

## Decision and Reasons for Decision

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<b>Citation:</b>	<i>H21 and Moreton Bay City Council [2026] QICmr 63 (23 April 2026)</i>
<b>Application Number:</b>	318622
<b>Applicant:</b>	H21
<b>Respondent:</b>	Moreton Bay City Council
<b>Decision Date:</b>	23 April 2026
<b>Catchwords:</b>	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for information about complainants - personal information and privacy of other individuals - prejudice flow of information to regulatory agency - whether access to information may be refused under section 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b></p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DOCUMENTS NONEXISTENT OR UNLOCATABLE - request for body worn camera footage - whether agency has conducted reasonable searches - whether access to recordings may be refused on the basis that they are nonexistent or unlocatable - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)</b></p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OUTSIDE OF SCOPE DOCUMENTS some documents located fall outside the scope of the applicant's request</b></p>

### DECISION

1. For the reasons set out below, I vary the reviewable decision<sup>1</sup> and find that:

- access to some of the documents sought by the applicant are outside the scope of the access application
- 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>2</sup> and
- access to the remaining further documents sought by the applicant may be refused on the basis they are nonexistent or unlocatable.<sup>3</sup>

2. This means that no further information is to be released to the applicant.

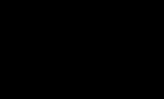
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<sup>1</sup> Under section 110(1)(b) of the RTI Act.

<sup>2</sup> Under section 47(3)(b) of the RTI Act.

<sup>3</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

3. My reasons for the decision follow.



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**K Zaidiza**  
**Manager, Right to Information**

**Date: 23 April 2026**

## **REASONS FOR DECISION**

### **Summary**

4. The applicant applied to Moreton Bay City Council (**Council**)<sup>4</sup> under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>5</sup> for access to documents regarding complaints made against his business on a specific date range. In particular, the applicant sought access to the names and contact details of the complainants, copies of the original complaints including photographs, Council's internal records, investigation notes and correspondence between Council and the complainants.
5. Council located 72 pages and decided<sup>6</sup> to give the applicant access to 40 pages and to refuse access to parts of 25 pages and 7 pages (**Information in Issue**) on the basis that disclosure of this information would, on balance, be contrary to the public interest.<sup>7</sup>
6. The applicant applied<sup>8</sup> to the Office of the Information Commissioner (**OIC**) for external review of Council's decision on the basis that further documents should have been located, including audio/visual footage and photographs provided by complainants. The applicant also sought access to the Information in Issue on the basis that Council had '*improperly weighed*'<sup>9</sup> the factors favouring nondisclosure. This concern related to information including the identity of complainants.
7. The Information in Issue comprises:
  - the name and contact details of complainants; and
  - photographs provided by complainants.

### **Issues for determination**

8. There are three issues for determination in this review:
  - whether access to further documents may be refused because they fall outside the scope of the access application
  - 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; and

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<sup>4</sup> The Office of the Information Commissioner understand Council trading name to be City of Moreton Bay.

<sup>5</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act. As the applicant's application was made before this change, the RTI Act as in force prior to 1 July 2025 remains applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act. Accordingly, references to the RTI Act in this decision is to that Act as in force prior to 1 July 2025.

<sup>6</sup> Decision dated 9 May 2025.

<sup>7</sup> Section 47 (3)(b) of the RTI Act.

<sup>8</sup> On 9 May 2025.

<sup>9</sup> Submissions received on 10 May 2025.

- whether Council has taken all reasonable steps to locate relevant documents falling within the terms of the application and access to any further document may be refused on the basis they do not exist.<sup>10</sup>

9. In my determination of these issues, I have considered evidence, submissions, legislation and other material as set out in these reasons.<sup>11</sup> I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information,<sup>12</sup> and in doing so, have acted in accordance with section 58(1) of the HR Act.<sup>13</sup>

### Documents outside the scope of an application

10. As noted in paragraph 4 above, the applicant made an application under the RTI Act seeking access to documents regarding complaints made against his business on a specific date range.
11. On external review, the applicant contended that further documents should have been located, particularly audio/visual footage and photographs provided by complainants. OIC asked Council to conduct further searches and as a result one body worn camera (**BWC**) recording was located. However, such recording was created outside the time period specified in the applicant's access request. Council also explained that such recording did not comprise the applicant's personal information.
12. OIC conveyed a view to the applicant that his concerns about missing BWC recordings extended beyond the scope of documents requested in the applicant's access application.<sup>14</sup> The applicant contested this view and submitted that he is entitled to this recording as it was '*taken in the course of an inspection or complaint investigation on my jointly owned property and concerning allegations relating to [him]....*'<sup>15</sup>
13. It is well established that an applicant cannot unilaterally expand the scope of an access request on external review.<sup>16</sup> Further, the Information Commissioner has previously expressed the view that the scope of an original application sets the parameters for the agency's searches.<sup>17</sup>
14. The access application was limited to documents within a specific date range. I am satisfied that the BWC recording located is not captured by the scope of the access application and as such can be excluded from consideration. There was no requirement that Council located it in response to the access application and OIC has no jurisdiction to consider this recording on review.

