



Decision and Reasons for Decision

Citation: *Suskova and Council of the City of Gold Coast* [2015] QICmr 31 (27 November 2015)

Application Number: 312288

Applicant: Suskova

Respondent: Council of the City of Gold Coast

Decision Date: 27 November 2015

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – information identifying a complainant and the substance of the complaint – internal floor plans – residential address of another individual – 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)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – FORMS OF ACCESS – COPYRIGHT – building plan – whether giving access to a copy of the document would involve an infringement of the copyright of a person other than the State – access granted by way of inspection only – section 68(4)(c) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – UNLOCATABLE AND NONEXISTENT DOCUMENTS – applicant contends additional documents exist – whether agency has taken all reasonable steps to locate the documents but the documents cannot be found or do not exist – sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Council of the City of Gold Coast (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a broad range of documents generally relating to a number of her dealings with Council.
2. Council located 109 pages and refused access to one page and parts of 13 pages on the basis that the information comprised exempt information under the RTI Act. Council also refused access to parts of two pages as disclosing the information would, on balance, be contrary to the public interest under the RTI Act.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision to refuse access to this information and also raised extensive sufficiency of search issues.
4. For the reasons set out below, the decision under review is varied and access to:
 - the information in issue can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest
 - the exterior elevations plan can be granted by way of inspection only under section 68(4)(c) of the RTI Act as providing the applicant with a copy of this document would infringe copyright; and
 - any additional information can be refused under section 47(3)(e) of the RTI Act as it is nonexistent or unlocatable.

Background

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

Reviewable decision

6. The decision under review is Council's deemed affirmation of the original decision.¹

Evidence considered

7. The applicant made submissions and provided voluminous supporting material to OIC supporting her case.² I have considered all of this information and, to the extent that it is relevant to the issues for determination, I address it below.
8. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Issues for determination

9. A number of issues were informally resolved on external review.³ As a result, the remaining issues for determination are whether:
 - access to the information in issue can be refused on the basis that its disclosure would, on balance, be contrary to the public interest⁴
 - providing the applicant with a copy of the exterior elevations plan would involve an infringement of the copyright of a person other than the State,⁵ and
 - access to the documents identified in the applicant's sufficiency of search submissions can be refused on the basis that they are nonexistent or unlocatable.⁶

¹ As Council's internal review decision was made outside the timeframe prescribed by section 83(2) of the RTI Act, Council is deemed to have affirmed the original decision made on 3 October 2014. However Council purported to issue a decision to the applicant (after it was deemed to have affirmed the original decision) and OIC treated the purported decision as Council's submission on external review.

² The applicant's submissions are set out in correspondence to Council dated 13 October 2014 and 30 October 2014 and to OIC dated 2 December 2014, 21 January 2015, 18 June 2015, 4 November 2015 and 13 November 2015. The applicant's supporting material comprises more than 300 pages. The applicant also raised various procedural issues on external review which I have previously addressed. As these issues are not relevant to the decision, I have not addressed them in these reasons.

³ The applicant did not seek review of Council's decision to refuse access to another individual's email address. Council also accepted OIC's preliminary view that the information in issue did not comprise exempt information under schedule 3, section 10(1)(b) of the RTI Act.

⁴ Section 47(3)(b) of the RTI Act.

⁵ Section 68(4)(c) of the RTI Act.

⁶ Section 47(3)(e) of the RTI Act.

Refusal of access

10. The information in issue comprises:

- the name and contact details of a complainant and information provided to Council's Development Compliance, Implementation and Assessment Branch by the complainant (**Complaint Information**);⁷ and
- four building plans of a neighbouring unit from 2005, comprising an exterior elevations plan and three internal floor plans (**Building Plans**).⁸

Relevant law

11. A person has a right to be given access to documents of an agency under the RTI Act.⁹ However, this right is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.¹⁰ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹¹

12. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹² and explains the steps that a decision-maker must take¹³ in deciding the public interest as follows:

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

Findings

Complaint Information

13. No irrelevant factors arise in the circumstances of this case. I will now consider the relevant factors favouring disclosure and nondisclosure of the Complaint Information.

Accountability and transparency of Council

14. I have considered whether disclosing the Complaint Information could reasonably be expected to¹⁴ enhance Council's accountability for its handling of the complaint¹⁵ or

⁷ This information comprises one page and 13 part pages.

