



Decision and Reasons for Decision

Citation:	<i>C52 and Department of Transport and Main Roads [2025] QICmr 41 (23 June 2025)</i>
Application Number:	318469
Review Applicant:	C52
Respondent:	Department of Transport and Main Roads
Decision Date:	23 June 2025
Catchwords:	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)

REASONS FOR DECISION

Summary

1. A non-bank lender (**Access Applicant**) applied¹ to the Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the registered garaging address of a vehicle over which it holds a registered security interest.
2. The Department located one document containing the registered garaging address of the vehicle² – the '**Information in Issue**'. The Department consulted with the current registered owner of the vehicle³ (**Review Applicant**), seeking their views on the Department's proposed disclosure. The Review Applicant – who was not a party to the original contract with the Access Applicant, but purchased the vehicle subject to encumbrance – objected to disclosure. The Department nevertheless decided⁴ to grant access to the Information in Issue, contrary to the Review Applicant's objections.
3. The Review Applicant applied to the Information Commissioner for external review of the Department's decision.⁵
4. For the reasons set out below, and consistently with a number of analogous OIC decisions, I affirm the Department's decision that disclosure of the Information in Issue would not, on balance, be contrary to the public interest under the RTI Act.⁶

¹ Application dated 6 December 2024.

² Together with some additional information, such as the VIN and a description of the vehicle.

³ As a relevant third party under section 37 of the RTI Act.

⁴ Decision dated 22 January 2025 – this is the decision under review in this matter.

⁵ External review application dated 18 February 2025. By telephone conversations on 1 April 2025 and 16 June 2025, this Office (**OIC**) confirmed with the Access Applicant that it continued to seek access to the Information in Issue. Although invited to do so via email dated 4 June 2025, the Access Applicant did not apply to participate in the review.

⁶ Sections 47(3)(b) and 49 of the RTI Act.

Relevant law

5. Under the RTI Act, a person has a right to be given access to documents of an agency.⁷ This right is subject to certain limitations, including grounds for refusal of access. As the decision under review is a '*disclosure decision*',⁸ the Review Applicant bears the formal onus of establishing that a decision not to disclose the Information in Issue is justified.⁹
6. The Review Applicant has not articulated a case identifying any particular ground on which it says access to the Information in Issue may be refused; in its application for external review, it simply submits that disclosure of the Information in Issue would be '*unfair*' and '*damage its business operations*.' I have approached these submissions in the same manner the Department dealt with the question of disclosure in the decision under review; as an argument that disclosure of the Information in Issue would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act. In doing so, I have followed the steps for balancing the public interest prescribed in section 49 of the RTI Act.¹⁰
7. As noted above, and while conscious of my obligation to decide this matter on its merits, I have also had regard to a line of OIC decisions concerning garaged address information, decided in very similar circumstances to those of this review.¹¹ In short, these decisions establish that disclosure of information of the kind in issue in this review, to an entity in the position of the Access Applicant, will not, on balance, ordinarily be contrary to the public interest.

Discussion

8. By letter dated 2 April 2025, another Assistant Information Commissioner wrote to the Review Applicant. That letter set out relevant facts and law, and conveyed a preliminary view on the issues in the review (footnotes omitted):

... the Information Commissioner has previously decided that the public interest favours release of a car's garaged address where it is subject to a registered security interest and repayments have not been made on the loan.

There is a public interest factor in relation to the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The factor (which favours disclosure of information) will arise if an access applicant demonstrates:

- *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.*

I acknowledge that you were not the party that entered into the contract with [the Access Applicant] and have advised that you 'bought the property in good faith that the prior owner...was immediately clearing any finance owing'.

⁷ Section 23 of the RTI Act.

⁸ Section 87(2) of the RTI Act.

⁹ Ibid.

