



## Decision and Reasons for Decision

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**Application Number:** 311305  
**Applicant:** Johnston  
**Respondent:** Brisbane City Council  
**Decision Date:** 6 December 2013

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – applicant seeks documents relating to road upgrade options and recommendations to improve traffic – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

### REASONS FOR DECISION

#### Summary

1. Councillor Johnston applied to Brisbane City Council (**Council**) for access to ‘*corridor and congestion studies for Oxley Road (also known as the South-West Corridor Study), Ipswich Rd Annerley, Annerley Rd Fairfield... 1 January 2011 to current*’ (**Corridor Study**) under the *Right to Information Act 2009* (Qld) (**RTI Act**).
2. Council located 382 pages and decided<sup>1</sup> to grant access to 256 pages but refuse full and partial access to 126 pages on the basis that disclosure would, on balance, be contrary to the public interest, primarily because it would prematurely disclose and therefore prejudice the deliberative processes of Council with respect to the Corridor Study.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council’s decision to refuse access.
4. On external review, Council agreed to informally release further information on the basis its disclosure would not, on balance, be contrary to the public interest.
5. Of the information remaining in issue (**Information in Issue**), for the reasons set out below, I vary Council’s decision and find that disclosure of:
  - 16 part pages would **not**, on balance, be contrary to the public interest; and
  - the remainder (ie. 5 full pages and 79 part pages) would, on balance, be contrary to the public interest.

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<sup>1</sup> By letter dated 23 November 2012, however, I note that the decision under review is a deemed decision – see paragraph 8.

## Background

6. Significant procedural steps relating to the application and external review are set out in the appendix to this decision.
7. Of note, OIC corresponded with Council over the course of three months about why the Information in Issue was not otherwise available under the following provision of the *City of Brisbane Act 2010* (Qld) (**COB Act**) which provides Councillors with a right to access certain information. See paragraphs 30 to 32 of this decision for further discussion.

### **172 Inspection of particular records by councillors**

(1) *A councillor may view and make a copy of, or take an extract from, council records.*

*Note—*

*The Right to Information Act 2009 also provides for access to information.*

(2) **Council records** include documents created by or kept by the council about its operations, whether or not the records must be available to be viewed by the public.

(3) *Subsection (1) does not apply to any of the following—*

*(a) a record of the BCC councillor conduct review panel;*

*(b) a record that would be privileged from production in a legal proceeding on the ground of legal professional privilege;*

*(c) for a councillor who is not a member of a statutory committee of the council—a record of the statutory committee of the council;*

*(d) another record if—*

*(i) disclosure of the record would be contrary to an order of a court or tribunal; or*

*(ii) release of the record could endanger the security of assets of the council or the public.*

## Reviewable decision

8. The decision under review is the decision Council is deemed to have made refusing access to the documents sought by the applicant dated 2 November 2012.<sup>2</sup>

## Evidence considered

9. The evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

## Information in issue

10. The Information in Issue can be broadly defined as either:
  - road upgrade options and recommendations to improve traffic in the South West Corridor and project documentation (**Planning Information**); or
  - parts of an internal issues register (**Issues Register Information**).
11. The Planning Information is itself divisible into two different categories:
  - Planning Information about larger scale potential changes which, if implemented, are likely to have a significant impact on residential land and residents' amenity, eg. changes to existing road routes (**Category 1**); and

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<sup>2</sup> Council did not give the applicant written notice of its decision by the end of the processing period set out in section 18 of the RTI Act and is therefore deemed to have made a decision refusing access to the Information in Issue in accordance with section 46(1)(a) of the RTI Act.

- Planning Information about:
  - smaller scale or generalised potential changes (eg. in relation to guardrails); and
  - the progress of the project.**(Category 2)**

12. On external review, the applicant confirmed that she does not seek access to hourly rates information and mobile phone numbers.<sup>3</sup>

### **Issue for determination**

13. The issue for determination in this review is whether access to the Information in Issue may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.<sup>4</sup>

### **Relevant law**

14. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency, subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act. Relevantly, access may be refused to information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.<sup>5</sup>

15. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

16. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>6</sup> and explains the steps that a decision-maker must take in deciding the public interest as follows:<sup>7</sup>

- identify any irrelevant factors and disregard them
- identify any relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.