⁸ This information comprises four pages. In submissions to OIC dated 18 June 2015, the applicant requested access to four drawings referred to in a letter from Council to another individual on 15 June 2005. OIC made further enquiries with Council about these documents. Council located these drawings and provided them to OIC for consideration.

⁹ Section 23 of the RTI Act.

¹⁰ Section 47 of the RTI Act.

¹¹ Section 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that, ordinarily, a public interest consideration is one which is common to all members of, or a substantial segment of, the community as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹² Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

¹³ Section 49(3) of the RTI Act.

¹⁴ The term '*could reasonably be expected to*' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at paragraph 31.

¹⁵ Schedule 4, part 2, item 1 of the RTI Act.

reveal the reasons for Council's decision or any background or contextual information informing the decision in relation to the complaint.¹⁶

15. Council must be accountable for the conduct of its investigations. The applicant was the subject of the complaint and I accept that disclosing the Complaint Information would reveal background or contextual information which may provide the applicant with a more comprehensive understanding of the information before Council which informed its subsequent action.
16. Council issued the applicant with a show cause notice as a result of the complaint. The applicant submits that there was insufficient information provided by Council in issuing the show cause notice to enable her to fully understand the nature and details of the complaint made against her and that it was issued in unreasonable circumstances.¹⁷ However, in this case, the information that Council has already released to the applicant reveals:
 - the substance of the complaint against the applicant
 - how Council responded to the complaint; and
 - that the complaint was investigated and the applicant issued with a show cause notice.
17. I consider the information which has already been provided to the applicant advances these factors significantly and that releasing the Complaint Information would only marginally enhance Council's accountability in these circumstances.
18. The applicant submits that disclosing the Complaint Information would significantly enhance Council's transparency and accountability as she would have all information available to her to properly examine Council's conduct and to ensure that all relevant laws, policies and procedures were complied with during her dealings with Council so that she could pursue further complaints or remedies.¹⁸ The fact that the applicant is dissatisfied with Council's handling of the complaint does not oblige Council to provide the applicant with access to its entire file. Relevantly, the Complaint Information does not relate to Council's handling of the complaint nor reveal any of the steps Council took in its investigation – it is information provided to Council by the complainant.
19. The applicant also contends that Council failed to properly investigate a complaint she made alleging misconduct by several Council officers.¹⁹ Again, the Complaint Information does not relate to the applicant's complaint and would not provide her with any understanding of how Council handled her complaint.
20. I afford low weight to both of these factors for the reasons addressed above.

Personal information and privacy

21. The Complaint Information relates to building works on the applicant's property and information provided to Council supporting the complaint. It generally comprises the applicant's personal information²⁰ and this gives rise to a factor favouring disclosure.²¹ I acknowledge the importance of providing individuals with access to their personal information held by public authorities and I afford significant weight to this factor.

¹⁶ Schedule 4, part 2, item 11 of the RTI Act.

¹⁷ Submissions to Council dated 30 October 2014 and to OIC dated 2 December 2014, 18 June 2015 and 4 November 2015.

¹⁸ Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

¹⁹ Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

²⁰ Section 12 of the *Information Privacy Act 2009* (Qld) defines 'personal information' as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

²¹ Schedule 4, part 2, item 7 of the RTI Act.

22. However, even though the subject matter of the Complaint Information generally relates to the applicant, the Complaint Information also comprises the complainant's personal information. This personal information includes both the complainant's identity and the information provided to Council. It is not possible for me to delete the complainant's name from the Complaint Information and release the remaining information. The complainant would still be identifiable from the remaining information given the subject matter of the complaint. I am satisfied that disclosing the Complaint Information could reasonably be expected to:
- prejudice the protection of the complainant's right to privacy;²² and
 - cause a public interest harm by disclosing the complainant's personal information.²³
23. The applicant submits that she knows the complainant's identity and contact details and that the identity of the complainant is obvious given the substance of the complaint. She also contends that the complainant made a written admission to the Body Corporate taking responsibility for the complaint to Council and that the document in which they make this admission is available to the public under the *Body Corporate and Community Management (Standard Module) Regulation 2008*. As a result, the applicant believes the complainant has no right to privacy in relation to the Complaint Information.²⁴
24. I accept that the applicant is generally aware of the substance of the Complaint Information as this information was conveyed to the applicant in the show cause notice. The applicant may also consider the identity of the complainant is obvious to her given the substance of the complaint.
25. As some information has previously been disclosed to the applicant about the complaint, this reduces, but does not completely negate, the weight to be afforded to these factors favouring nondisclosure. I am satisfied the Complaint Information was provided to Council for the specific and limited purpose of Council conducting an investigation and that its disclosure outside of the investigation process could reasonably be expected to prejudice the complainant's privacy. The extent of the intrusion, and the anticipated harm, may be reduced to some degree. However, I am not satisfied that the actual Complaint Information has been provided to the applicant nor that the privacy interest attaching to the information has been negated in the way the applicant contends. For these reasons, I afford moderate weight to both of these nondisclosure factors.
26. The applicant also makes a number of submissions about there being a history of conflict with the people she believes are the complainants and the motivations and conduct of these people and Council officers.²⁵ These submissions are not relevant to the issues for determination in this review and I have not addressed them in these reasons.