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<sup>10</sup> Under section 47(3)(e) of the RTI Act.

<sup>11</sup> Including footnotes.

<sup>12</sup> Section 21 of the HR Act.

<sup>13</sup> OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

<sup>14</sup> Letter dated 4 September 2025.

<sup>15</sup> Applicant's submissions dated 13 November 2025.

<sup>16</sup> *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].

<sup>17</sup> *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8]; *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33]; *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [15].

## Nonexistent documents

### Relevant law

15. Access to a document may be refused if it is nonexistent or unlocatable.<sup>18</sup> A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>19</sup> A document will be 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.<sup>20</sup>
16. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures and the nature and age of requested documents.<sup>21</sup> After considering relevant factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency. 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.<sup>22</sup> What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
17. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all possible steps)<sup>23</sup> to identify and locate documents applied for by applicants.<sup>24</sup> On an external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>25</sup> However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.<sup>26</sup> Suspicion and mere assertion will not satisfy this onus.<sup>27</sup>

### Submissions from the applicant

18. The applicant raised concerns<sup>28</sup> that information he considered should have been located by Council in response to his access request was not located, including '*digital or audio surveillance records*'. The applicant also submitted that Council had not '*demonstrated that*

<sup>18</sup> Sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>19</sup> Section 52(1)(a) of the RTI Act.

<sup>20</sup> Section 52(1)(b) of the RTI Act.

<sup>21</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].

<sup>22</sup> In *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6], McGill J observed that this does not extend to all 'possible' steps.

<sup>23</sup> *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

<sup>24</sup> Section 130(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb* at [6] that the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

<sup>25</sup> Section 87(1) of the RTI Act.

<sup>26</sup> See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

<sup>27</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

<sup>28</sup> Submissions dated 10 May 2025 and 4 September 2025.

*it took all reasonable steps to locate relevant documents' because its 'search efforts were confined to Development Services and Local Law electronic systems and property files' and 'material clearly referenced in released records (e.g photographs, attachments, body worn camera footage) [has] not been produced'. The applicant further submitted that Council should have conducted 'searches in personal officer mailboxes, shared drivers, mobile correspondence, or hard copy records', as well some other locations including 'backup archives.'*

### **Searches conducted by Council**

19. The search records provided by Council during this review show that the following business units conducted searches for all complaint information relating to the scope of the applicant's access request:

- Council's Building Services team
- Local Laws team
- Development Services team
- Development Compliance team; and
- Environmental Health team (Customer Response Department).

20. In search records provided to OIC,<sup>29</sup> Council confirmed that searches of Council's Enterprise Content Management (**ECM**) – that is, its electronic management system – were conducted. In this regard, Council explained that if documents regarding a complaint are received, those are recorded and saved in Council's ECM to ensure records management and compliance. Hardcopy records were also searched. Council confirmed that searches were conducted including the property records and also included searches of emails to development compliance officers and printed files for information related to the applicant's business.

### **Findings**

21. The legal test I must apply in these circumstances is whether Council has taken all reasonable steps to locate the documents sought by the applicant. In doing so I have considered the scope of the access request, the documents that were located and the evidence provided by the applicant about the existence of documents.

22. The applicant has raised specific concerns that photographs provided by complainants were missing and submitted that this demonstrated Council has failed to locate all documents responsive to his application. However, on viewing the Information in Issue, I observe that photographs provided by complainants were located by Council as part of processing the access application, but access has been refused (I will address the refusal of this information in the *Contrary to Public Interest* section). Further, the body worn camera footage that the applicant contested should exist has been located, however it falls outside the time period specified in the applicant's access request as explained in paragraphs 10 to 14 above.

23. As noted in paragraph 17, suspicion and mere assertion will not satisfy the onus on the applicant to demonstrate the agency has not discharged its obligation to locate all relevant documents. The applicant has submitted that OIC's acceptance of '*Council's position that [the] ECM captures everything*' is '*factually and operationally incorrect*'. In support of this, the applicant states '*Council officers frequently retain information before uploading to ECM, 'some notes are never uploaded at all*'.<sup>30</sup> Council searches demonstrate that not

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<sup>29</sup> Council's submissions dated 12 August 2025.

