



## Decision and Reasons for Decision

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Citation:	<i>Tomkins and Rockhampton Regional Council</i> [2016] QICmr 2 (22 January 2016)
Application Number:	312363
Applicant:	Tomkins
Respondent:	Rockhampton Regional Council
Decision Date:	22 January 2016
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - applicant seeking access to information about himself and his dogs - audio recordings of interviews and photographs of dogs relating to Council investigation of a dog attack - whether documents contain the applicant's personal information - whether the documents can be the subject of an access application under the <i>Information Privacy Act 2009</i> (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to Rockhampton Regional Council (**Council**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documents relating to allegations about himself and his dogs, for the period 1 December 2013 to 1 January 2015.<sup>1</sup>
2. Council refused access to all the information it located in response to the application on the ground of legal professional privilege. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision. During the external review, a number of documents were released to the applicant by Council and the applicant also agreed not to pursue access to certain information.
3. Two categories of information remain in issue on external review: audio recordings of interviews Council held with the victim of the dog attack (**Interview Recordings**) and dog "line up" photographs shown to the victim (**Photos**).

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<sup>1</sup> In January 2015, the applicant's two dogs were declared to be dangerous dogs by Council. The dogs have been the subject of investigations by Council and were identified by Council as the dogs responsible for an attack on another individual in September 2014. Council has since commenced prosecution proceedings in the Magistrates' Court against the applicant in relation to his dogs. As at the date of this decision, these proceedings are ongoing.

4. For the reasons set out below, I vary the Department's decision and find that the Interview Recordings and Photos do not contain the applicant's personal information and therefore, cannot be subject to the applicant's access application under the IP Act.

## Background

5. Significant procedural steps relating to the external review are set out in the Appendix.
6. During the external review, Council accepted OIC's view that the majority of the documents located in response to the access application were not subject to legal professional privilege. Council also located and agreed to release additional information to the applicant. The applicant accepted OIC's views on various issues.<sup>2</sup>
7. The applicant made a number of submissions to OIC about the sufficiency of Council's searches.<sup>3</sup> Council conducted additional searches during the review process and provided OIC with relevant search results and submissions. The applicant accepted OIC's view that various additional documents were nonexistent or unlocatable<sup>4</sup> and therefore, those issues are not dealt with in this decision.
8. The applicant did not accept that Council located all of the Photos and Interview Recordings. As stated at paragraph 4, I have found that these categories of information do not contain the applicant's personal information and therefore, cannot be subject to an access application under the IP Act. Accordingly, the issue of sufficiency of search with respect to these categories of information is beyond the scope of this external review and therefore, it is not addressed in this decision.

## Reviewable decision

9. The decision under review is Council's decision dated 28 January 2015.

## Evidence considered

10. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
11. The applicant (via his authorised representative) provided OIC with extensive submissions in support of his case.<sup>5</sup> I have carefully considered those submissions. The applicant raised a number of concerns regarding Council's investigation process, the veracity of information relied upon by Council in making its decision to prosecute him and the information released to him under the prosecution process.<sup>6</sup> To the extent the applicant's submissions are relevant to the issue for determination, I have addressed them below.

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<sup>2</sup> Post application documents, blank and duplicate documents, out of scope non-personal information and refusal of access to exempt information and contrary to public interest information. As these issues were resolved with the applicant during the review process, they are not addressed in these reasons for decision.

<sup>3</sup> Submissions dated 28 and 29 June, 9 July, 23 August and 21 September 2015.

<sup>4</sup> Under section 52 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>5</sup> As set out in the Appendix. The submissions which relate directly to the Interview Recordings and Photos mainly appear in the applicant's external review application and emails to OIC dated 23 August 2015, 21 September 2015, 30 October 2015 and 22 November 2015.

<sup>6</sup> These concerns are irrelevant to the issue for determination in this review.

## Issue for determination

12. The issue to be decided is whether the Interview Recordings and Photos can be the subject of the applicant's access application made under the IP Act on the basis that they contain the applicant's personal information.<sup>7</sup>

## Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information.<sup>8</sup>

14. Personal information is defined in the IP Act as:<sup>9</sup>

*... 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.*

15. The Right to Information Commissioner has previously determined that information will be a particular individual's personal information for the purposes of the IP Act if:

- the individual can be *identified* from the information sought; and
- the information sought is *about* that individual.<sup>10</sup>

16. In some instances, an individual's identity is clear from the face of the documents, for example, an individual's name or photograph or a detailed description of a particular individual. Where a document does not contain information that obviously identifies an individual, the Right to Information Commissioner has previously considered that, in some instances, an individual may be reasonably identifiable through additional information. The Right to Information Commissioner has previously considered that the below factors will influence whether an individual's identity can be reasonably ascertained:<sup>11</sup>

- how available the additional information is
- how difficult it is to obtain
- how many steps are required to identify the individual
- how certain the identification will be
- whether it will identify one specific individual or a group of people; and
- whether the individual receiving the information can use it to identify the individual.

