



Decision and Reasons for Decision

Citation:	<i>R78 and Brisbane City Council [2026] QICmr 87 (1 June 2026)</i>
Application Number:	318789
Applicant:	R78
Respondent:	Brisbane City Council
Decision Date:	1 June 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - APPLICATION OUTSIDE SCOPE OF ACT - ENTITIES TO WHICH ACT DOES NOT APPLY IN RELATION TO A PARTICULAR FUNCTION - application for documents in relation to a prior external review application - whether the application is to an entity to which the Act does not apply - section 17 of the <i>Information Privacy Act 2009</i> (Qld) - sections 14(2) and 17(b) and schedule 2, part 2, item 7 of the <i>Right to Information Act 2009</i> (Qld)

I vary¹ the decision of Brisbane City Council (**Council**) and find that, the applicant's access application is outside the scope of the IP Act pursuant to section 17 of the IP Act and sections 17(b) and schedule 2, part 2, item 7 of the RTI Act.

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.

My reasons for the decision follow.



Joanne Kummrow
Information Commissioner

Date: 1 June 2026

REASONS FOR DECISION

Summary

1. The applicant applied to Council² under the IP Act to access documents in relation to a previous external review application made by the applicant to the Office of the Information Commissioner (OIC) (**Review Documents**) as follows:³

This information request is for access to any and all information stemming from communications (being written or verbal), including advices, between Council's RTI Unit (extending to Managers, including [name of Council Officer]) concerning OIC reference 317941 (being BCC IP 2023/24-206). There is also communications with Inclusive Brisbane staff (including [name of Council Officer]) of Council. I require all this information as part of this privacy request.

This BCC IP matter was connected to my QHRC and QCAT complaints, predominately QCAT. The BCC information request was via an email application of [date]. [Name of Council Officer] of Council was the then Decisionmaker, and I subsequently sought Internal Review, and then an External Review with the OIC on [date].

As part of the External Review (which was undertaken by [name of Review Officer] of the OIC), Council was required to provide me additional information.

*Looking back on this IP matter, the RTI Unit had released information to me as part of the External Review process, however there were considerable issues (documents missing, no watermarks, etc). Numerous communications with Council from me, and then between Council and the OIC took place, before a **re-release** of information was made to me.*

In an email sent to me by [name of Review Officer] of the OIC, [date], [name of Review Officer] advised me that Council had forwarded-on various emails (from me to Council) to her 'raising a series of issues about the release of documents to you.'

In an email to me from [name of Council Officer] of BCC, [name of Council Officer] [date] 'This matter is currently before an external review of the OIC. Should you wish to raise these issues with the OIC, I will await further advice from the OIC with regards to how to proceed. Please note, I am of the view that the information release to you was QA'ed by the OIC prior to being sent.'

In the IP matter of 2023/24-206, I was subsequently advised by the OIC that the OIC had applied the redactions, and then Council had released the documents to me via a series of emails (from [name of Council Officer] then Council email address).

As mentioned above, I require access to any and all information, including correspondence and information/documentation, in any format, associated with exchanges of communications between Council and the OIC (including [name of Review Officer] of the OIC). [Name of Review Officer] has already confirmed to me, via email, that these communications were made, so I am formally seeking access to these (including whether in writing, text messages, advices, Teams, emails, letters, memos, notes or verbally). My understanding is that Council is required to keep accurate records.

² On 30 May 2025.

³ For the timeframe 14 April 2024 to 12 December 2024 (inclusive).

