



Decision and Reasons for Decision

Citation:	<i>Brisbane Enterprises Qld Pty Ltd and Redland City Council [2020] QICmr 63 (23 October 2020)</i>
Application Number:	315029
Applicant:	Brisbane Enterprises Qld Pty Ltd ACN 1027398321, trading as Resource Recoveries and Recycling
Respondent:	Redland City Council
Decision Date:	23 October 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO THE PUBLIC INTEREST INFORMATION - documents relating to land use and a development approval application - personal information - whether disclosure of information 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. The applicant applied¹ to Redland City Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access:
 - (a) *All correspondence to/from the Corporate eMailbox in which MCU013688 or Lot 1 RP109322 have been mentioned or referred to*
 - (b) *All correspondence, memoranda and notations of calls between [a Councillor] and [two individuals] relative to Lot 1 on RP109322 and Lot 3 SP238067*
 - (c) *All correspondence, memoranda and notations between [a Councillor] and any other employee of the Redland City Council relative to Lot 1 RP109322 and Lot 3 SP238067*
 - (d) *All documents, correspondence or reports as furnished to [a Councillor] by Redland City Council relating to the establishment of buffer zones relative to mining and resource areas.*²
2. Council decided to release four full pages and neither confirm nor deny the existence of the remaining requested documents under section 55 of the RTI Act.³
3. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.

¹ Application dated 3 October 2019.

² The date range of the application is 1 January 2016 to 3 October 2019.

³ Decision dated 22 November 2019.

⁴ On 29 November 2019.

4. On external review, Council accepted that the neither confirm nor deny provision could not be relied on in this case and disclosed located documents to the applicant, subject to the deletion of personal and irrelevant information.
5. The applicant continues to seek access to the deleted personal information.⁵
6. For the reasons set out below, I set aside Council's decision and find that access may be refused to the information remaining in issue on the ground disclosure would, on balance, be contrary to the public interest.

Background

7. MCU013688 (**Development Application**) was lodged with Council in February 2016 in respect of the land identified in the access application (**Land**).⁶ Council received several submissions objecting to the Development Application, some of which were subsequently withdrawn. On 26 July 2019, Council refused the Development Application.⁷
8. Council's refusal of the Development Application is the subject of proceedings currently before the Planning and Environment Court.

Reviewable decision and evidence considered

9. The decision under review is Council's decision dated 22 November 2019.
10. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).⁸
11. Significant procedural steps relating to this review are set out in the Appendix.

Information in issue

12. The information in issue appears on 57 pages⁹ (**Information in Issue**). I am constrained about the level of detail I can provide about this information,¹⁰ however, I can confirm that it comprises the personal information of private individuals, such as their names and contact details, information they provided to Council and information which is otherwise about them or which would enable them to be identified.

⁵ The applicant did not contest the deletion of irrelevant information from the documents Council disclosed and therefore that information is not being considered in this decision.

⁶ The Development Application relates to the Land and was made on behalf of the applicant's related company, Quin Enterprises Pty Ltd.

⁷ Documents lodged with Council in respect of the Development Application can be accessed via Council's PD Online at <pdonline.redland.qld.gov.au>.

⁸ The application in this matter was made on behalf of a corporate entity. While individuals in Queensland have human rights under the *Human Rights Act 2019* (Qld) (**HR Act**), Kingham J in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33 at [90] recently confirmed that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and to not act or make a decision that is not compatible with human rights. In making this decision I have observed and respected the law prescribed in the RTI Act. Doing so is construed as '*respecting and acting compatibly with*' the rights prescribed in the HR Act (*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 have therefore satisfied the requirements of section 58(1) of the HR Act, in accordance with the following observations of Bell J about the interaction between the Victorian analogues of Queensland's RTI Act and HR Act would apply: '*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*' (**XYZ** at [573]).

⁹ Pages numbered 1-3, 5-8, 11-13, 15-18, 21, 26-33, 35-47, 50-51, 53-54, 56-71 and 73.