17. Whether information is 'about' an individual is a contextual question, independent from considering whether the information identifies an individual. The word 'about' is not defined in the IP Act and it is therefore necessary to consider the word's ordinary meaning, which includes '*of; concerning; in regard to ... connected with*'.<sup>12</sup> Accordingly, in considering whether information is 'about' an individual, it is necessary to consider whether the information reveals anything about the individual.<sup>13</sup>

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<sup>7</sup> For the reasons set out at paragraph 8 above, sufficiency of search issues do not form part of the issue for determination.

<sup>8</sup> Section 40(1)(a) of the IP Act.

<sup>9</sup> Section 12 of the IP Act.

<sup>10</sup> *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (*Mahoney*) at [19].

<sup>11</sup> *Mahoney* at [21].

<sup>12</sup> Macquarie Dictionary online.

<sup>13</sup> *Mahoney* at [23] to [27].

## Findings

18. As the access application was made under the IP Act, the only documents which can be subject to the application are those that contain the applicant's personal information.<sup>14</sup>
19. The Interview Recordings and Photos were brought into existence during Council's investigation of a dog attack, for which the applicant's dogs were identified by Council as responsible. The Interview Recordings comprise the victim's account of the attack and confirm that photographs of various dogs (being the Photos) were shown to the victim.<sup>15</sup> The Photos depict a number of different dogs, each with a handwritten identification number. They contain no further identifying information, such as owner details, registration details, locations or dog names.
20. I accept that the applicant has a strong personal interest in accessing information relating to his dogs and Council's investigation of the dog attack. However, the fact that the dogs Council identified as responsible for the attack are owned by the applicant does not automatically mean that all of the documents relating to the dog attack investigation will contain the applicant's personal information.
21. To determine whether the Interview Recordings and Photos contain the applicant's personal information and therefore can be the subject of the IP Act application, I must consider:
  - firstly, whether the applicant can be identified from the Interview Recordings and Photos; and
  - secondly, whether the Interview Recordings and Photos are about the applicant.

### ***Can the applicant be identified from the Interview Recordings and Photos?***

22. No, for the reasons that follow.
23. The applicant generally submits he has an entitlement to access all documents within Council's investigation files, including the Interview Recordings and Photos, because the investigation led to his prosecution and the dogs are his property and this leads to the identification of him in all documents.
24. More specifically, the applicant submits that:
  - the Interview Recordings triggered an investigation, which resulted in Council forming a database of his '*personal information and opinions*' made about him';<sup>16</sup> and
  - as the Photos were shown to the victim during the investigation, the depicted dogs '*now make up* [the applicant's] *personal information and personal opinions held about him.*'<sup>17</sup>
25. I have carefully considered the Interview Recordings and Photos and I am satisfied that they contain no information which references or identifies the applicant. It is therefore

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<sup>14</sup> Section 40 of the IP Act.

<sup>15</sup> By letter dated 12 January 2015, responding to the applicant's submissions regarding a proposed regulated dog declaration notice, Council advised the applicant that '*The victim was shown a series of photos of dogs with similar markings, size and colouring.*'

<sup>16</sup> Submission dated 23 August 2015.

<sup>17</sup> Submission dated 21 September 2015.

necessary to consider whether the applicant can be reasonably identified through additional information.

26. In this case, although the applicant's ownership of his dogs can be ascertained from additional information,<sup>18</sup> the Interview Recordings and Photos do not specifically identify the applicant's dogs.
27. The Interview Recordings contain the victim's description of the dogs who attacked her and record her consideration of a series of photographs of unidentified dogs with similar physical characteristics to the descriptions she gave to Council. The Photos are of various dogs and do not reveal any connection with their owner, nor do they contain the dog names, breeds or registration numbers. Neither the Interview Recordings nor the Photos contain any information which relates to any ownership conduct or action of the applicant in respect of the dogs which he owns.
28. For the above reasons, I am satisfied that a person receiving the Interview Recordings and Photos would not be able to use them to identify the applicant. Accordingly, I am satisfied that the applicant's identity could not be reasonably ascertained through additional information.