2. Council decided⁴ that the access application was outside the scope of the IP Act under section 52 of the IP Act⁵ and schedule 2, part 2, item 7 of the RTI Act.
3. The applicant applied for internal review of Council's decision.⁶ In its internal review decision,⁷ Council upheld its original decision relying on OIC's decision *T71 and Queensland Police Service*.⁸
4. The applicant then applied to the OIC for an external review of Council's decision.⁹

Background

5. The applicant made a previous application to Council (**Prior Application**) seeking access to documents relating to a complaint the applicant had made against Council.¹⁰ The Prior Application was subject to external review by OIC (**Prior Review**).¹¹ In this matter as noted at paragraph 1, the applicant is seeking access to documents in relation to the Prior Review.
6. On 18 March 2025, QCAT issued its decision in *Stella*, which considered an access application made under the IP Act that included a request for agency processing documents. In that decision, Judicial Member DJ McGill SC confirmed that an agency decision maker, on an application that is reviewable by the Information Commissioner, is not an 'agency' for the purposes of the RTI Act because the decision maker falls within schedule 2, part 2, item 7 of the RTI Act, as the holder of an office connected with a quasi-judicial entity (i.e. the Information Commissioner) in relation to the Information Commissioner's quasi-judicial functions.
7. During the review, OIC conveyed a preliminary view to the applicant that following the QCAT decision of *Stella*, OIC considered that her request for documents relating to the Prior Review sought documents of an entity to which the IP Act does not apply.¹² The applicant disagreed with that position and indicated that she wished to make submissions in response.
8. On 24 October 2025, the Court of Appeal issued a judgment in which it refused Mr Stella's application for leave to appeal QCAT's decision referred to at paragraph 6 above.¹³ During the review, OIC informed the applicant about the Court of Appeal's decision and provided her with a link to access the decision.¹⁴

⁴ Decision dated 4 June 2025.

⁵ I note the comment of the Queensland Civil and Administrative Tribunal (**QCAT**) in *Stella v Griffith University* [2025] QCATA 20 at [81] (**Stella**), that section 52 of the IP Act provides a machinery provision dealing with the consequences of an agency deciding that one of the situations in section 52(1)(b) of the IP Act applies.

⁶ On 20 June 2025.

⁷ Dated 25 June 2025.

⁸ [2022] QICmr 10 (4 March 2022) (**T71**).

⁹ Email to OIC dated 17 July 2025.

¹⁰ Council reference number IP 2023/24-206.

¹¹ External review 317941.

¹² Letter to the applicant dated 27 August 2025.

¹³ *Stella v Griffith University* [2025] QCA 203.

¹⁴ Email to the applicant dated 25 November 2025.

Reviewable decision

9. The decision under review is Council’s internal review decision dated 25 June 2025.

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁵ 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.¹⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁷

Issue for determination

12. The issue for determination is whether the application for Review Documents has been made to an entity to which the RTI Act does not apply and accordingly the IP Act does not apply.

Concerns raised by the applicant

13. During the review, the applicant alleged that OIC had misrepresented the information that she was seeking access to by summarising it as ‘*all documents in Council’s possession in relation to external review 317941, including communications between Council and OIC*’.¹⁸
14. The applicant submitted that this was ‘*deceptive (misleading) conduct*’ and referred to parts of the actual wording of the access application. In addition, the applicant submitted:¹⁹

Is the OIC trying to safeguard it’s [sic] review officers and Commissioners – in case whatever Council SHOULD BE releasing to me makes the OIC (and potentially Council) look bad? Is this hiding evidence of information that could be criticised? Is this, reasonably, bias conduct of the OIC and also bias decision-making of Council decision-makers?

¹⁵ Section 21 of the HR Act.

¹⁶ *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]. This approach, in the context of the IP Act and RTI Act, was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner ‘was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.’

¹⁷ I 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 Freedom of Information Act’.

¹⁸ Email to OIC dated 8 April 2026. The summary referred to by the applicant was contained in OIC’s letter to the applicant dated 27 August 2025.

¹⁹ Email to OIC dated 8 April 2026.

15. The summary referred to by the applicant was included in OIC's preliminary view to the applicant, in a paragraph after OIC had set out the scope of the applicant's access application in full as referred to at paragraph 1 above. Given this, I cannot identify how OIC's conduct can be described as misleading or deceptive, nor are the applicant's further comments an accurate reflection as to why I have decided that the access application falls outside the scope of the IP Act.