### **Findings**

#### ***Would disclosure of the Information in Issue, on balance, be contrary to the public interest?***

17. The majority of the Information in Issue (ie. Category 1 Planning Information and Issues Register Information) would, on balance, be contrary to the public interest to disclose. However, disclosure of the Category 2 Planning Information would not. My reasons are set out below.

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<sup>3</sup> Telephone calls with OIC on 24 September and 20 November 2013. The hourly rates are on page 6 of the Oxley Road Corridor Study and the mobile phone numbers are on pages 43-46 of the Corridor Study Stakeholder Register.

<sup>4</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>5</sup> Section 47(3)(b) of the RTI Act.

<sup>6</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest.

<sup>7</sup> Section 49(3) of the RTI Act.

### Irrelevant factors

18. Council expressed concerns on external review that the applicant would publicise any documents released to her.<sup>8</sup> This raises for consideration whether disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.<sup>9</sup> This is an irrelevant factor and I have not taken it into account in deciding whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.<sup>10</sup>
19. I do not consider that any other irrelevant factors arise in this review.

### Factors favouring disclosure

20. I am satisfied that disclosing both the Category 1 and Category 2 Planning Information would assist the applicant and her constituents to discuss various traffic and safety issues affecting the Ward and its surrounding area and to evaluate the different options Council is considering for improvement. The applicant submits,<sup>11</sup> and I agree, that there is a public interest in residents having input into Council's decision making process. As the Information Commissioner has previously noted:<sup>12</sup>

*... provided access can be obtained at a timely stage in the process, disclosure of preliminary documents relating to policy or planning proposals in development is essential if the FOI Act is to achieve one of its major objects, i.e., promoting informed public participation in the processes of government.*<sup>13</sup>

21. The Issues Register Information deals with internal issues and I do not consider disclosing it would contribute to an assessment of the same traffic and safety issues. However, it would allow some insight into the way Council is handling the Corridor Study project internally.
22. On the basis of the above, I am satisfied that disclosing the Information in Issue could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>14</sup>
  - contribute to positive and informed debate on important issues or matters of serious interest<sup>15</sup>
  - inform the community of the Government's operations<sup>16</sup>
  - ensure effective oversight of expenditure of public funds;<sup>17</sup> and
  - reveal measures relating to public safety (this factor is only relevant to the Planning Information).<sup>18</sup>
23. Having determined that the above public interest factors apply, the next step is to assess the weight to be attributed to these factors.

<sup>8</sup> Letter to OIC dated 22 April 2013.

<sup>9</sup> Schedule 4, part 1, item 3 of the RTI Act.

<sup>10</sup> Section 49(3) of the RTI Act.

<sup>11</sup> Email to OIC dated 28 November 2013.

<sup>12</sup> In the context of the now repealed *Freedom of Information Act 1992* (Qld). I note that the preamble to the RTI Act contains a similar object: '*openness in government increases the participation of members of the community in democratic processes leading to better informed decision-making*'.

<sup>13</sup> *Johnson and Department of Transport; Department of Public Works* (2004) 6 QAR 307 at [39], and noting too the Information Commissioner's endorsement at [40] of the Commonwealth Administrative Appeals Tribunal's observations in *Re Boehm and Department of Industry, Technology and Commerce* (1985) 7 ALN 186 (at p.189) that '*submissions ...that final decisions only, and not earlier discussions, should be disclosed, seem to us to be inconsistent with the very existence of the [Commonwealth FOI] Act*'.

<sup>14</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>15</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>16</sup> Schedule 4, part 2, item 3 of the RTI Act.

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

<sup>18</sup> Schedule 4, part 2, item 14 of the RTI Act.