Prejudice the flow of information to Council

27. If disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency, a public interest factor favouring nondisclosure arises.²⁶

²² Schedule 4, part 3, item 3 of the RTI Act.

²³ Schedule 4, part 4, section 6 of the RTI Act.

²⁴ Submissions to Council dated 30 October 2014 and to OIC dated 2 December 2014 and 4 November 2015.

²⁵ Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

²⁶ Schedule 4, part 3, item 13 of the RTI Act.

28. Council relies on members of the public to provide information which enables it to administer and enforce local laws.²⁷ I am satisfied that routinely disclosing the type of information in issue in this review would tend to discourage individuals from coming forward with information and cooperating with Council as they may consider that their personal information could be released to other individuals, including to the person who is the subject of the complaint. This in turn could reasonably be expected to negatively impact Council's ability to obtain this information in future.
29. The applicant considers that little or no weight should be afforded to this factor. She contends that releasing the Complaint Information would not result in a decrease in the flow of information from the public relating to genuine complaints but that there may be a reduction in the flow of vexatious complaints. The applicant submits that '*vexatious complainants cannot hide behind the RTI Act in order to use Council resources to investigate non genuine complaints designed to harass or discriminate other members of the public*'.²⁸
30. I am not required to determine in this review whether the complaint was vexatious or unfounded. However I note that Council did issue the applicant with a show cause notice in response to the complaint.²⁹ In *P6Y4SX and Department of Police*,³⁰ the Assistant Information Commissioner considered the public policy considerations in protecting the free flow of information and relevantly explained that '*...it is generally recognised that there is very strong public interest in protecting the free flow of information to law enforcement agencies, even where this may result in an agency investigating false and/or unsubstantiated allegations*'.³¹ I agree with these comments and I am not persuaded by the applicant's submissions on this issue.
31. For these reasons, I afford significant weight to this nondisclosure factor.

Administration of justice and fair treatment

32. I have considered whether disclosing the Complaint Information could reasonably be expected to:
- advance the applicant's fair treatment in accordance with the law in her dealings with Council;³² and
 - contribute to the administration of justice and procedural fairness both generally and for the applicant.³³
33. The applicant submits that Council did not afford her procedural fairness as she was not informed of the substance of the complaint and did not have the opportunity to respond to the complaint before the show cause notice was issued. In her view, Council should have investigated the complaint before issuing the show cause notice.³⁴
34. She also contends that Council should have followed relevant guidelines and issued a letter of demand instead of a show cause notice. In her view, if a letter of demand had been issued, she would have been able to provide evidence supporting her case and advise Council that the complaint was vexatious. The applicant submits that as a result of Council's actions, she has been denied natural justice.³⁵

²⁷ See, for example, *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) (*Matthews*) at paragraphs 25-27.

²⁸ Submissions dated 4 November 2015.

²⁹ In submissions dated 4 November 2015, the applicant submits that the show cause notice was later withdrawn by Council.

³⁰ (Unreported, Queensland Information Commissioner, 31 January 2012).

³¹ At paragraph 40.

³² Schedule 4, part 2, item 10 of the RTI Act.

³³ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³⁴ Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

³⁵ Submissions dated 4 November 2015.