<sup>30</sup> Applicant's submissions dated 13 November 2025.

only ECM has been searched, but hardcopy records have also been searched to the extent that it was reasonable to conduct such searches. The applicant has not provided any evidence to support his assertions and as such I do not consider the applicant has discharged the relevant onus. In relation to the applicant's submission that searches be conducted in 'backup archives', I am also satisfied that section 52(2) of the RTI Act is not enlivened.

24. Given the searches conducted by Council, the extent of the released documents, the further searches conducted which located a further BWC recording and responses from the relevant areas, it is my view that Council has taken all reasonable steps to identify and locate the documents responsive to the applicant's access request. The searches and inquiries conducted by Council were directed to the appropriate areas and in my view, used relevant search terms, and conducted in locations where it would be reasonable to expect documents to be located. As such, if further documents sought existed, the searches conducted would have located them.
25. Accordingly, based on the information before me, it is my view that Council has located all documents relevant to the scope of the applicant's request and access to any additional documents may be refused on the basis that they do not exist under sections 47(3)(e) and 52(1)(a) of the RTI Act.

### **Contrary to the public interest information**

#### ***Relevant Law***

26. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>31</sup> However, this right of access is subject to certain limitations, including grounds upon which access to information may be refused.<sup>32</sup> The RTI Act requires the grounds for refusing access to be interpreted narrowly, and decisions on access to be made with regard to the pro-disclosure bias.<sup>33</sup>
27. Relevantly, access to information may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>34</sup> 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. There are, however, some recognised public interest considerations that may apply for the benefit of an individual.
28. The RTI Act explains the steps that the decision-maker must take in deciding the public interest.<sup>35</sup> It also identifies a non-exhaustive list of factors in Schedule 4 that may be relevant to deciding the balance of the public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.

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<sup>31</sup> Section 23 of the RTI Act.

<sup>32</sup> Section 47(3) of the RTI Act.

<sup>33</sup> Section 47(2)(a) and 44 of the RTI Act.

<sup>34</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>35</sup> Section 49(3) of the RTI Act.

### **Submissions from the applicant**

29. Throughout the external review, the applicant has submitted<sup>36</sup> that the public interest favoured the release of the Information in Issue, in particular the names and contact details of complainants, for reasons including:

- the applicant requires the Information in Issue to '*pursue legal remedies*' as the applicant is involved in active '*criminal, civil, regulatory and child-protection matters in which the identity, accuracy, and conduct of complainants*' as well as '*the accuracy of Council's evidence are central issues*'. As such, the '*...administration of justice factors carry significant weight*'
- the applicant has '*suffered legal and financial detriment arising from [his at home business] complaints and related proceedings*' and '*without knowing the complainants' identities and seeing their evidence, [the applicant] cannot issue subpoenas, test credibility, or defend [himself]*'
- the privacy of the complainants should be given low weight because '*complainants engaged Council in a regulatory complaint process involving [the applicant's] property*', '*complainants reasonably expect their complaints may be disclosed in legal proceedings*' and as '*the withheld identifying details can be minimally redacted while still disclosable*'
- release of the Information in Issue '*affects the integrity and transparency of Council's regulatory functions*', as it will disclose '*whether Council has acted impartially in handling complaints*' and or show that '*complaints may have been malicious or conflicted*'
- '*it may evidence false or malicious complaints and a potential conflict of interest involving Council officers*'; and
- '*Council's reliance on "privacy" is overstated*' and the '*[p]rivacy and "flow of information" are important, but they cannot outweigh the exceptional injustice that results if [the applicant is] denied the ability to defend [himself] in court*'.

### **Findings**

#### **Irrelevant factors**

30. I have not identified any irrelevant factors that apply in relation to the Information in Issue.<sup>37</sup>

#### **Factors favouring disclosure**

31. In terms of enhancing Council's accountability and transparency in how it handles complaints, I note that the Information in Issue is limited in nature and it does not reveal how Council investigated the complaints or any actions taken by Council. Information in relation to these aspects has already been released to the applicant. Disclosure of the Information in Issue would only provide the applicant with the identity of the complainant/s and some additional background or contextual information of the complaints. As such, in my view the information released by Council, which includes the substance of the complaints, has already served to discharge the public interest in promoting Council's transparency and accountability<sup>38</sup> in the performance of its regulatory functions, and releasing the Information in Issue would only marginally advance Council's transparency and accountability. As such, I afford these factors low weight in favour of disclosure.