24. Depending on what decision Council reaches in relation to the Corridor Study, some of the proposed changes in the Category 1 Planning Information may have significant implications for residents. A person's home is often their largest asset and understandably, there is a great deal of public interest in, and a high degree of scrutiny of, decisions made by government in relation to land. Public safety issues are also of serious concern to the community because of the nature of their potential impact (ie. direct effect on citizens' health and wellbeing). For these reasons, I am satisfied that the above factors attract significant weight in the case of the Category 1 Planning Information.
25. However:
- a large amount of information has already been released to the applicant which provides insight into the Corridor Study and the issues Council is considering; and
  - a number of the documents are only in draft form and Council has revised its approach to the original Corridor Study.<sup>19</sup>
26. For the above reasons, I find that the significant weight otherwise attributed to the factors favouring disclosure is somewhat reduced.
27. The Category 2 Planning Information issues are of a smaller scale and more general nature, and therefore are less likely to be of serious interest to the community. On this basis, I consider the above factors favouring disclosure are of moderate weight in the case of the Category 2 Planning Information.
28. The weight to be accorded to the factors favouring disclosure concerning the Issues Register Information is also moderate as it does not provide insight into traffic and safety issues that would directly affect the whole community, but rather relates to certain discrete parts of Council's internal workings on one stage of the Corridor Study.
29. The applicant submits<sup>20</sup> that disclosure of the Information in Issue could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>21</sup> However, I do not consider that the Information in Issue could reveal such matters because the Corridor Study is still in its Options Development Phase<sup>22</sup> and Council has not yet reached a decision about any recommendations made so far.

***Act that provides for disclosure***

30. Under the COB Act, a Councillor may view and make a copy of, or take an extract from, Council records.<sup>23</sup> While this is not specifically recognised in the list of factors in schedule 4 of the RTI Act, this list is not exhaustive; therefore I have also taken this into account as a factor weighing in favour of disclosure. I accord this factor significant weight as it demonstrates Parliamentary recognition that Councillors need access to these kinds of documents to assist in their role representing the constituents of their wards, and therefore have greater access rights than normal members of the public.

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<sup>19</sup> Council's submission to OIC dated 29 October 2013 and subsequent telephone conversation on 3 December 2013.

<sup>20</sup> External review application dated 11 December 2012.

<sup>21</sup> Schedule 4, part 2, section 11 of the RTI Act.

<sup>22</sup> In a telephone call with OIC on 3 December 2013, Council confirmed that the Options Development Stage that was originally scheduled to commence in September (as set out in a briefing note dated 19 August 2013 from Council's Transport Planning Manager to the applicant) was still underway and the Options Testing and Design Phase scheduled to commence in November would likely not commence until the new year.

<sup>23</sup> Section 172(1) of the COB Act.

31. Council submits that section 172 of the COB Act is not applicable because the Information in Issue is in draft form and contains sensitive deliberative process information.<sup>24</sup> However, I have not taken this into consideration as:
- the definition of ‘Council records’ provided in the COB Act does not preclude draft documents;<sup>25</sup> and
  - there are no other restrictions set out in section 172 that would require Council to take into consideration whether the document contains sensitive deliberative process information.
32. Council also submits that if the Information in Issue is released under the RTI Act, it will not be subject to the restrictions in section 173 of the COB Act,<sup>26</sup> which is correct. On this basis, I consider that the significant weight attributed to this factor favouring disclosure is somewhat reduced.

### **Factors favouring nondisclosure**

#### ***Deliberative process***

33. The RTI Act provides that the public interest will favour nondisclosure of information where disclosure could reasonably be expected to:
- prejudice a deliberative process of government (**Prejudice Factor**);<sup>27</sup> and/or
  - cause a public interest harm through disclosure of an opinion, advice or recommendation that has been obtained, prepared or recorded or a consultation or deliberation that has taken place, in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**).<sup>28</sup>
34. Deliberative processes involved in the functions of government have been defined as ‘...*thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action*’.<sup>29</sup>
35. This is the primary basis upon which Council has relied to support its refusal of access to the Information in Issue.
36. The Planning Information comprises road upgrade options and recommendations to improve traffic in the South West Corridor. Since these documents were originally created, Council has revised its approach and the new Corridor Study is now in its Options Development Stage. Council has confirmed, however, that the Information in Issue is heavily informing the new project.<sup>30</sup> I am satisfied that the Information in Issue comprises an opinion, advice or recommendation prepared in the course of Council’s deliberative processes (ie. making decisions about traffic management in the South West Corridor) and therefore, the Harm Factor applies.
37. I am satisfied that disclosure of the Issues Register Information could also reasonably be expected to result in a public interest harm as it comprises an opinion prepared in the course of the same deliberative process.