Relevant law in relation to the issue for determination

16. Under the IP Act, an individual has a right to access documents of an agency to the extent that they contain the individual's personal information.²⁰ Although the IP Act is to be administered with a pro-disclosure bias,²¹ the right of access is subject to certain limitations. In the IP Act, the terms 'document' and 'agency' have the same meaning as in the RTI Act.²² Notably, 'agency' is defined to exclude entities to which the RTI Act does not apply.²³ Accordingly, an access application will be outside the scope of the IP Act if the entity to which the application is made is not an entity to which the RTI Act applies.
17. Section 17 of the RTI Act defines the entities to which the RTI Act does not apply as being the entities mentioned in schedule 2 of the RTI Act.²⁴ Relevantly, under schedule 2, part 2, item 7 of the RTI Act, *'a member of, or the holder of an office connected with, a quasi-judicial entity, in relation to the entity's quasi-judicial functions'* is an entity to which the RTI Act does not apply.²⁵
18. In the *Stella* QCAT decision, the Tribunal found that:
- OIC is a quasi-judicial body.²⁶
 - OIC performs quasi-judicial functions when conducting external reviews, so in performing those functions it is not an entity to which the IP Act applies for the purposes of schedule 2, part 2, item 6 of the RTI Act.²⁷
 - The decision maker of an agency on an application under the IP Act, which is reviewable by the OIC is not an agency, since the decision maker would not be an agency for the purposes of the RTI Act.²⁸ In other words, the agency decision maker in making a decision on an access application under the IP Act is *'connected with'* OIC's external review function for the purposes of schedule 2, part 2, item 7 of the RTI Act.
 - The reasoning in *Carmody v Information Commissioner & Ors (5)*²⁹ and *T71* also apply to an application under the IP Act.³⁰

²⁰ Section 40(1)(a) of the IP Act.

²¹ Section 58(4) of the IP Act.

²² Sections 13 and 17 of the IP Act.

²³ Section 17 of the IP Act and section 14(2) of the RTI Act.

²⁴ Part 1 of that schedule lists the entities to which the RTI Act does not apply and part 2 mentions the entities to which the RTI Act does not apply in relation to particular functions.

²⁵ Schedule 5 of the RTI Act defines a quasi-judicial entity as an entity that exercises quasi-judicial functions.

²⁶ At [74].

²⁷ At [74].

²⁸ At [78].

²⁹ [2018] QCATA 18 (*Carmody*).

³⁰ At [79].

- Nothing requires that schedule 2 to the RTI Act be interpreted in a narrow or restrictive way or with a pro-disclosure bias.³¹

19. In the *Stella* Court of Appeal judgment, the Court found that there was no error of law in QCAT applying the reasoning from the *Carmody* decision to its findings.³²

Findings in relation to the issue for determination

20. In her external review application, the applicant submitted that Council had previously disclosed information of the nature that she is seeking access to in the application that is subject to this review. In support of this, the applicant provided OIC with copies of documents that had been disclosed by Council in response to applications made by another individual.³³

21. OIC in its preliminary view to the applicant, explained that while Council may have disclosed documents of this nature previously, the position had changed since the QCAT decision of *Carmody* and OIC's subsequent decision following *Carmody* – T71.³⁴

22. OIC also conveyed a preliminary view that:

- OIC is a quasi-judicial entity and in conducting an external review it carries out a quasi-judicial function³⁵
- the Council decision makers were the holders of an office *connected with* OIC in relation to its quasi-judicial function³⁶
- the documents in the Previous Review were created or received by the holders of an office (Council's decision makers) connected with the quasi-judicial entity (OIC) conducting the Previous Review; and
- on that basis the documents requested in this matter – i.e. the Review Documents are documents of an entity to which the IP Act does not apply.

23. In the *Stella* matter, the applicant sought access to documents encompassing the processing of a previous access application, whereas in this matter the applicant seeks access to Review Documents in relation to the Prior Review. However, I consider that, given that OIC has been found to be a quasi-judicial body and when conducting an external review it is performing a quasi-judicial function, it follows that in creating or receiving documents from OIC, Council was '*connected with*' OIC when OIC was conducting its external review function in relation to the Prior Review.³⁷ On that basis the Review Documents are documents of an entity to which the IP Act does not apply.

