



## Decision and Reasons for Decision

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**Application Number:** 310314

**Applicant:** Matthews

**Respondent:** Gold Coast City Council

**Decision Date:** 23 June 2011

**Catchwords:** INFORMATION PRIVACY ACT – Grounds on which access may be refused – section 67(1) of the *Information Privacy Act 2009* (Qld) – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) – whether document comprises information the disclosure of which would, on balance, be contrary to the public interest

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## REASONS FOR DECISION

### Summary

1. The applicant applied to the Gold Coast City Council (**Council**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a complaint made about him.
2. Council identified six pages responding to the applicant's access application. After consultation with a third party, Council provided the applicant with full access to four pages, partial access to two pages (the letter of complaint) and refused access to the remaining information on the basis that its disclosure would, on balance, be contrary to the public interest.<sup>1</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.
4. In support of his case for access, the applicant made submissions including that:
  - the opinions, thoughts and assumptions to which he has been denied access are about him and he has reason to believe they:
    - are of a malicious nature
    - are not relevant to the facts of the complaint
    - are exaggerated, misleading and false; and
    - are defamatory
  - he is being denied natural justice and the right to defend himself
  - he should be permitted to know comments made about him so that he can defend himself and have the information corrected under the IP Act.
5. After carefully considering all of the information before me, I am satisfied that access to the information in issue can be refused under section 67 of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

### Background

6. Significant procedural steps relating to the application, internal review and external review are set out in the Appendix.

### Reviewable decision

7. The decision under review is Council's internal review decision dated 15 July 2010 refusing access to parts of two pages under section 47(3)(b) of the RTI Act, on the basis that disclosure of this information would, on balance, be contrary to the public interest.

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<sup>1</sup> Section 67 of the IP Act provides that Council may refuse access to a document in the same way and to the same extent that Council could refuse access to the document under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.

## Evidence considered

8. In making this decision, I have taken the following into account:

- applicant's access application dated 21 April 2010
- Council's decision dated 9 June 2010
- applicant's internal review application dated 21 June 2010
- Council's internal review decision dated 15 July 2010
- applicant's external review application dated 26 July 2010
- file notes of telephone conversations held between OIC staff members and the applicant, the third party and officers of the Council during the external review
- the information in issue and the information already released to the applicant
- submissions provided by the applicant to the OIC dated 21 March 2011
- previous decisions of the Information Commissioner as referred to in these reasons; and
- relevant provisions of the RTI and IP Acts.

## Information in issue

9. The information in issue in this review comprises parts of two pages to which the applicant was refused access (**Information in Issue**), except for any personal contact information of the complainant to which the applicant does not seek access.<sup>2</sup>

## Relevant law

10. Access must be given to a document unless disclosure would, on balance, be contrary to the public interest.<sup>3</sup>

11. To decide whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I must:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information would, on balance, be contrary to the public interest.<sup>4</sup>

## Findings

12. No irrelevant factors arise in this case.

13. Next, I will consider which public interest factors favouring disclosure and nondisclosure of the Information in Issue arise in this case.

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<sup>2</sup> Letter from the applicant dated 21 March 2011.

<sup>3</sup> Sections 64 (Pro disclosure bias) and 67 (Grounds on which access may be refused) of the IP Act and section 47(3)(b) of the RTI Act.

<sup>4</sup> Section 49(3) of the RTI Act.

### **Factors favouring disclosure**

14. Taking into account all of the information before me, I am satisfied that the factors favouring disclosure of the Information in Issue include:
- some of the Information in Issue comprises the applicant's personal information, (notably his name and references to events to which he was a party)<sup>5</sup>
  - disclosure could reasonably be expected to promote open discussion of public affairs and enhance Council's accountability;<sup>6</sup> and
  - disclosure could reasonably be expected to reveal that the Information in Issue was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant, given the applicant's submission that disclosure would reveal defamatory allegations made by the complainant.<sup>7</sup>

### **Shared personal information and accountability**

15. With respect to the relevant personal information, I note that it comprises the shared personal information of both the applicant and the complainant and that in a practical sense, it is not able to be separated.
16. I also note that Council:
- has provided the applicant with the substance of the relevant complaint; and
  - did not rely on the Information in Issue in reaching its decision.