35. The notice which Council issued to the applicant invited her to show cause under section 590 of the *Sustainable Planning Act 2009* (Qld) as to why an enforcement notice should not be issued in regards to building work at her property. The notice outlined the substance of the complaint, reasons for Council's action and provided instructions on how to respond to the notice. The notice was not a decision. The purpose of issuing the notice was to seek the applicant's response to the allegations and I consider that she was afforded procedural fairness in this regard.
36. The applicant has provided detailed submissions on why the show cause notice should not have been issued and makes assertions about the motivations of Council officers in issuing the notice and conduct of Council officers in investigating the complaint.³⁶ I am unable to comment on Council's actions or whether the issuing of the show cause notice was warranted in the circumstances. These issues are not relevant to the issues for determination. The fact that the applicant considers Council should have taken a different course of action in dealing with the complaint is not, in my view, relevant to the application of these factors.
37. The applicant also submits that she intends to pursue various remedies available to her and that there is substantial public interest in pursuing any actionable wrongs by Council or a Council official in the circumstances.³⁷
38. The Information Commissioner has previously recognised that, in an appropriate case, there may be a public interest in a person who has suffered, or may have suffered, an actionable wrong, being permitted to obtain access to information which would assist the person to pursue any remedy which the law affords in those circumstances. However, a mere assertion by an applicant that information is required to enable pursuit of a legal remedy is not sufficient, in itself, to enliven this consideration.³⁸
39. The applicant has provided a document to OIC which indicates that she has recently made a complaint to the Anti-Discrimination Commission Queensland about Council and a Council officer.³⁹ I am unable to identify how disclosing the Complaint Information in this review would enable the applicant to pursue a legal remedy in that jurisdiction. Furthermore, there is no evidence currently before me to indicate that disclosing the Complaint Information would enable the applicant to pursue any other legal remedy.
40. As noted above, the Complaint Information is the information which the complainant provided to Council – it does not relate to Council's actions which are the subject of the applicant's concerns. The applicant is able to address any concerns about the complaint handling process and show cause notice without having seen the Complaint Information. As previously noted, the applicant is generally aware of the substance of the Complaint Information.
41. For these reasons, I do not consider that these factors are relevant.

Reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant

42. The applicant submits that disclosing the Complaint Information could reasonably be expected to reveal that the information was incorrect, out of date, misleading,

³⁶ Submissions dated 2 December 2014, 18 June 2015 and 4 November 2015.

³⁷ Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

³⁸ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at paragraphs 16 and 17.

³⁹ Submissions dated 4 November 2015.

gratuitous, unfairly subjective or irrelevant.⁴⁰ The applicant relies on this factor as she considers the complaint is vexatious.

43. In *Matthews*, the Right to Information Commissioner considered this factor in the context of a complaint and relevantly explained that:⁴¹

... I am mindful that complaint information is by its very nature, an individual's particular version of events which is shaped by factors including the individual's memory and subjective impressions.

In my view, this inherent subjectivity does not necessarily mean that the resulting account or statement is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Rather, it means that complaint information comprises a personal interpretation of relevant events, which an investigator must balance against other (often competing) statements and evidence in reaching a conclusion in a particular case.

44. I agree with these comments. In this review, there is no evidence to suggest that the Complaint Information is not an accurate reflection of the views put forward by the complainant. Council is aware that a complaint represents only one version of events and that complaints may lack substance or warrant no further action. For these reasons, I do not consider that this factor is relevant.

Reveal information about the conduct of Council officers

45. The applicant submits⁴² that disclosing the Complaint Information could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁴³ and
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁴⁴

46. The applicant makes a range of allegations about the conduct of Council officers in handling the complaint and attending her property to investigate. She submits that disclosing information about the conduct of a Council officer and other Council staff in issuing the show cause notice would assist her in determining the events that caused the show cause notice to be issued in circumstances which she considers were unreasonable. She also submits that she intends to lodge a complaint with Council concerning compliance issues arising from the complaint but is unable to do so until the Complaint Information is released to her.⁴⁵

47. As I have previously explained, the Complaint Information is the information which the complainant provided to Council – it does not relate to Council's actions which are the subject of the applicant's concerns. As the Complaint Information does not relate to the conduct of Council officers, or reveal how Council handled the complaint, its disclosure would not further these public interest factors and I am satisfied these factors are not relevant in the circumstances.

⁴⁰ Schedule 4, part 2, item 12 of the RTI Act. Submissions to Council dated 30 October 2014.

⁴¹ At paragraphs 17 and 18.

⁴² Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

⁴³ Schedule 4, part 2, item 5 of the RTI Act.

⁴⁴ Schedule 4, part 2, item 6 of the RTI Act.

⁴⁵ Submissions to Council dated 30 October 2014 and to OIC dated 4 November 2015.