¹⁰ Section 108 of the RTI Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

Issue for determination

13. The issue to be determined is whether access may be refused to the Information in Issue on the ground disclosure would, on balance, be contrary to the public interest.¹¹
14. The applicant has raised concerns about delays in Council's consideration of the Development Application and the perceived improper influence of a specific Councillor in Council's decision-making process for the Development Application.¹² External review is a merits review—that is, an administrative reconsideration of a reviewable decision, to make a decision within the same legislative framework as the primary decision maker.¹³ Council's town planning processes are not within my external review jurisdiction.
15. The applicant also contends that I am obliged to consult the records of certain proceedings before the Queensland Civil and Administrative Tribunal because:
 - OIC is '*a body with investigative powers*'; and
 - the applicant believes certain individuals conspired with a Councillor to '*procure and publish objections to the [Development Application] without regard to the truth or otherwise of the statements, and to that purpose they used the anonymity of the complaint process to publish malicious falsehoods intended to cause [the applicant] severe financial damage*'.¹⁴
16. The RTI Act provides that the procedure to be taken on external review is, subject to the RTI Act, at the discretion of the Information Commissioner.¹⁵ On external review, I have no jurisdiction to investigate, or make findings about, the veracity of objections made in respect of the Development Application or complaints that were received by Council concerning commercial activities on the Land. In this matter, I am limited to considering whether the applicant is entitled to access the Information in Issue under the RTI Act.

Relevant law

17. The RTI Act gives a right to access documents of an agency,¹⁶ however, this right is subject to limitations, including grounds on which access to information may be refused.¹⁷
18. One ground of refusal is where disclosing information would, on balance, be contrary to the public interest.¹⁸ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁹
 - 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

¹¹ Sections 47(3)(b) and 48 of the RTI Act.

¹² External review application and submissions dated 6 August 2020.

¹³ This has also been described as '*stepping into the shoes*' of the primary decision-maker to determine what is the correct and preferable decision (section 105(1)(b) of the RTI Act).

¹⁴ Applicant's submissions dated 21 September 2020.

¹⁵ Section 95(1)(a) of the RTI Act. As a delegate of the Information Commissioner, I am also entitled in this review to inform myself on any matter in any way that I consider appropriate (section 95(1)(c) of the RTI Act).

¹⁶ Section 23(1)(a) of the RTI Act.

¹⁷ The grounds on which an agency may refuse access are set out in section 47(3) of the RTI Act.

¹⁸ Section 47(3)(b) of the RTI Act. The phrase '*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 merely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We know it's Important, But Do We Know What it Means' (2006) 48 *AIAL Forum* 12, 14.

¹⁹ Section 49(3) of the RTI Act.

- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

19. The applicant contends that, consistent with the pro-disclosure bias of the RTI Act,²⁰ the requested documents should be disclosed without redaction. It relies on the following public interest factors favouring disclosure, which arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability²¹
 - contribute to positive and informed debate on important issues or matters of serious interest²²
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community²³
 - ensure effective oversight of expenditure of public funds²⁴
 - allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official²⁵
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct²⁶
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies²⁷
 - reveal the reason for a government decision and any background or contextual information that informed the decision;²⁸ and
 - contribute to the administration of justice generally, including procedural fairness.²⁹
20. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant to determining where the balance of the public interest lies in a particular case. I have carefully considered these factors, the RTI Act's pro-disclosure bias and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.³⁰

Irrelevant factors

21. I have taken no irrelevant factors into account in making my decision.

Factors favouring disclosure

22. The applicant submits that:³¹

there is the substantial public interest in enhancing government accountability and transparency by enabling public scrutiny of the Council's performance of its regulatory functions in accordance with the factors that favour disclosure under Schedule 4, part 2 of the RTI Act.

²⁰ Section 44 of the RTI Act.

²¹ Schedule 4, part 2, item 1 of the RTI Act.

²² Schedule 4, part 2, item 2 of the RTI Act.

²³ Schedule 4, part 2, item 3 of the RTI Act.

²⁴ Schedule 4, part 2, item 4 of the RTI Act.

²⁵ Schedule 4, part 2, item 5 of the RTI Act.

²⁶ Schedule 4, part 2, item 6 of the RTI Act.

²⁷ Schedule 4, part 2, item 10 of the RTI Act.

²⁸ Schedule 4, part 2, item 11 of the RTI Act.

²⁹ Schedule 4, part 2, item 16 of the RTI Act.

³⁰ Section 47(2) of the RTI Act.

³¹ Submissions dated 6 August 2020.

23. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability³²
 - contribute to positive and informed debate on important issues or matters of serious interest³³
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;³⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁵
24. I acknowledge that, as a local government body responsible for the good rule and local government of a part of Queensland,³⁶ it is reasonable to expect that Council conducts itself in an open, accountable and transparent way. In this case, Council is specifically accountable to its local community for ensuring that land uses are carried out in accordance with relevant legislative restrictions and approvals. There is also a level of community interest in the commercial activities conducted, or proposed to be conducted, on the Land.³⁷
25. Council has disclosed a significant amount of information to the applicant concerning the enquiries and complaints it received about the approved, and proposed, uses of the Land. In particular, the disclosed information includes the substance of the complaints Council received about activities being undertaken on the Land. I consider disclosure of this information has substantially advanced the accountability and transparency factors, enabling scrutiny of Council's regulatory functions. However, given the limited nature of the Information in Issue, I do not consider its disclosure would further advance these factors in any significant way. In these circumstances, I attach low weight to these factors.

Oversight of expenditure of public funds

26. A public interest factor favouring disclosure will also arise where disclosing information could reasonably be expected to ensure oversight of expenditure of public funds.³⁸
27. Although the applicant contends this factor applies, it does not explain how disclosing the Information in Issue (such as individuals' names, contact details and observations) could be expected to enable oversight of Council's expenditure of the public funds it receives from ratepayers.
28. Given the limited nature of the Information in Issue, I am not satisfied that this factor applies.

³² Schedule 4, part 2, item 1 of the RTI Act.

³³ Schedule 4, part 2, item 2 of the RTI Act.

³⁴ Schedule 4, part 2, item 3 of the RTI Act.

³⁵ Schedule 4, part 2, item 11 of the RTI Act.

³⁶ Section 8(1) of the *Local Government Act 2009* (Qld).

³⁷ This is evidenced by the submissions that were made concerning the Development Application and the previous development approved for the Land.

³⁸ Schedule 4, part 2, item 4 of the RTI Act.

Deficiencies in the conduct or administration of an agency or official

29. The RTI Act also gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to and allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of Council or its officers.³⁹
30. The applicant asserts that these factors apply because it believes Council is covering up serious misconduct relating to the manner in which Council dealt with the Development Application.⁴⁰ In particular, the applicant alleges that a Councillor has had inappropriate involvement in the town planning processes for the Development Application.⁴¹
31. In this regard, I note that the applicant considers the information which has already been disclosed by Council reveals or substantiates some of what it considers to be improper conduct by Council and its officers. For these factors to be relevant, there must be a reasonable expectation that disclosing the Information in Issue (that is, the personal information of private individuals) would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. I have carefully considered the Information in Issue, together with the information which has been released to the applicant. I am satisfied that there is nothing in this information which gives rise to a reasonable expectation that disclosure of the Information in Issue would allow or assist enquiry into, reveal or substantiate, any deficiencies in the conduct of Council or its officers.
32. For the above reasons, I afford no weight to these public interest factors favouring disclosure.

Disclosure would reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective, or irrelevant

33. A public interest factor favouring disclosure will arise where disclosing information would reveal it was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.⁴²
34. I have considered whether this factor applies to the Information in Issue, given the applicant's concerns that certain complaints made to Council '*did not constitute a [sic] bona fide complaints*'.⁴³
35. My review of the Information in Issue showed that it primarily comprises the names and contact details of private individuals who made enquiries with, or complaints to, Council. There is nothing before me which suggests that this type of information is incorrect. The Information in Issue also includes a small amount of information provided by those individuals. This information comprises the observations, opinions and versions of events expressed by these individuals, which are shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not itself mean that the information is necessarily incorrect, misleading or unfairly subjective.⁴⁴

³⁹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁴⁰ External review application and submissions dated 6 August and 21 September 2020.

⁴¹ External review application.

⁴² Schedule 4, part 2, item 12 of the RTI Act.

⁴³ Submissions dated 21 September 2020.

⁴⁴ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

36. On this basis, I consider that it is unlikely disclosure of the Information in Issue would reveal it to be incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant and I therefore afford this factor favouring nondisclosure low weight.

Advance fair treatment and procedural fairness

37. Under the RTI Act, the public interest will also favour disclosure if disclosing information could reasonably be expected to:

- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;⁴⁵ and
- contribute to the administration of justice generally, including procedural fairness.⁴⁶

38. The applicant argues that these factors apply, however, it has not identified how disclosure of the Information in Issue would advance its fair treatment in its future dealings with Council or contribute to procedural fairness.

39. The public interest factor relating to advancing the fair treatment of individuals does not require a decision-maker to ensure that a person is provided with sufficient information to enable them to be subjectively satisfied that they received fair treatment. Rather, it is about providing information to ensure fair treatment in a person's future dealings with agencies.⁴⁷ Given the nature of the Information in Issue, I am not satisfied that disclosing it would advance the applicant's fair treatment in its future dealings with Council and other government agencies and bodies, whether those dealings relate to Development Applicant, the Land or other matters. I therefore consider that this factor does not apply in the circumstances of this review.

40. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.⁴⁸ Accordingly, the person who is the subject of a decision must be provided with adequate information about material that is credible, relevant and significant to the adverse finding to be made, so that the person can be given the opportunity to make effective representations to the decision-maker.⁴⁹

41. The information which Council disclosed to the applicant:

- includes the substance of the complaints Council received concerning activities on the Land; and
- confirms that, following receipt of the complaints, Council discussed the subject matter of them with the applicant's representatives, thus affording the applicant⁵⁰ an opportunity to respond at the relevant time.

42. Given the nature of the Information in Issue (which includes the identities of the complainants), I am not satisfied that its disclosure would contribute to procedural fairness for the applicant, any other entity or individual. For these reasons, I consider that this factor does not apply in the circumstances of this review.

⁴⁵ Schedule 4, part 2, item 10 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 16 of the RTI Act.

⁴⁷ *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [89]-[90].

⁴⁸ *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J.

⁴⁹ *Kioa* at 629 per Brennan J.

⁵⁰ Including the applicant's related entities.

Administration of justice for the applicant

43. A public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person.⁵¹ In determining whether this public interest factor in favour of disclosure applies, I must consider whether:
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.⁵²
44. I acknowledge that the applicant disagrees with Council's refusal of the Development Application and, as noted in paragraph 8, that the refusal decision is currently the subject of ongoing court proceedings. However, on the information before me, I am not satisfied that disclosure of the Information in Issue is required to enable the applicant to:
- evaluate whether a legal remedy against Council or any particular individual or entity is available or worth pursuing; or
 - pursue legal action against Council or any particular individual or entity.
45. On that basis, I do not consider that this factor favouring disclosure applies.

Other factors favouring disclosure

46. Taking into account the nature of the Information in Issue, I can identify no other public interest considerations favouring its disclosure.⁵³

Factors favouring nondisclosure

Personal information and privacy of other individuals

47. Public interest factors favouring nondisclosure will arise under the RTI Act where disclosure of information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;⁵⁴ and
 - cause a public interest harm because it would disclose personal information of a person, whether living or dead.⁵⁵
48. The applicant submits that these factors do not apply to the Information in Issue because it believes the identity of the private individuals is known to it and those individuals have

⁵¹ Schedule 4, part 2, item 17 of the RTI Act.

⁵² *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

⁵³ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Information in Issue could, for example, contribute to protection of the environment (schedule 4, part 2, item 13 of the RTI Act) or contribute to the enforcement of the criminal law (schedule 4, part 2, item 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

⁵⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁵ Schedule 4, part 4, section 6 of the RTI Act.

identified themselves, their contact details and their complaints in submissions lodged in respect of the Development Application and in court proceedings.⁵⁶

49. The RTI Act precludes me from addressing the applicant's assumptions about whose personal information appears within the Information in Issue.⁵⁷ However, I do not accept that the applicant's assumptions justify disclosure of the Information in Issue under the RTI Act, where there can be no restriction on the use, dissemination or republication of disclosed information.
50. I acknowledge that, generally, the identities and contact details of individuals who lodge objections in Council's town planning processes and/or participate in appeals concerning Council's town planning decisions will be publicly accessible.⁵⁸ However, the Information in Issue does not appear in lodged development objections or court documentation, but in Council's records of received complaints and enquiries. Having considered all the material before me,⁵⁹ I am satisfied that this specific Information in Issue is not in the public arena.
51. The concept of '*privacy*' is not defined in either the RTI Act or the *Information Privacy Act 2009* (Qld) (**IP Act**). It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁶⁰ Some of this information is sensitive in nature, being information provided to Council by these individuals in the context of regulatory complaints and enquiries. Given this, I am satisfied that disclosure would interfere with the private individual's personal sphere, and that this factor favouring nondisclosure therefore applies.
52. '*Personal information*' is defined in section 12 of the IP Act 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*'.⁶¹ Having carefully reviewed the Information in Issue, I am satisfied that it comprises the personal information of private individuals. Given the sensitivity of some of this information as noted above, I am satisfied that disclosing the Information in Issue could reasonably be expected to prejudice the protection of the other individuals' right to privacy and cause a public interest harm.
53. It is relevant then to consider the extent of the prejudice and harm that could result from disclosing the personal information of these other individuals under the RTI Act.
54. Given the sensitive and personal nature of the other individuals' personal information and the context in which it appears, I consider that its disclosure would be a significant intrusion into the privacy of these individuals. I also consider that the extent of the harm that could be anticipated from disclosing information which includes the names, contact details, personal circumstances, observations and opinions of (or about) these individuals under the RTI Act would be significant. Accordingly, I afford significant weight to these factors favouring nondisclosure.

