



Decision and Reasons for Decision

Citation:	<i>Tomkins and Rockhampton Regional Council</i> [2016] QICmr 3 (22 January 2016)
Application Number:	312378
Applicant:	Tomkins
Respondent:	Rockhampton Regional Council
Decision Date:	22 January 2016
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - report submitted to Council meeting about prosecution of applicant in relation to his dogs - personal information of dog attack victim - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Rockhampton Regional Council (**Council**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to a report, which was presented to a Council meeting on 27 January 2015, relating to proposed enforcement action against the applicant and his dogs arising from a dog attack (**Report**).¹
2. Council decided to refuse access to the Report on the ground that it comprised exempt information, as it would be privileged from production in a legal proceeding on the ground of legal professional privilege.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.
4. During the external review, Council agreed to disclose the majority of the information in the Report to the applicant, except for information it considered was the victim's personal information or subject to legal professional privilege. The applicant agreed

¹ In January 2015, the applicant's two dogs were declared 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.

² Under sections 47(3)(a) and 48 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

not to pursue access to the legal professional privilege information but submitted that he was entitled to the information about the victim.

5. For the reasons set out below, I vary Council's decision and find that access to the remaining information in the Report may be refused as its disclosure would, on balance, be contrary to the public interest.³

Background

6. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

7. The decision under review is Council's decision dated 12 February 2015.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
9. The applicant (via his authorised representative⁴) provided OIC with extensive submissions in support of his case.⁵ I have carefully considered those submissions. Those submissions also address the applicant's dissatisfaction with Council's investigation into the dog attack and question the veracity of information relied upon by Council in making its decision to prosecute him. To the extent the applicant's submissions are relevant to the issue for determination, I have addressed them below.

Issue for determination

10. On external review, a number of issues were resolved informally⁶ and Council agreed to partially release the Report to the applicant.
11. The remaining issue for consideration is whether access to information in the Report can be refused under section 67(1) of the IP Act on the basis that its disclosure would, on balance, be contrary to the public interest.

Information in issue

12. Page 2 of the Report contains two photographs and two lines of text which have not been released to the applicant (**Information in Issue**). Generally, it comprises information about the victim of the dog attack.

Relevant law

13. An individual has a right to be given access to documents of an agency under the IP Act to the extent the documents contain the individual's personal information.⁷

³ Under sections 47(3)(b) and 49 of the RTI Act.

⁴ The authorisation was provided to OIC on 3 February 2015 in the context of a separate external review application.

⁵ As set out in the Appendix. The submissions which relate directly to the Information in Issue mainly appear in the applicant's external review application and emails to OIC dated 23 August and 21 September 2015.

⁶ Council accepted OIC's preliminary view that the majority of the Report was not subject to legal professional privilege. The applicant also accepted OIC's preliminary view that a small section of page 3 of the Report was subject to legal professional privilege. As these issues were resolved informally, they are not dealt with in these reasons for decision.

⁷ Section 40(1)(a) of the IP Act.

However, this right is subject to limitations, including grounds for refusal of access.⁸ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁹

14. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹⁰ and explains the steps that a decision-maker must take¹¹ in deciding the public interest as follows:
- 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.

Findings

15. No irrelevant factors arise in the circumstances of this case.

Accountability, transparency and fair treatment

16. The applicant submits that he should be given access to a complete copy of the Report. He is concerned that it has '*led to an opinion being formed about him*'.¹²
17. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability¹³
 - reveal the reason for a government decision and any background or contextual information that informed the decision;¹⁴ and
 - advance the fair treatment of an individual in accordance with the law in their dealings with agencies.¹⁵
18. Almost the entire Report has been released to the applicant. The released information identifies the outcome of Council's investigation into the dog attack and the reasoning for Council's action against the applicant. The applicant has also received further information from Council under a separate prosecution process. Given the extent of information that has already been released to the applicant and the nature of the particular Information in Issue, I do not consider these public interest factors would be advanced to any significant extent by disclosing the Information in Issue to the applicant. I therefore afford very low weight to these factors.

⁸ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it 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 the RTI Act.

⁹ Section 47(3)(b) and 49 of the RTI Act. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹⁰ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

¹¹ Section 49(3) of the RTI Act.

¹² Applicant's email to OIC dated 22 November 2015.

¹³ Schedule 4, part 2, item 1 of the RTI Act.

¹⁴ Schedule 4, part 2, item 11 of the RTI Act.

¹⁵ Schedule 4, part 2, item 10 of the RTI Act.