***Are the Interview Recordings and Photos about the applicant?***

29. No, for the reasons that follow.
30. The information in the Interview Recordings does not identify or refer to the applicant as the owner of the dogs responsible for the attack. Similarly, the Photos do not identify or refer to any of the depicted dogs as being owned by the applicant. The Interview Recordings and Photos are therefore, not *obviously* about the applicant.
31. The question is then whether the Interview Recordings and Photos reveal anything about the applicant or, in other words, whether there is a sufficient link or connection between the Interview Recordings and Photos and the applicant to conclude that the Interview Recordings and Photos are about the applicant's personal information.
32. The recordings are, as noted above, about the victim's account of the attack and her consideration of the dog "line up" photographs. While the victim may have provided Council with a description of the physical qualities of the dogs involved in the attack, there is no connection between that description and the applicant. For these reasons, I am satisfied that the information in the Interview Recordings does not reveal a fact or opinion about the applicant. I also find that there is not a sufficient link or connection between this information and the applicant to make the Interview Recordings about the applicant.
33. As noted above, the victim was shown a series of photographs of dogs with similar physical characteristics to those she described in her account of the attack and those photographs were only identified by handwritten numbers. I find that there is no connection between the applicant and the Photos.<sup>19</sup> For these reasons, I am satisfied

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<sup>18</sup> Relevant extraneous material includes the applicant's registration form relating to those dogs, which was released to the applicant on external review. The information provided to the applicant under the separate prosecution process also includes photographs of two dogs, which are the applicant's dogs, with the victim's handwritten statements on the back of one photograph of each dog. In one of these handwritten statements, the victim indicated she was very confident that the depicted dog was involved in her attack.

<sup>19</sup> The information provided to the applicant under the separate prosecution process included the majority of the Photos. In his submission dated 23 August 2015, the applicant states '*Dog photos already received 1,2,3,5,7,8. are not [the applicant's] dogs*'. This submission also relates to the applicant's concerns about sufficiency of search which, for the reasons explained at [8], are not relevant to the issue for determination in this review.

that the Photos do not reveal a fact or opinion about the applicant and there is not a sufficient link or connection between the Photos and the applicant to make them about the applicant.

34. Accordingly, I am satisfied that the Interview Recordings and Photos contain no information which is about the applicant.

### **Conclusion**

35. For the reasons set out above, I am satisfied that the Interview Recordings and Photos do not contain the applicant's personal information and therefore, the Interview Recordings and Photos cannot be subject to the applicant's access application which was made under the IP Act.

### **DECISION**

36. I vary Council's decision and find that the Interview Recordings and Photos do not contain the applicant's personal information and therefore, cannot be subject to the applicant's access application which was made under the IP Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 22 January 2016**

## APPENDIX

### Significant procedural steps

Date	Event
16 January 2015	Council received the access application.
28 January 2015	Council issued its decision to the applicant.
<b>1 February 2015</b>	<b>OIC received the application for external review of Council's decision.</b>
2 February 2015	OIC notified Council that the external review application had been received and requested relevant procedural documents by 9 February 2015.
3 February 2015	OIC received the procedural documents from Council. OIC received the applicant's authorisation of his representative to act on his behalf in the review.
4 February 2015	OIC notified the applicant and Council that it had accepted the external review application. OIC requested Council provide a copy of the documents in issue by 18 February 2015.
5 February 2015	OIC confirmed its request to Council for a copy of the documents in issue by 18 February 2015.
23 February 2015	OIC received the documents in issue from Council.
31 March 2015	OIC received further information from Council.
17 June 2015	OIC conveyed a preliminary view to Council on various issues and requested submissions by 1 July 2015.
18 June 2015	OIC provided an update to the applicant regarding the preliminary view conveyed to Council.
24 June 2015	Council notified OIC that it accepted the preliminary view and agreed to release documents to the applicant on 25 June 2015.
17 August 2015	OIC conveyed a preliminary view to the applicant on various issues, including the Interview Recordings and Photos, and requested submissions by 31 August 2015.
23 August 2015	OIC received the applicant's submissions in support of his case.
9 September 2015	OIC confirmed to the applicant OIC's preliminary view on various issues, including the Interview Recordings and Photos, and requested submissions by 23 September 2015.
21 September 2015	OIC received the applicant's further submissions in support of his case.
12 October 2015	OIC confirmed to the applicant OIC's preliminary view on various issues, including the Interview Recordings and Photos, and requested submissions by 2 November 2015.
30 October 2015	OIC received the applicant's further submissions in support of his case.
12 November 2015	OIC confirmed to the applicant OIC's preliminary view on various issues, including the Interview Recordings and Photos, and requested submissions by 26 November 2015.
22 November 2015	OIC received the applicant's further submissions in support of his case.
7 December 2015	OIC confirmed to the applicant OIC's preliminary view in respect of the Interview Recordings and Photos.
14 December 2015	OIC confirmed its preliminary view in respect of the Interview Recordings.