### **Content of complaint information**

17. With respect to the applicant's concern that the Information in Issue may contain defamatory allegations to which he should be able to respond, I am mindful that complaint information is by its very nature, an individual's particular version of events which is shaped by factors including the individual's memory and subjective impressions.
18. In my view, this inherent subjectivity does not necessarily mean that the resulting account or statement is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Rather, it means that complaint information comprises a personal interpretation of relevant events, which an investigator must balance against other (often competing) statements and evidence in reaching a conclusion in a particular case.
19. In this respect, I note Council's statement on internal review:
- With respect to personal opinions, thoughts and assumptions... Council does not underestimate the potential for exaggerated, misleading or false allegations or information... A report to Council may only be a trigger for inspection or investigation. Once Council's attention is drawn to a matter, Council makes its own investigations, inspections and interviews of people who may be, or may be offered as, a potential witness of fact or a person who can provide assistance.*
20. After carefully considering all of the matters set out above, I am satisfied that little or no weight should be afforded to the public interest factors favouring disclosure.

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<sup>5</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>6</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>7</sup> Schedule 4, part 2, item 12 of the RTI Act.

### **Factors favouring non-disclosure**

21. Taking into account all of the information before me, I am satisfied that the factors favouring non-disclosure of the Information in Issue include, that disclosure of the information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy<sup>8</sup>
  - cause a public interest harm if disclosure would disclose personal information of a person;<sup>9</sup> and
  - prejudice an agency's ability to obtain confidential information.<sup>10</sup>

### **Personal information and privacy**

22. The concept of 'privacy' is not defined in the IP Act or RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others.<sup>11</sup>
23. Taking into account all of the information before me, I consider that:
- when an individual provides information to Council about their thoughts and opinions related to a complaint, this comprises a private action falling within an individual's 'personal sphere'; and
  - disclosure of this information could reasonably be expected to prejudice the protection of an individual's right to privacy.

24. I am also satisfied that as the Information in Issue comprises the personal information of someone other than the applicant, its disclosure could reasonably be expected to cause a public interest harm under part 4, schedule 4 of the RTI Act.

### **Prejudice agency's ability to obtain confidential information**

25. Council relies heavily on information provided by members of the community on a confidential basis to enable it to effectively administer and enforce local laws.
26. I consider that there is a strong public interest in protecting Council's ongoing ability to obtain this information.
27. In the circumstances, I am satisfied that disclosure of the Information in Issue could reasonably be expected to have a detrimental impact<sup>12</sup> on the ability of Council to obtain confidential information in future.

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<sup>8</sup> Schedule 4, part 3, item 3 of the RTI Act

<sup>9</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>10</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>11</sup> 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 11 August 2008, at paragraph 1.56.

<sup>12</sup> Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail (220020, 24 November 2010)* at paragraph 16 for a succinct exposition of the meaning of 'prejudice' as used throughout the RTI Act.

***Balancing relevant public interest factors***

28. Having identified and carefully considered the public interest factors for and against disclosure, I consider that the public interest in:

- safeguarding personal information
- protecting an individual's right to privacy and avoiding public interest harm; and
- protecting Council's ability to obtain confidential information,

outweighs those factors favouring disclosure of the Information in Issue in the circumstances of this review.

29. While I accept the importance of ensuring that agencies conduct investigations transparently and accountably, and that individuals have access to information allowing them to determine how complaints have been managed, I am satisfied in the circumstances of this case that:

- these public interests have been adequately served by disclosure to the applicant of the bulk of the letter of complaint; and
- Council has provided the applicant with sufficient information to demonstrate the reasoning behind its ultimate response to the complaint.

30. I also confirm that while some of the Information in Issue is the applicant's personal information, it is not possible to separate this personal information from the personal information of others. Disclosing it would therefore require disclosure of the personal information of a person other than the applicant, and would prejudice that individual's right to privacy and could reasonably be expected to cause a public interest harm.

31. In the circumstances of this case, I am satisfied that the public interest in safeguarding personal information and privacy outweighs the public interest in disclosing to the applicant their own personal information, particularly given that Council did not rely on the Information in Issue in reaching its decision.

**DECISION**

32. I affirm the reviewable decision and find that access to the Information in Issue can be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure of this information would, on balance, be contrary to the public interest.

33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Jenny Mead**  
**Right to Information Commissioner**

**Date: 23 June 2011**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
21 April 2010	Council receives access application
May 2010	Council consults with third party
9 June 2010	Council issues initial decision
21 June 2010	Applicant applies for internal review
15 July 2010	Council issues internal review decision
26 July 2010	Applicant applies for external review
28 July 2010	OIC receives external review application
1 October 2010	OIC provides oral preliminary view to applicant
18 February 2011	OIC provides written preliminary view to applicant
28 February 2011	Applicant applies for extension to provide submissions
2 March 2011	OIC grants extension until 21 March 2011 for applicant to provide submissions
21 March 2011	OIC receives submissions from applicant objecting to preliminary view