<sup>24</sup> Council’s submission dated 22 April 2013.

<sup>25</sup> ‘**Council records**’ include documents created by or kept by the council about its operations, whether or not the records must be available to be viewed by the public. (Section 172(2) of the COB Act)

<sup>26</sup> Council’s submission dated 27 March 2013.

<sup>27</sup> Schedule 4, part 3, item 20 of the RTI Act.

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

<sup>29</sup> *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 at paragraphs 28-30 citing with approval the definition given in *Re Waterford and Department of Treasury (No.2)* (1984) 5 ALD 588 at 606.

<sup>30</sup> Council’s submission to OIC dated 29 October 2013 and subsequent telephone conversation on 3 December 2013.

38. The applicant submits that only the Establishment and Coordination Committee (**ECC**) make deliberative decisions and *'workshop notes, plans, spreadsheets and related materials are not deliberate in any official Council sense.'*<sup>31</sup> I acknowledge that the ECC is Council's peak decision making body. However, there are many other groups in Council that also make smaller-scale decisions that involve deliberative processes. The important point for the purposes of the Harm Factor, is that the Information in Issue was created during the deliberations, or will ultimately feed into the decision that is made about the Corridor. I am satisfied that this is the case.
39. If the options and recommendations being considered were disclosed, it is likely that there would be a large amount of disruptive public debate. This could reasonably be expected to prejudice Council's ability to objectively consider the options available and reach a considered decision about the Corridor. It could also reasonably be expected that Council would need to reallocate resources to deal with any public debate, resources which would otherwise be involved in finalising the deliberative process. Therefore I am also satisfied that the Prejudice Factor is also established.
40. The applicant submits that the above factor lacks merit because Council is required to make decisions in the context of community debate on a daily basis and *'Council provides information to residents without having made a final decision on whether to proceed or not with a particular issue.'*<sup>32</sup> This may well occur, however, it is my role to determine whether, in the particular circumstances of this review, disclosure would, on balance, be contrary to the public interest. The fact that Council otherwise deals with difficult circumstances on a regular basis does not reduce the harm that could reasonably be expected to result from disclosure of the Information in Issue in these circumstances given:
- the potentially significant impact on residents' land and amenity
  - the Corridor Study is still in the Options Development Stage
  - the documents are largely in draft form; and
  - the project has since been revised and options reassessed.
41. The next step is to assess the weight to be attributed to the Harm and Prejudice Factors, now that I have established that they apply.
42. The Category 1 Planning Information relates to changes that could have a significant impact on residents' land and amenity. Accordingly, the weight to be attributed to the public interest harm that would result from disclosure is significant for the same reasons as the pro-disclosure factors carry such significant weight - disclosure of options that may impact people's land and amenity is likely to cause passionate disagreement, anxiety and potentially protest about various options that may not eventuate. The traffic management issues which are the subject of the Corridor Study are of vital importance to a number of Wards. This is another reason for attributing any detriment to this important deliberative process significant weight. While Council submits that there is no firm recommendation or decision to proceed with the changes in the Category 2 Planning Information,<sup>33</sup> I consider this is of less concern as the Category 2 Planning Information would have very little impact on residents' land and amenity (if implemented) and for this reason, I have attributed a low weight to the public interest harm that could be expected to result from disclosure of this information.
43. The applicant submits that *'[T]hese changes are to existing routes not new routes.'*<sup>34</sup> I take this to mean that the applicant expects changes to existing routes to be of less

<sup>31</sup> External review application dated 11 December 2012.

<sup>32</sup> Email to OIC dated 28 November 2013.

<sup>33</sup> Council's submission dated 29 October 2013.

<sup>34</sup> External review application dated 11 December 2012.

concern than the creation of new routes. I agree that decisions about completely new routes are likely to be particularly controversial and that disclosure of deliberative process information in those circumstances is likely to significantly harm the public interest. However, this does not mean that significant public interest harm cannot be occasioned by disclosure of documents relating to potential changes to existing routes. As such, I am satisfied that the weight to be attributed to the Harm and Prejudice Factors remains significant in the case of the Category 1 Planning Information.