⁵⁶ Submissions dated 6 August 2020. On 21 September 2020, the applicant provided me with a copy of an email extracted from Council's PD Online in which private individuals added additional issues to their lodged objection to the Development Application. The applicant submits that this email is evidence that the private individuals had disclosed to the public that they '*desired their complaints to be added to their objections*' to the Development Application.

⁵⁷ Section 108 of the RTI Act.

⁵⁸ For example, in Council's 'PD online' (which can be accessed at: <https://www.redland.qld.gov.au/info/20192/development_tools_and_advice/357/pd_online>) and the Queensland Courts website (at <<https://www.courts.qld.gov.au/services/search-for-a-court-file/search-civil-files-ecourts>>).

⁵⁹ Including documents provided by the applicant in support of its submissions.

⁶⁰ Paraphrasing 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 12 August 2008, at paragraph 1.56.

⁶¹ This definition is adopted by schedule 5 of the RTI Act.

Flow of information

55. If disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies, a public interest factor favouring nondisclosure arises.⁶²
56. For the reasons set out in paragraph 48, the applicant submits that this factor does not apply to the Information in Issue. As previously noted, I am satisfied that this particular Information in Issue is not in the public domain.
57. Regulatory agencies such as Council routinely receive and rely on information from the public to be alerted to and to pursue potential regulatory breaches. Further, the efficient and effective use of public resources is facilitated by Council being able to seek and obtain information from members of the community, whether they are complainants or the subjects of complaint. As previously stated, I have reviewed the applicant's submissions and the Information in Issue. I consider that routinely disclosing the type of information in issue in this review (which includes the names and contact details of complainants) would tend to discourage individuals from coming forward with relevant information in the future. It is reasonable to expect that this would, in turn, detrimentally effect Council's ability to effectively discharge its regulatory functions. On this basis, I afford significant weight to this factor favouring nondisclosure.

Balancing the public interest

58. I acknowledge the pro-disclosure bias in deciding access to documents under the RTI Act.⁶³ In addition to this, and for the reasons addressed above, I have identified some factors favouring disclosure of the Information in Issue (including those relating to Council's transparency and accountability).⁶⁴ Taking into account the limited nature of the Information in Issue, I afford these factors low to no weight.
59. On the other hand, I have identified three factors favouring nondisclosure of the Information in Issue, each of which carries significant weight. In this case, I recognise the strong public interest in protecting the personal information and privacy of other individuals and avoiding a public interest harm through disclosing such information. I also attribute significant weight to protecting the flow of information to Council in relation to its regulatory functions.
60. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the information in issue would, on balance, be contrary to the public interest.

DECISION

61. For the reasons set out above, I set aside Council's decision and find that access may be refused to the Information in Issue⁶⁵ on the ground that its disclosure would, on balance, be contrary to the public interest.

⁶² Schedule 4, part 3, item 13 of the RTI Act.

⁶³ Section 44 of the RTI Act.

⁶⁴ Schedule 4, part 2, items 1, 2, 3, 5, 6, 11 and 12 of the RTI Act.

⁶⁵ Under section 47(3)(b) of the RTI Act.

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

Louisa Lynch
Right to Information Commissioner

Date: 23 October 2020

APPENDIX

Significant procedural steps

Date	Event
29 November 2019	OIC received the application for external review.
23 December 2019	OIC advised the applicant and Council that the external review application had been accepted.
28 January 2020	OIC asked Council to provide further information.
21 February 2020	OIC received Council's submissions and the requested information.
4 March 2020	OIC conveyed a preliminary view to Council.
31 March 2020	OIC received Council's submissions.
30 April 2020	OIC provided an update to the applicant.
24 July 2020	OIC asked Council to release information Council had agreed to disclose and conveyed a preliminary view to the applicant concerning the information removed from the documents to be released.
6 August 2020	OIC received the applicant's submissions.
7 September 2020	OIC conveyed a further preliminary view to the applicant.
21 September 2020	OIC received the applicant's further submissions.