Balancing the public interest factors

48. I acknowledge the general public interest in promoting access to information under the RTI Act and the pro-disclosure bias in deciding access to documents.⁴⁶
49. I have identified three factors which favour disclosure of the Complaint Information. For the reasons addressed above, I afford low weight to the two factors relating to Council accountability and transparency and significant weight to the factor relating to the applicant's personal information.
50. I have identified three factors favouring nondisclosure of the Complaint Information. For the reasons addressed above, I afford moderate weight to the two factors relating to the personal information and privacy of the complainant and significant weight to the factor relating to protecting the flow of information to Council.
51. As a result, I am satisfied that the factors favouring disclosure of the Complaint Information are outweighed by the factors favouring nondisclosure. Accordingly, I find that Council was entitled to refuse access to the Complaint Information under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

Building Plans

Exterior elevations plan

52. This is a plan of the exterior of a neighbouring property. I have decided to grant the applicant access to this plan subject to the deletion of the owner's residential address.⁴⁷ I am satisfied the owner's residential address is their personal information and its disclosure would, on balance, be contrary to the public interest.⁴⁸
53. The applicant seeks access to a copy of the plan. The RTI Act provides that if giving access in the form requested by the applicant would involve an infringement of the copyright of a person other than the State, access in that form may be refused and given in another form.⁴⁹
54. Copyright in architectural plans and drawings is regulated by the *Copyright Act 1968* (Cth) (**Copyright Act**). Section 32 of the Copyright Act provides that copyright subsists in an artistic work. Section 10 of the Copyright Act relevantly defines 'artistic work' to include a drawing, whether the work is of artistic quality or not, a model of a building, whether the model is of artistic quality or not, or a work of artistic craftsmanship. Copyright in relation to an artistic work is an exclusive right to reproduce the work in a material form, publish the work and communicate the work to the public.⁵⁰
55. After carefully considering the relevant provisions of the Copyright Act, I am satisfied that the exterior elevations plan is subject to copyright and that providing the applicant with a copy of this document under the RTI Act would constitute an infringement of copyright. Accordingly, I have decided to grant the applicant access to this plan by way of inspection only.
56. The applicant submits that there is no copyright in this plan as any purported rights to copyright were extinguished when the owner submitted the plan for permanent inclusion in the records of the Body Corporate. As a result, the applicant contends that

⁴⁶ Section 44 of the RTI Act.

⁴⁷ The owner's residential address is not the same as the address of the property which appears in the plan.

⁴⁸ Section 47(3)(b) of the RTI Act.

⁴⁹ Section 68(4)(c) of the RTI Act.

⁵⁰ Section 31(1)(b) of the Copyright Act.

the plan is now a public document.⁵¹ If the plan was in fact still available from the Body Corporate records, then the applicant, as Secretary of the Body Corporate, would be able to access the plan in that way, without the need for an application under the RTI Act. However, I do not consider that the fact the plan may have been included in the Body Corporate records at some stage would waive copyright in the plan.

57. The applicant also believes that, because the owner submitted the plan to Council for approval, it can be viewed by the general public. She also notes that material concerning development applications is publically available on Council's website for development applications lodged after 2006.⁵² I am satisfied that a copy of this plan is not available on Council's website. Council's policy is to release floor plans only with the consent of the registered owner.⁵³ The applicant does not appear to have the registered owner's consent in this case.
58. For these reasons, I find that access to the plan can be granted by way of inspection only and subject to the deletion of the owner's residential address.

Internal floor plans

59. The three remaining plans are internal floor plans which show the changes the owner intended to make to their property.
60. I accept that floor plans of houses are published regularly online and are made public from time to time, particularly when a property is listed for sale. However, I consider that plans of particular existing houses are not generally publicly available and that these internal floor plans, showing intended renovations, are not in the public domain. Until such time as these plans are made publicly available, I consider there is a degree of privacy which attaches to this type of information. This gives rise to a factor favouring nondisclosure to which I afford moderate weight.⁵⁴
61. I am unable to identify any factors which favour disclosure of these plans and which carry sufficient weight to justify disclosure in this instance. As noted above, the applicant is able to obtain access to these drawings from Council with the owner's consent.
62. The applicant has provided extensive submissions in relation to the Building Plans. In summary, the applicant submits that disclosing the Building Plans could reasonably be expected to contribute to the administration of justice, including procedural fairness, as:⁵⁵
- a person who wishes to purchase the property needs to be able to identify previous works done; and
 - she is the Secretary of the Body Corporate and wants to include the plans in the Body Corporate records to ensure that the extensions undertaken by the owner in 2005 are in accordance with approved Council plans.
63. As noted above, a prospective purchaser may obtain a copy of these plans from Council with the owner's consent. The applicant is not required to make this information available to a prospective purchaser – this is a matter for the owner and Council.