44. The applicant also contends that Council has repeatedly and publicly announced its plans to upgrade the roads in question and that she had been invited to a briefing on the matter which indicated that the Corridor Study had been completed.<sup>35</sup> Council submits that the specific briefing the applicant was referring to was in relation to a separate congestion study.<sup>36</sup> As set out above, the Corridor Study itself is still in the Options Development Stage and has not progressed to Options Testing and Design.<sup>37</sup> I acknowledge that if Council had made a decision, the prejudice occasioned by disclosure of deliberative process information may be reduced. However, as set out above, Council has not yet reached a decision about the Corridor.
45. I am not satisfied that the same weight applies to the Harm and Prejudice Factors in the context of the Issues Register Information because this information does not relate to changes to road routes that could potentially have significant impacts on residents' land and amenity. I attribute the Harm and Prejudice Factors only low weight for the Issues Register Information.

#### ***Relationship with other agencies***

46. A small amount of the Planning Information has been provided by another agency to Council regarding its own project that is still under consideration. Having carefully considered this information and checked that information regarding the other agency's project is not publicly available, I accept Council's submission that disclosure could reasonably be expected to prejudice the deliberative processes of this other agency and consequently Council's relationship with this agency.<sup>38</sup> I attribute this factor significant weight because it is important for agencies to have the confidence to be able to share this kind of information and collaborate in this way where projects overlap.

#### ***Management of staff***

47. The Issues Register Information is a small amount of information which identifies performance issues affecting the Corridor Study project. This register appears to be a valuable exercise in honestly identifying problems and brainstorming actions that can be taken to remedy these problems and thus improve the project's timeliness, direction, cost and other such matters.
48. Disclosure could reasonably be expected to cause public interest harm if it could have a substantial adverse effect on the assessment by Council of its staff.<sup>39</sup> Release of this kind of information would cause employees to be less likely to provide such frank feedback in future, which would have a substantial adverse effect on this kind of performance assessment exercise. Therefore, I am satisfied that disclosure of the Issues Register Information could reasonably be expected to result in a public interest harm. The weight I attribute this factor is significant because of the value to the

<sup>35</sup> External review application dated 11 December 2012.

<sup>36</sup> Council's submission dated 29 October 2013, confirmed in a telephone call with OIC on 4 November 2013. I note that the applicant was advised of Council's submission in this regard and did not respond to this point in her submissions.

<sup>37</sup> Council's submission dated 29 October 2013.

<sup>38</sup> Schedule 4, part 3, item 14 of the RTI Act, as raised in Council's submission dated 8 July 2013.

<sup>39</sup> Schedule 4, part 4, item 3(c) of the RTI Act.



Corridor Study, and efficient project management generally, in conducting an exercise of this nature.

***Prejudice to private, business and commercial affairs of entities***

49. If disclosure of information could reasonably be expected to prejudice the private, business, commercial or financial affairs of entities,<sup>40</sup> the public interest will favour nondisclosure.<sup>41</sup>
50. Council submits that the Information in Issue proposes some options that would have a negative effect on the value of residents' properties.<sup>42</sup>
51. It has previously been found that the following could reasonably be expected to financially prejudice residents if disclosed:
  - documents concerning sites under consideration by the local council for a proposed bioreactor landfill;<sup>43</sup> and
  - a report identifying properties as subject to flooding impacts in the context of Road Upgrade options under consideration by Council.<sup>44</sup>
52. Having considered the Information in Issue, I am satisfied that certain parts of the Category 1 Planning Information could reasonably be expected to prejudice the financial affairs of residents by reducing property values. I attribute significant weight to this factor, in relation to the relevant parts of the Category 1 Planning Information, given the broad range of properties that may be affected and considerable prejudice that could be expected to result.
53. The Category 2 Planning Information relates to potential changes of a smaller scale. I am not satisfied that release of this information could reasonably be expected to result in a reduction in property values, therefore, in the case of the Category 2 Planning Information, I do not consider the above factor favouring nondisclosure applies.