¹⁰ Including disregarding irrelevant factors proscribed in schedule 4 part 1, and identifying and balancing factors favouring disclosure and nondisclosure. I should also note that while the Review Applicant is a corporation and does not therefore itself enjoy human rights under the *Human Rights Act 2019* (Qld) (**HR Act**), I accept this matter may affect the human rights of individuals directly associated with the Review Applicant, and have had regard to relevant rights in making this decision particularly the right to particularly the right to property, and right to privacy and reputation. In this regard, I note that a decision-maker in my position will be '*respecting and acting compatibly with*' rights prescribed in the HR Act, when applying the law prescribed in the RTI Act as I have done in this decision, thereby conforming with section 58(1) of the HR Act (see *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]; and *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹¹ See, for example, *F9TO8 and Department of Transport and Main Roads* [2016] QICmr 19 (3 June 2016); *G11 and Department of Transport and Main Roads* [2024] QICmr 44 (19 September 2024); *K61 and Department of Transport and Main Roads* [2024] QICmr 55 (23 October 2024).

[The Access Applicant] has provided a copy of a Notice of Default dated 23 July 2024 showing an overdue balance, alongside the signed Loan Agreement and Personal Property Securities Register extract. According to the Loan Agreement, this constitutes a default for which ...[the Access Applicant] is entitled to enforce the security interest in relation to the vehicle. From this information I am satisfied that... [the Access Applicant] has suffered loss in respect of a which a remedy is available and has a reasonable basis for seeking to pursue the remedy. This process appears to be the only way that ...[the Access Applicant] can locate the vehicle and enforce its rights under the contract.

I consider this factor carries significant weight in favour of disclosure of the Address.

Your external review application stated that it is “unfair to any reasonable person to release the information at such short notice as it would damage [your] business operations”. I recognise that disclosure of the 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 business’s financial affairs and afford this factor moderate weight.

However, I do not consider that this factor is sufficient to displace the significant weight afforded to the factor favouring disclosure to enable ...[the Access Applicant] to enforce its rights under the contract.

For the above reasons, it is my preliminary view that the factor relating to the administration of justice is determinative and access may be given to the Address under the RTI Act.

9. The preliminary view sets out the key considerations in this case, and expresses a conclusion consistent with prior decisions of OIC noted above. It is a conclusion with which, for reasons briefly stated below, I agree.¹²
10. Favours disclosure in this case is the general public interest in promoting access to government-held information,¹³ and the strong public interest in disclosure of information where that disclosure, could, as here, reasonably be expected to contribute to the administration of justice.¹⁴ Key criteria for the application of this latter factor – first set out by the Information Commissioner in *Willsford and Brisbane City Council*,¹⁵ and enumerated in the Assistant Information Commissioner’s preliminary view – are all satisfied in this case, for the reasons explained in that preliminary view as excerpted above.
11. Telling against disclosure is the fact that release is likely to result in the Access Applicant using the Information in Issue to enforce its security rights. This, as is recognised in the preliminary view, could reasonably be expected to prejudice the Review Applicant’s business and financial affairs.¹⁶ The preliminary view afforded this factor moderate weighting; the Review Applicant has not contested that weighting, and I adopt it for the purposes of these reasons.
12. Although not raised by the Review Applicant,¹⁷ I am also prepared to recognise that disclosure of the Information in Issue may prejudice the protection of an individual’s right to privacy. This is because, while the Review Applicant is a company, it appears the registered garaging address may also be a residential property.¹⁸ As such, any enforcement action that may flow from disclosure could result in some intrusion into the ‘*personal sphere*’ of

¹² Noting the Review Applicant has not meaningfully contested this preliminary view: of the four emails received from the Review Applicant in response to that letter - dated 3 April, 14 April, 13 May and 21 May 2025 - only one contained what might be construed as a submission supporting a case for nondisclosure – that relevant matters ‘affects’ the Review Applicant’s ‘business operations’ (email dated 14 April 2025).

¹³ Implicit in the object of the RTI Act.