⁵¹ Submissions dated 4 November 2015.

⁵² Submissions dated 4 November 2015.

⁵³ See Council's application form for copies of building plans at <http://www.goldcoast.qld.gov.au/planning-and-building/building-works-compliance-6336.html>.

⁵⁴ That is, disclosing this information could reasonably be expected to prejudice the protection of an individual's right to privacy (schedule 4, part 3, item 3 of the RTI Act).

⁵⁵ Submissions dated 4 November 2015. Schedule 4, part 2, items 16 and 17.

64. In relation to the applicant's submission that she wishes to ensure that the extensions undertaken by the owner in 2005 are in accordance with approved Council plans, this is not an issue relating to the administration of justice. If the applicant has concerns about the works undertaken, she may raise them with Council for further investigation. Council has provided the applicant with information showing that the Body Corporate had no objections to the proposed development at the time.⁵⁶ It has also released a copy of Council's letter to the owner approving the development permit and setting out a number of conditions.⁵⁷
65. For these reasons, I find that access to these plans can be refused under section 47(3)(b) of the RTI Act as their disclosure would, on balance, be contrary to the public interest.⁵⁸

Sufficiency of search

Relevant law

66. Access to a document may be refused if the document is nonexistent or unlocatable.⁵⁹ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.⁶⁰ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁶¹
67. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.⁶² When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.
68. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

Findings

69. The applicant sought access to 14 categories of documents which generally relate to Council's dealings with her and neighboring properties from 2005. Council performed electronic and hardcopy searches of its files relating to the applicant's property, the other two properties in the complex and the Body Corporate. It also had the relevant officers perform broad searches for diary notes, emails and log book entries which may relate to the applicant, the applicant's address and lot number, the show cause notice and internal communications about these matters. Council located 109 pages in response to the applicant's request.

⁵⁶ Two page handwritten letter to Council dated 19 April 2005.

⁵⁷ Five page letter to the owner dated 15 June 2005.

⁵⁸ In any event, even if access to the internal floor plans could be granted under the RTI Act, they would be subject to copyright for the reasons addressed above. Therefore, access to the internal floor plans would be granted by way of inspection only.

⁵⁹ Sections 47(3)(e) and 52 of the RTI Act.

⁶⁰ Section 52(1)(b) of the RTI Act.

⁶¹ Section 52(1)(a) of the RTI Act.

⁶² *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at paragraph 19 which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr7 (9 February 2009). The key factors include: the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); the agency's practices and procedures (including but not exclusive to its information management approach) and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

70. On internal review, the applicant raised numerous concerns about documents which Council had not located. Council performed further searches but did not locate any additional information.
71. The applicant provided extensive submissions to OIC relating to documents which she considers exist and are relevant to her application but have not been located by Council.
72. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁶³ Generally, the agency that made the decision under review that has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁶⁴ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.⁶⁵
73. A large part of the applicant's submissions are irrelevant to the issues for determination and are not addressed in these reasons. These submissions seek explanations from Council about the creation of certain documents,⁶⁶ request information about actions taken by particular staff and explain why the applicant needs particular information and what she believes the documents will show. In some cases, the applicant merely seeks confirmation from Council that certain information doesn't exist. To the extent the applicant's submissions are relevant to the issues for determination, they are addressed below.

Document 238530 and customer request 43856070

74. The applicant submits that document 238530 and customer request 43856070 referred to in the documents located by Council have not been provided to her.⁶⁷ Council explained that:⁶⁸
- document 238530 is the original complaint form submitted by the complainant in relation to building work allegedly undertaken by the applicant
 - the original complaint form was scanned into Council's system and the image was allocated the number 43856070 as a customer request; and
 - the complaint was then allocated the complaint number 238530.
75. I have considered Council's explanation and the documents located by Council. I am satisfied Council's explanation is correct that that the relevant documents have been located. Access to the complaint form was refused for the reasons addressed above as it comprises Complaint Information.

Document 44721802

76. The applicant submits that document 44721802 lodged on Council's computer system by a Council Compliance Officer on 9 July 2014 has not been provided. This document

⁶³ Section 130(2) of the RTI Act.

⁶⁴ Section 87(1) of the RTI Act.