**Balancing the public interest**

***Category 1 Planning Information***

54. I have attributed significant weight to the public interest factors favouring both disclosure<sup>45</sup> and nondisclosure<sup>46</sup> of the Category 1 Planning Information. However, in the circumstances of this review, I consider it relevant that:
  - a large amount of information has already been released to the applicant which provides insight into the Corridor Study and the issues Council is considering; and
  - a number of the documents are only in draft form and Council has revised its approach to the original Corridor Study.
55. For these reasons, I am satisfied that the factors favouring nondisclosure outweigh the factors favouring disclosure and disclosure of the Category 1 Planning Information would, on balance, be contrary to the public interest.

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<sup>40</sup> Section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Qld) defines 'entity' to include 'a person and an unincorporated body'; 'person'

to include 'an individual and a corporation'; and 'individual' to mean 'a natural person'.

<sup>41</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>42</sup> Submissions dated 27 March 2013, 22 April 2013 and 8 July 2013.

<sup>43</sup> *Metcalf and Maroochy Shire Council* (Unreported, Queensland Information Commissioner, 19 December 2007) at paragraph 59.

<sup>44</sup> *Pallara Action Group Inc and Brisbane City Council* (Unreported, Queensland Information Commissioner, 21 September 2012) at paragraph 32.

<sup>45</sup> See paragraphs 20 to 32 above.

<sup>46</sup> See paragraphs 33 to 46 and 49 to 52 above.

### **Category 2 Planning Information**

56. I have attributed moderate<sup>47</sup> to significant<sup>48</sup> weight to factors favouring disclosure of the Category 2 Planning Information. However, I have attributed only low weight to the public interest harm that could reasonably be expected to arise from disclosure of the Category 2 Planning Information, as it is unlikely that disclosure would result in any serious interference in Council's decision making process.
57. On this basis, I am satisfied that the factors favouring disclosure outweigh the factors favouring nondisclosure. Therefore, disclosure of the Category 2 Planning Information would **not**, on balance, be contrary to the public interest under section 49 of the RTI Act and access may **not** be refused under section 47(3)(b).

### **Issues Register Information**

58. While I attribute a moderate<sup>49</sup> to significant<sup>50</sup> weight to the factors favouring disclosure of the Issues Register Information, I consider that they are outweighed by the significant public interest harm that could reasonably be expected to result from disclosure of the Issues Register Information in that it would have a substantial adverse effect on a valuable internal performance assessment exercise.<sup>51</sup> Therefore, access to the Issues Register Information may be refused under section 47(3)(b) of the RTI Act.

## **DECISION**

59. I vary the decision under review and find that disclosure of the:
- Category 1 Planning Information would, on balance, be contrary to the public interest
  - Category 2 Planning Information would **not**, on balance, be contrary to the public interest; and
  - Issues Register Information would, on balance, be contrary to the public interest.<sup>52</sup>
60. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**JS Mead**  
**Right to Information Commissioner**

**Date: 6 December 2013**

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<sup>47</sup> Accountability and public discussion factors set out at paragraph 22 above; see discussion of weighting at paragraph 27.

<sup>48</sup> Councillors' access to these documents is specifically contemplated by the COB Act as set out at paragraphs 30 to 32 above.

<sup>49</sup> Accountability and public discussion factors set out at paragraph 22 above; see discussion of weighting at paragraph 28.

<sup>50</sup> Councillors' access to these documents is specifically contemplated by the COB Act as set out at paragraphs 30 to 32 above.

<sup>51</sup> While I have also taken into account that disclosure would also cause a low weight public interest harm as the Issues Register Information comprises an opinion prepared in the course of the deliberative process, this was not determinative in my balancing of the public interest factors.

<sup>52</sup> Sections 47(3)(b) and 49 of the RTI Act.