¹⁴ Schedule 4, part 2, item 17 of the RTI Act.

¹⁵ (1996) 3 QAR 368, which applied equivalent provisions under the repealed *Freedom of Information Act 1992* (Qld).

¹⁶ 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. There is a related public interest harm factor that may, in appropriate circumstances, also apply to tell against disclosure of information: schedule 4, part 4, section 7(1)(c) of the RTI Act. In the absence of submissions from the Review Applicant, as the party with the onus in this review, contending for the relevance of this harm factor, I do not consider it necessary to take it into account in balancing the public interest. In the event it did apply, I would afford it, too moderate weight.

¹⁷ Nor canvassed in the preliminary view.

¹⁸ Based on internet searches undertaken by OIC, noting the Information Commissioner may inform herself on any matter in an external review in any way the commissioner considers appropriate: section 95(1)(c) of the RTI Act.

property residents.¹⁹ Protecting individual privacy is an important public interest. Given the absence of submissions on the point by the Review Applicant – again noting it bears the onus in this review – I think it appropriate to afford this factor moderate weight.

13. Balancing competing public interest considerations against one another, I am satisfied that, for reasons explained in the preliminary view, the strong public interest in promoting the administration of justice should be preferred to those factors favouring nondisclosure discussed above.²⁰ Consistently with similar OIC decisions, this administration of justice public interest consideration is, in my view, determinative in this case.
14. In reaching this conclusion, I acknowledge that Review Applicant was not the counterparty to the finance contract with the Access Applicant. The Review Applicant did, nevertheless, implicitly concede that the subject vehicle was purchased by it with knowledge of the encumbrance, on an expectation that the vendor would clear the existing obligation with the proceeds from the sale immediately.²¹
15. The Review Applicant's position is unfortunate. It is not, however, sufficient to tip the balance of the public interest in favour of nondisclosure, and so deprive the Access Applicant of access to information necessary to allow it to exercise its lawful rights.
16. I also acknowledge the Review Applicant's communications during the review, advising that it was continuing to seek a negotiated outcome with the Access Applicant, and requesting that OIC delay finalising this matter. OIC did extend certain accommodations in this regard, allowing the Review Applicant some additional time. A final request²² for yet more unspecified time was not, however, granted: not only does OIC have an obligation to resolve external reviews expeditiously,²³ but the Access Applicant has a legally-enforceable right to access the Information in Issue, and I did not consider it appropriate to further delay the Access Applicant's enjoyment of that right.²⁴

DECISION

17. For the reasons explained above, disclosure of the Information in Issue would not, on balance, be contrary to the public interest.²⁵ There being no other grounds for refusing access raised by the Review Applicant,²⁶ I affirm the Department's decision to disclose the Information in Issue to the Access Applicant.
18. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Jim Forbes
Assistant Information Commissioner
Date: 23 June 2025

¹⁹ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others: see the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56. For completeness, I note that I am not satisfied the related personal information harm factor in schedule 4, part 4, section 6 of the RTI Act is satisfied. Personal information is defined in section 12 of the *Information Privacy Act 2009* (Qld), as, relevantly, information *about* an individual. The Information in Issue is not *about* any individual, but a vehicle: *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4 (19 January 2017).

²⁰ Including the public interest harm factor canvassed in footnote 16, in the event I am mistaken as to its nonapplication.

²¹ External review application, the Review Applicant's representative stating that he was '*told by the seller of the vehicle that the finance would be paid off with...the purchase funds*'. I note, too, that the Access Applicant's interest is registered on the Personal Property Security Register (a copy of the relevant register entry having been supplied by the Access Applicant to the Department, and in turn by the Department to OIC).

²² Via email dated 21 May 2025.

²³ Section 95(1)(b) of the RTI Act.

²⁴ See my email to the Review Applicant dated 26 May 2025.

²⁵ Sections 47(3)(b) and 49 of the RTI Act.

²⁶ Nor apparent to me.