⁶⁵ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at paragraph 13.

⁶⁶ I have previously explained to the applicant that, to the extent her submissions seek answers to questions, instead of access to information, I am unable to consider them as part of this review and they are irrelevant to the issues for determination. This is because the RTI Act provides a right of access to information – it does not provide a right to obtain answers to questions from an agency. See *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at paragraphs 30-31 and *Pearce and Queensland Rural Adjustment Authority; Various Landholders (Third Parties)* (1999) 5 QAR 242.

⁶⁷ Submissions to Council dated 30 October 2014 and to OIC dated 18 June 2015.

⁶⁸ Council's purported internal review decision.

number appears again on Council's system on 23 July 2014 as the show cause notice issued to the applicant.⁶⁹

77. Council confirmed that document 44721802 is the show cause notice that was served on the applicant on 23 July 2014.⁷⁰ On external review, Council further explained that:⁷¹

- the Compliance Officer created the show cause notice on 9 July 2014
- the show cause notice was then provided to an Administrative Officer to type up and the officer allocated the date of 23 July 2014 to the document; and
- there are not multiple versions of this document, document 44721802 is the show cause notice that was issued to the applicant on 23 July 2014.

78. The applicant submits that:⁷²

- the Compliance Officer intended to close the file as there was no evidence of building works found during his investigation
- the officer did not record details of his inspection of the applicant's premises
- when the officer became aware that a complaint had been made about his conduct, he colluded with other people so that a further complaint was made about the applicant which would provide sufficient grounds to issue the show cause notice; and
- document 44721802 was then removed from Council's recording system.

79. I accept Council's explanation and note that there is no evidence to indicate that this document was modified in the way the applicant suggests. I am satisfied that document 44721802 has been located and released to the applicant.

Internal documents about Council's handling of the investigation and issuing of the show cause notice

80. The applicant submits that work diaries, internal memos or log books from certain Council officers have not been located by Council.⁷³ On external review, OIC made further enquiries with Council about the existence of these documents and Council explained that:⁷⁴

- Council officers make notes relating to investigations on a computerised application management system
- Council officers update these entries as events occur on the relevant complaint or customer request; and
- there is no requirement for an officer in the field to carry a written document.

81. I have carefully reviewed the information located by Council and which has been released to the applicant. I have also considered the searches conducted by Council specifically for this information. It is evident from the information released to the applicant that Council officers have made entries about actions completed in relation to a complaint or customer request on the application management system. The information released to the applicant shows that Council officers made notes relating to, for example, the service of show cause notices, attending site inspections and sending and receiving correspondence.

⁶⁹ Submissions to Council dated 30 October 2014 and to OIC dated 18 June 2015 and 4 November 2015.

⁷⁰ Council's purported internal review decision.

⁷¹ In a conversation with OIC on 9 September 2015.

⁷² Submissions dated 4 November 2015.

⁷³ Submissions to Council dated 30 October 2014 and to OIC dated 18 June 2015 and 4 November 2015.

⁷⁴ In a conversation with OIC on 9 September 2015.

82. The applicant appears to be primarily concerned that the Council officer, who attended her property prior to issuing the show cause notice, did not record details of the site attendance. She submits that it is not logical that a Council officer would attend a private property and not take notes or record the matter electronically.⁷⁵ Council has located and released the customer request details which record the relevant officer's notes in relation to this matter. I agree that these documents do not record the attendance at the applicant's property in the same way as other officers have recorded their attendances. Based on my review of this information, I consider the officer did not record the attendance. However, I do not consider that this points to the existence of additional information. If the attendance was recorded, it would appear in the documents which Council has located.
83. The applicant also submits that Council would not conduct an investigation and issue a show cause notice on a verbal basis without any written reference or written referral to a supervisor.⁷⁶ However, the applicant has not provided any evidence which points to the existence of such information. A mere assertion or belief that certain internal documents *should have been created* does not mean that the documents were in fact created and further searches with Council, based on this mere assertion, are not warranted in the circumstances.

Building, engineering, hydraulic or survey plans

84. The applicant submits that Council has failed to locate building, engineering, hydraulic and survey plans from 2005 that she considers exist in relation to building work undertaken by a neighbouring owner. The applicant states that the documents must exist if there was lawful building approval for this property.⁷⁷
85. As noted above, Council has located the Building Plans which relate to this property from 2005. Despite the applicant's submission that additional building, engineering, hydraulic or survey plans exist, there is no evidence to support this submission.