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

<b>Date</b>	<b>Event</b>
27 September 2012	The applicant made an access application to Council.
23 November 2012	Council made its decision as set out at paragraph 2 above.
11 December 2012	OIC received the applicant's application for external review of Council's decision and requested a copy of the procedural documents from Council.
12 December 2012	Council provided OIC with a copy of the procedural documents.
14 December 2012	Council confirmed to OIC by telephone that there were no other considerations to be taken into account in calculating the processing period and that the decision under review was therefore deemed.
18 December 2012	OIC informed Council and the applicant that the application had been accepted for external review.
7 January 2013	Council provided OIC with a copy of the Information in Issue.
25 January 2013	OIC contacted Council by telephone to discuss whether access is otherwise available to the applicant under section 172 of COB Act.
29 January 2013	
8 February 2013	
20 March 2013	OIC sent a letter requesting Council to consider releasing the Information in Issue to the applicant under the COB Act by 29 March 2013.
27 March 2013	Council advised OIC that it would not presently be releasing the Information in Issue under the COB Act, but may reconsider once the Corridor Study had progressed significantly enough.
15 April 2013	OIC requested Council to provide an assurance that the Information in Issue would be released under the COB Act.
23 April 2013	Council informed OIC in writing that it would not be able to make assurances about the Information in Issue being released under the COB Act.
24 April 2013	OIC contacted Council to reconcile the Information in Issue with schedule provided by Council.
	Council sent OIC a clarified schedule of the Information in Issue.
13 June 2013	OIC sent Council a preliminary view that it had not discharged the onus under section 87(1) of the RTI Act to justify its decision to refuse access to some of the Information in Issue. A response was requested by 27 June 2013.
27 June 2013	Council requested an extension of one week in which to provide its submission which was granted.
8 July 2013	Council agreed to release some further information to the applicant but made an extensive submission (18 pages) to OIC supporting its decision to refuse access to the remaining Information in Issue.
11 July 2013	OIC wrote to the applicant to confirm that Council would be releasing further information.
	OIC wrote to Council to confirm that it would release further information to the applicant by 25 July 2013.
18 July 2013	The applicant requested Council's reasons for changing its mind about certain information.
22 July 2013	OIC wrote to the applicant to confirm that Council would release the further information before the end of the week.

	The applicant reiterated her request for the reasons for Council's change in position.
	Council provided the applicant with a copy of the further information by letter of this date.
25 July 2013	OIC wrote to the applicant to confirm that a copy of the preliminary view to Council would not be released to her because of restrictions under section 108 of the RTI Act.
16 September 2013	OIC requested a meeting with Council to discuss further information which, in OIC's preliminary view, would not, on balance, be contrary to the public interest to disclose.
24 September 2013	The applicant confirmed that she does not seek mobile telephone numbers in a telephone call with OIC.
	OIC met with Council to convey an oral preliminary view about further information which would not, on balance, be contrary to the public interest to disclose.
25 September 2013	OIC wrote to Council confirming its understanding of the outcomes of the meeting and the further information Council agreed to release. OIC requested a response by 15 October 2013.
15 October 2013	OIC called Council to confirm submission due this day and Council requested an extension until 18 October 2013 which was granted.
21 October 2013	OIC called Council to determine why the submission had not been received. Council agreed to provide submission on this day.
22 October 2013	Council called OIC to explain that the submission would be sent as soon as possible.
25 October 2013	OIC called Council to follow up on the submission.
28 October 2013	OIC called Council to follow up on the submission.
29 October 2013	OIC received Council's extensive submission (8 pages) which agreed to release some further information.
4 November 2013	OIC called Council to clarify what stage the Corridor Study had reached.
12 November 2013	OIC contacted Council to clarify whether a PowerPoint presentation in the Information in Issue was ever publicly presented.
13 November 2013	Council confirmed that the PowerPoint presentation was not completed or presented.
20 November 2013	The applicant confirmed to OIC by telephone that she does not seek access to certain hourly rates in the Information in Issue.
21 November 2013	OIC sent its preliminary view in relation to the remaining Information in Issue to the applicant, requesting a response by 11 December 2013 and confirming further information would be released by 27 November 2013.
	OIC wrote to Council requesting further Information in Issue be released by 27 November 2013.
	Council released further information to the applicant by letter of this date.
28 November 2013	OIC received a phone call and written submission from the applicant in response to its preliminary view.
3 December 2013	OIC called Council to clarify what stage the Corridor Study had reached.