



Decision and Reasons for Decision

Citation:	<i>G11 and Department of Transport and Main Roads [2024] QICmr 44 (19 September 2024)</i>
Application Number:	317705
Applicant:	G11
Respondent:	Department of Transport and Main Roads
Decision Date:	19 September 2024
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - agency consulted external review applicant as a third party under section 37 of the <i>Right to Information Act 2009</i> (Qld) - external review applicant objected to disclosure - whether a decision not to disclose is justified - section 87(2) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - registered garaging address of a vehicle - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The access applicant (**Access Applicant**), a non-bank lender, sought access to the registered garaging address of a vehicle over which it holds a registered security interest from the Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**).
2. The Department located a one page document containing the registered garaging address of the vehicle. The Department consulted with the current registered owner of the vehicle¹ (the **Review Applicant** in this external review), seeking his views on the Department's proposed disclosure. The Review Applicant objected, but the Department decided² to grant access to the registered garaging address,³ contrary to the Review Applicant's objections.
3. The Review Applicant applied for internal review⁴ and the Department decided again to give access to the registered garaging address.⁵

¹ As a relevant third party under section 37 of the RTI Act.

² Decision dated 13 October 2023.

³ The Department deleted the customer reference number, and the Review Applicant's name and birth date as irrelevant information under section 73 of the RTI Act.

⁴ On 30 October 2023.

⁵ Internal review decision dated 17 November 2023.

4. The Review Applicant then applied to the Information Commissioner for external review of the Department's internal review decision.⁶
5. For the reasons set out below, I affirm the Department's decision that disclosure would not, on balance, be contrary to the public interest under the RTI Act.⁷

Background

6. The Review Applicant informed the Information Commissioner⁸ that that previous owner of the vehicle was in negotiations with the Access Applicant to repay the loan and, as such, the Access Applicant no longer sought access to the registered garaging address. In line with the Information Commissioner's obligation to identify and promote opportunities for resolution of reviews,⁹ the Access Applicant was contacted¹⁰ and a representative has confirmed that access to the information in issue is still sought.¹¹

Evidence considered

7. Significant procedural steps relating to this review are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).
8. Decision makers must have regard to the *Human Rights Act 2019* (Qld) (**HR Act**), as section 11(1) of the HR Act provides that '[a]ll **individuals** in Queensland have human rights' (my emphasis). While the HR Act does not apply to the Access Applicant (as it is a company), I have had regard to the HR Act with regard to the Review Applicant, particularly the right to property, and right to privacy and reputation.¹² I consider a decision-maker will be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁴

Reviewable decision

9. The decision under review is the Department's internal review decision dated 17 November 2023.

Information in issue

10. The information in issue in this review is the registered garaging address of the subject vehicle (**registered garaging address**).

⁶ External review application dated 4 December 2023.

⁷ Sections 47(3)(b) and 49 of the RTI Act.

⁸ By telephone on 13 February 2024.

⁹ Section 90(1) of the RTI Act.

¹⁰ On 22 February 2024.

¹¹ By email dated 22 February 2024.

¹² Sections 24 and 25 of the HR Act.

¹³ *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]. I note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from this position).

¹⁴ I also 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*'.

Issue for determination

11. The issue for determination is whether disclosure of the registered garaging address would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

Relevant law

12. Under the RTI Act, a person has a right to be given access to documents of an agency.¹⁵ However, this right is subject to certain limitations, including grounds for refusal of access. One ground of refusal is where disclosure would, on balance, be contrary to the public interest.¹⁶
13. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest¹⁷ and explains the steps that a decision maker must take when deciding whether disclosure would, on balance, be contrary to the public interest as follows:¹⁸
- 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 disclosure of the information in issue would, on balance, be contrary to the public interest.
14. Where an agency has made a decision to give access to a document, the participant in the external review who opposes disclosure has the onus of establishing that a decision not to disclose the information is justified.¹⁹

Findings

15. The Department decided to disclose the registered garaging address, and the Review Applicant opposes this decision. As such, the Review Applicant bears the onus in this review.

Irrelevant factors

16. I do not consider that any irrelevant factors arise in the circumstances of this case, nor have I taken any into account.²⁰

Factors favouring disclosure

17. I have only identified one factor favouring disclosure of the registered garaging address, that is, that disclosure could reasonably be expected to contribute to the administration of justice.²¹ This factor was considered in *Willsford and Brisbane City Council*,²² where the Information Commissioner found that it will arise if an access applicant demonstrates:

¹⁵ Section 23 of the RTI Act.

¹⁶ Section 47(3)(b) of the RTI Act.

¹⁷ Schedule 4 of the RTI Act sets out a non-exhaustive list of factors relevant to deciding whether disclosing information would, on balance, be contrary to the public interest.

¹⁸ Section 49 of the RTI Act.

¹⁹ Section 87(2) of the RTI Act.

²⁰ Schedule 4, part 1 of the RTI Act.

²¹ Schedule 4, part 2, item 17 of the RTI Act.

²² (1996) 3 QAR 368 (*Willsford*), which applied the equivalent provisions under the repealed *Freedom of Information Act 1992* (Qld).

- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- they have a reasonable basis for seeking to pursue the remedy; and
- disclosing the information in issue would assist the applicant to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.²³

18. Having considered the evidence provided by the Access Applicant,²⁴ I am satisfied that:

- the previous owner of the subject vehicle entered into a loan contract with the Access Applicant to purchase the vehicle, which includes a condition that the Access Applicant holds a registered security interest over the subject vehicle
- the previous owner of the vehicle failed to make loan repayments in accordance with the terms of the loan contract, resulting in the Access Applicant suffering loss
- in these circumstances, the Access Applicant has a reasonable basis to pursue a remedy for breach of contract, including recovery of the vehicle; and
- disclosure of the registered garaging address would enable the Access Applicant to pursue any remedy available to it, or to consider whether it is worth pursuing.

19. I acknowledge that the Review Applicant is not the party that entered into the contract, and that he has explained that he had no knowledge of the encumbrance over the vehicle at the time that he purchased the vehicle. Despite these circumstances, I am satisfied that this factor applies in favour of disclosure. It is unfortunate that the Review Applicant did not make himself aware of those process and the applicable law, but his ignorance in that regard is not a valid reason to deprive the access applicant of its ability to exercise its lawful rights.

20. Turning to the weight to be attributed to this factor, the Information Commissioner has previously found that the weight of this factor will be influenced by the magnitude of the loss, damage or wrong and the strength of the prospects for successfully pursuing the available remedy.²⁵ The loss is not insignificant, and the Access Applicant appears to have a reasonable prospect of success. In addition, this would appear to be the only way that the Access Applicant can locate the vehicle and enforce its rights under the contract. As such, this factor carries substantial weight in favour of disclosure.

Factors favouring nondisclosure

21. I accept the Review Applicant's submission that, having recently moved to Australia, he did not know about the searches that he could conduct prior to purchasing a vehicle and, as such, he was not aware of the encumbrance when he purchased the vehicle.²⁶

22. While I acknowledge the Review Applicant's difficulties, it is clear on the information before me that the legal rights of the Access Applicant pre-exist the Review Applicant's purchase of the vehicle and that processes are available (such as a search of the Personal Property Security Register) to identify such legal rights and to prevent these situations arising.

²³ *Willsford* at [17]. *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

²⁴ Including the default notice, Personal Property Securities Register certificate, Consumer Loan Agreement provided with the access application, and the terms and conditions document received by OIC on 21 August 2024.

²⁵ *Willsford* at [18].

²⁶ Information provided with external review application on 4 December 2023.

23. Given the circumstances, I recognise that disclosure of the registered garaging address is likely to result in the Access Applicant taking steps to recover the vehicle or pursue another remedy which will have a detrimental impact on the Review Applicant's private and financial affairs.²⁷ I attribute moderate weight to this factor favouring nondisclosure.
24. In addition to this, disclosure of the registered garaging address to the Access Applicant will reveal the Review Applicant's address, giving rise to a further two factors favouring nondisclosure relating to the protection of personal information²⁸ and an individual's right to privacy.²⁹ I do not consider the information in issue itself (an address without any other information) to be especially sensitive in the particular circumstances of this case and afford these factors moderate weight.

Balancing the public interest

25. I am satisfied that the significant weight attributed to the administration of justice factor favouring disclosure outweighs the moderate weight afforded to protecting personal information and privacy, and prejudice to financial affairs factors.
26. I find that the administration of justice factor is determinative in this matter and disclosure of the registered garaging address would not, on balance, be contrary to the public interest.

DECISION

27. I affirm the Department's decision to grant access to the registered garaging address of the vehicle to the Access Applicant, on the basis that disclosure would not, on balance, be contrary to the public interest.³⁰
28. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Jane Williams
Assistant Information Commissioner

Date: 19 September 2024

²⁷ A nondisclosure factor will arise where disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities – schedule 4, part 3, item 2 of the RTI Act.

²⁸ 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.*'

²⁹ Schedule 4, part 3, item 3 and part 4, item 6 of the RTI Act.

³⁰ Sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
4 December 2023	OIC received an application for external review from the Review Applicant. OIC advised the Department that the external review had been received and requested preliminary procedural documents.
12 December 2023	OIC received the requested procedural documents from the Department.
29 January 2024	OIC informed the Department that the external review had been accepted and asked it to provide a copy of the registered garaging address and other supporting documents. OIC informed the Review Applicant that the external review had been accepted and conveyed a preliminary view that access may be given to the registered garaging address.
12 February 2024	The Department provided OIC with a copy of the registered garaging address and supporting documents.
13 February 2024	OIC spoke with the Review Applicant on the telephone regarding the external review.
22 February 2024	OIC asked the Access Applicant whether it still sought access to the registered garaging address. The Access Applicant confirmed that access was still sought. OIC provided the Review Applicant with an update and reiterated the preliminary view.
5 March 2024	OIC received a submission and phone message from the Review Applicant. OIC contacted the Review Applicant to discuss the external review.
20 August 2024	OIC asked the Access Applicant to provide a copy of the relevant contract terms and conditions.
21 August 2024	OIC received a copy of the relevant contract terms and conditions from the Access Applicant.