Remaining sufficiency of search submissions

86. Having carefully considered the applicant's remaining submissions, together with the information set out above in relation to the nature and extent of Council's searches, I am satisfied that Council was entitled to refuse access to the requested documents under section 47(3)(e) of the RTI Act on the basis that they are nonexistent or unlocatable.

DECISION

87. As set out above, I vary⁷⁸ the decision under review and find that access to:
- the information in issue identified above can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest
 - the exterior elevations plan can be granted by way of inspection only under section 68(4)(c) of the RTI Act as providing the applicant with a copy of this document would infringe copyright; and
 - any additional information can be refused under section 47(3)(e) of the RTI Act as it is nonexistent or unlocatable.

⁷⁵ Submissions dated 4 November 2015.

⁷⁶ Submissions dated 18 June 2015.

⁷⁷ Submissions dated 4 November 2015 and 13 November 2015.

⁷⁸ The decision under review is a deemed affirmation of Council's original decision. The decision is varied as Council located additional documents on external review (i.e. the Building Plans) and OIC reached the view that Council was not entitled to refuse access to the Complaint Information on the basis that it comprised exempt information under schedule 3, section 10(1)(b) of the RTI Act.

88. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Tara Mainwaring
A/Assistant Information Commissioner

Date: 27 November 2015

APPENDIX

Significant procedural steps

Date	Event
2 September 2014	Council received the access application.
3 October 2014	Council issued its decision to the applicant.
16 October 2014	Council received the internal review application.
30 October 2014	The applicant provided further submissions supporting the internal review application.
28 November 2014	Council purported to issue the internal review decision to the applicant. However, as Council did not issue its decision within the prescribed timeframe, it was taken to have affirmed the original decision.
2 December 2014	OIC received the external review application.
4 December 2014	OIC notified Council and the applicant that the external review application had been received. OIC asked Council to provide relevant procedural documents by 11 December 2014.
15 December 2014	OIC received the requested documents from Council.
21 January 2015	OIC notified the applicant and Council that the external review application had been accepted. OIC asked Council to provide additional procedural documents and a copy of the documents located in response to the application by 4 February 2015. OIC received submissions from the applicant confirming the basis for the external review application.
10 February 2015	OIC received the requested documents from Council.
16 February 2015	OIC received additional documents from Council.
5 June 2015	OIC asked the applicant to provide submissions by 19 June 2015 clarifying her sufficiency of search concerns.
18 June 2015	OIC received the applicant's submissions.
26 August 2015	OIC requested further information from Council regarding their searches.
27 August 2015	OIC received the requested information from Council.
8 September 2015	OIC conveyed a preliminary view to the applicant by phone. The applicant did not accept the preliminary view. The applicant confirmed she did not seek access to the email address of another individual.
9 September 2015	OIC conveyed its preliminary view to Council on some of the information to which access had been refused. Council accepted the preliminary view. OIC asked Council for further information in relation to some of the sufficiency of search issues. Council provided the requested information.
22 September 2015	OIC asked Council for further information in relation to a sufficiency of search issue. Council advised OIC it had located four additional pages (the Building Plans).
28 September 2015	OIC received a copy of the additional documents from Council. Council provided a submission in which it objected to release of these documents.
7 October 2015	OIC conveyed its preliminary view to Council on the additional documents. Council accepted the preliminary view.
8 October 2015	OIC conveyed its preliminary view to the applicant and invited her to provide submissions supporting her case by 23 October 2015 if she did not accept the preliminary view.

Date	Event
23 October 2015	The applicant requested an extension of time until 30 October 2015 to respond to the preliminary view. OIC granted the requested extension.
28 October 2015	The applicant requested a further extension of time until 4 November 2015 to respond to the preliminary view. The applicant also raised a procedural issue.
29 October 2015	OIC granted the requested extension of time and addressed the procedural issue.
4 November 2015	The applicant notified OIC that she did not accept the preliminary view and provided detailed submissions and other documents supporting her case. The applicant also raised various procedural issues.
11 November 2015	OIC addressed the procedural issues with the applicant and advised that the preliminary view had not changed. The applicant requested an opportunity to provide further submissions supporting her case.
12 November 2015	OIC granted the applicant the requested extension of time to provide further submissions.
13 November 2015	OIC received the applicant's submissions. The applicant repeated a number of procedural issues.
16 November 2015	OIC advised the applicant that the procedural issues had been addressed previously by OIC.