24. The applicant replied to OIC's preliminary view, stating that she did not accept the preliminary view and in summary:³⁸

³¹ At [83].

³² At [83].

³³ Email to OIC dated 17 July 2025.

³⁴ Letter to the applicant dated 27 August 2025.

³⁵ For the purposes of schedule 2, part 2, item 6 of the IP Act.

³⁶ For the purposes of schedule 2, part 2, item 7 of the IP Act.

³⁷ Email to the applicant dated 25 November 2025.

³⁸ Emails to OIC dated 28 November 2025, 2 March 2026 and 8 April 2026.

- a) Repeated her submissions that Council had disclosed information of a similar nature to another individual and referred to OIC's decisions that finalised external reviews of those matters.³⁹ In this respect, the applicant stated that OIC's preliminary view in this matter was biased as it *'includes only a few cases which tend to favour the OIC and Council, rather than be balanced and include [the three previous external reviews referred to by the applicant]'*.
- b) Submitted that the cases that OIC had referred to in its preliminary view were different to her access application as they were made to other agencies rather than Council.
- c) Referred to complaints she had made about Council both to Council itself and other agencies and submitted that she had received information from Council and the other agencies in response to access applications for complaint information.
- d) OIC cannot decide that her access application falls outside of the IP Act.

25. In relation to point a) above, the OIC decisions referred to by the applicant, all occurred prior to OIC's decision of *T71*. As noted above, OIC has previously explained,⁴⁰ that its position has changed since those decisions were made and in reaching the preliminary view, OIC was following *T71* and subsequently the *Stella* Court of Appeal decision **which are binding on OIC**. I do not accept that this shows evidence of bias.

26. In relation to point b) above, while the decisions that OIC referred to in its preliminary view did not involve Council, the relevance of those cases is that the agencies were found to be *'connected with'* OIC for the purposes of schedule 2, part 2, item 7 of the RTI Act. Given this, the findings in those matters are applicable to my decision in this matter.

27. In relation to the applicant's submission at point c) above, external review is a merits review, which requires me to determine a matter on its own facts and on the basis of the information available to me. The issue that I must consider in this matter is whether the applicant's access application is outside the scope of the IP Act because the entity to which the application was made (i.e. Council) is not an entity to which the RTI Act applies in these particular circumstances. In doing so, I must consider the legislation as was in place at the relevant time⁴¹ and the judgments of QCAT and the Court of Appeal in the *Stella* matter, which as noted above are binding on me. Given this, the applicant's submission about receiving complaint information from other agencies is not relevant to this issue.

28. In relation to point d) above, the IP Act provides that the Information Commissioner may decide any matter in relation to an access application that under the IP Act could have been decided by an agency.⁴² Accordingly, it is open to me to decide that an

³⁹ *P90 and Brisbane City Council* [2021] QICmr 23 (27 May 2021), *F89 and Brisbane City Council* [2021] QICmr 69 (20 December 2021) and *Q30 and Brisbane City Council* [2022] QICmr 4 (25 January 2022) respectively.

⁴⁰ Letter to the applicant dated 27 August 2025.

⁴¹ See footnote 1 above. Notably the amendments to the IP and RTI introduced by the IPOLA Act include a requirement that decisions made by an agency that an entity is outside the scope of the RTI Act under schedule 2, part 2, items 1 to 8 be appealed directly to QCAT (see section 119(2) and definition of 'judicial function decision' in schedule 5 of the current RTI Act).

⁴² Section 118(1) of the IP Act.

access application is outside the scope of the IP Act if there is sufficient information before me to support that decision, which I consider there is in this matter.

29. I am satisfied that for the purposes of schedule 2, part 2, item 7 of the RTI Act, Council is an entity to which the IP Act does not apply in relation to OIC's external review function. Given this, I find that the applicant's request to access the Review Documents is outside the scope of the IP Act by virtue of section 17(b) and schedule 2, part 2, item 7 of the RTI Act.