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<sup>36</sup> Applicant's submissions dated 4 September 2025 and 13 November 2025 as well as the applicant's external review application.

<sup>37</sup> Including those set out in schedule 4, part 1 of the RTI Act.

<sup>38</sup> Schedule 3, part 2, items 1, 3 and 11 of the RTI Act.

32. The applicant's submissions were particularly focused on obtaining access to the Information in Issue for what the applicant has advised, are active legal proceedings. In particular, the applicant submitted that '*[w]ithout knowing the complainants' identities and seeing their evidence, I cannot issue subpoenas, test credibility, or defend myself*'.<sup>39</sup> However, in this instance I consider the administration of justice factor favouring disclosure, both generally and for the applicant,<sup>40</sup> have been discharged by the information that has already been released to the applicant. This is because Council has already provided substantial information in relation to how it conducted the investigation, the substance of the complaints and the actions taken by Council.
33. I have also considered that the applicant does not require the Information in Issue to determine whether there is a reasonable basis to pursue or consider pursuing a legal remedy. However, I note the applicant's advice about active legal proceedings and also note his ability to seek or compel the provision of documents in those proceedings via court processes which are less likely to necessitate redactions. As such, I afford the administrative of justice factors, both generally and for the applicant, low weight.
34. The applicant also raised concerns about the complaints being '*false or malicious*' and considers there may be '*potential conflict of interest involving Council's officer*'. I have therefore considered whether release of the Information in Issue would favour the public interest in revealing incorrect information and / or would allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official, or reveal that an agency or official has engaged in misconduct.<sup>41</sup> Given the limited content of the Information in Issue as noted above, I do not consider its release could reasonably be expected to reveal that the complaints made were incorrect or were malicious, other than for the applicant to know the identity of the complainants. The applicant has already been provided the substance of the complaints. There is also nothing before me to indicate that the Council officers were engaging in misconduct, improper or unlawful conduct or there any deficiencies in their conduct. As such, I do not consider these factors apply.
35. I have carefully considered the remaining factors favouring disclosure listed in schedule 4, part 2, of the RTI Act, and factors favouring disclosure more generally, given the factors listed in schedule 4 are not exhaustive. I can identify no other public interest considerations in favour of disclosure of the Information in Issue.

### **Factors favouring nondisclosure**

36. In this instance, the Information in Issue inherently contains complainants' personal information.<sup>42</sup> If this information were to be released, it would be expected to prejudice the right to privacy<sup>43</sup> of other individuals. Privacy considerations carry significant weight in the protection of the complainants' personal information and its release would be an invasion of privacy. Given the information about other individuals appears in a sensitive complaint context, and individuals are involved in their personal capacity, I afford these factors significant weight.
37. There are strong public interests in protecting the free flow of information to law enforcement and regulatory agencies and their ability to obtain confidential information.<sup>44</sup> The Information in Issue comprises the identifying information of individuals who made

<sup>39</sup> Applicant's submissions dated 4 September 2025.

<sup>40</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

<sup>41</sup> Schedule 4, part 2, item 12, 5 and 6 of the RTI Act.

<sup>42</sup> Personal information is defined 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*' – see schedule 5 of the RTI Act and section 12 of the IP Act.

<sup>43</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

<sup>44</sup> Schedule 4, part 3, item 13 and 16 of the RTI Act.

complaints including evidence provided by the complainants to Council. Disclosing this type of information could reasonably be expected to discourage individuals and community members from fully engaging with Council and raising concerns or complaints in the future. This, in turn, would significantly prejudice Council's ability to effectively discharge their regulatory functions. Given that Council relies on the willingness of individuals to bring issues of concern within Council's regulatory jurisdiction to its attention and to provide evidence in relation to such concerns, I consider such reluctance would prejudice the flow of information to Council in relation to its regulatory function and its ability to obtain confidential information. Accordingly, I afford significant weight to these factors favouring nondisclosure.

### **Balancing test**

38. I acknowledge that there are some public interest factors which favour disclosure of the Information in Issue including Council's transparency, accountability and the administration of justice. However, given the nature of the Information in Issue and the amount of information already released to the applicant, I consider these factors favouring disclosure carry low weight. On the other hand, I am satisfied that the collective weight of the nondisclosure factors which seek to protect other individuals' personal information and their right to privacy and ensure the flow of information to Council and its ability to obtain confidential information is not prejudiced, is greater, and determinative. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access to it may be refused.

### **Conclusion**

39. The above are the reasons for my decision set out at paragraph 1.

40. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner under section 145 of the RTI Act