Administration of justice and procedural fairness

19. The applicant submits that, '*Justice demands that [the applicant] be provided with this information in order to defend himself.*'¹⁶
20. Given these submissions, I have considered whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice generally, including procedural fairness, or for a person.¹⁷
21. In *Willsford and Brisbane City Council*¹⁸, the Information Commissioner found that the administration of justice factor will arise if an applicant can demonstrate that:
 - they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.¹⁹
22. As noted above, the information in the Report which has been released to the applicant identifies the outcome of Council's investigation into the dog attack and the reasoning for Council's action against the applicant. The applicant received additional information from Council under the separate prosecution process including formal statements of the victim and Council officers.
23. I have carefully considered the nature of the Information in Issue and the context in which it appears. In my view, the applicant does not require this information to enable him to defend himself or to respond to the allegations which form the basis of Council's prosecution.²⁰ For these reasons, I afford these two factors minimal weight in favour of disclosure.

Incorrect information

24. The applicant submits that Council made its decision to prosecute him based on the Report, which contains incorrect information and that '*It would be reasonable for him to conclude that the missing parts of this report also contain false information.*'²¹
25. The RTI Act provides that the public interest will favour disclosure where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.²²
26. The applicant's submissions arise from the applicant's assessment of the information in the Report which has been released to him. As noted above, the Information in Issue only comprises information relating to the victim.
27. I have carefully considered the Information in Issue and the context in which it appears and I am satisfied that its disclosure could not reasonably be expected to reveal that it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.

¹⁶ External review application.

¹⁷ Schedule 4, part 2, items 16 and 17 of the RTI Act.

¹⁸ (Unreported, Queensland Information Commissioner, 27 August 1996) (*Willsford*).

¹⁹ *Willsford* at [17].

²⁰ As a defendant to a prosecution, the applicant will have an opportunity in the Magistrates' Court to put forward his case and respond to allegations against him.

²¹ Submissions received 23 August 2015.

²² Schedule 4, part 2, item 12 of the RTI Act.

Accordingly, I consider this public interest factor carries no weight in favour of disclosure.

Personal information and privacy

28. The RTI Act gives rise to factors favouring nondisclosure in circumstances where disclosing information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;²³ and
 - cause a public interest harm by disclosing the personal information²⁴ of other individuals.²⁵
29. The Information in Issue was provided by the victim in the context of Council's investigation into the dog attack. It includes photographs and some private, sensitive information about the victim. I am satisfied that this comprises the victim's personal information. Due to the particular nature of the information, I consider that disclosure would be a significant intrusion into the victim's privacy and that the extent of the public interest harm that could result from disclosure is significant.
30. I accept that some of this information may be known to the applicant as a result of the prosecution process. This reduces, but only to a limited extent, the weight to be attributed to the personal information and privacy factors in respect of that particular information. However, some of the sensitive personal information has not previously been disclosed to the applicant and therefore, that information retains a high privacy interest.
31. I am satisfied that these two public interest factors carry significant weight in favour of nondisclosure of the Information in Issue.

Balancing the relevant factors

32. I have carefully considered the factors for and against disclosure of the Information in Issue. I consider there is a public interest in disclosing information which would marginally advance the factors of accountability, transparency, fair treatment, administration of justice and procedural fairness. This is significantly outweighed by the public interest in protecting the personal information and right to privacy of the victim. For these reasons, I find that:
- disclosing the Information in Issue would, on balance, be contrary to the public interest; and
 - access to it may therefore be refused under section 47(3)(b) of the RTI Act.

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

²⁴ Section 12 of the IP Act defines personal information 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*'.

²⁵ Schedule 4, part 4, item 6 of the RTI Act.

DECISION

33. For the reasons set out above, I vary Council's decision and find that access to the Information in Issue can be refused on the basis that its disclosure would, on balance, be contrary to the public interest.²⁶
34. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 22 January 2016

²⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
2 February 2015	Council received the access application.
12 February 2015	Council issued its decision to the applicant.
16 February 2015	OIC received the application for external review of Council's decision.
18 February 2015	OIC notified Council that the external review application had been received and requested relevant procedural documents by 24 February 2015.
19 February 2015	OIC received the procedural documents and the documents in issue from Council.
25 February 2015	OIC notified the applicant and Council that it had accepted the external review application.
17 June 2015	OIC conveyed a preliminary view to Council on various issues and requested submissions by 1 July 2015.
24 June 2015	Council notified OIC that it accepted the preliminary view and agreed to release most of the Report to the applicant on 25 June 2015.
28 June 2015	The applicant requested access to the information deleted from the Report and provided submissions in support of his case.
30 June 2015	OIC acknowledged receipt of the applicant's submissions and provided information to the applicant about the external review process.
9 July 2015	The applicant provided further submissions in support of his case.
17 August 2015	OIC conveyed a preliminary view to the applicant on various issues and requested submissions by 31 August 2015.
23 August 2015	The applicant provided further submissions in support of his case.
9 September 2015	OIC conveyed a preliminary view to the applicant on various issues and requested submissions by 23 September 2015.
21 September 2015	The applicant provided further submissions in support of his case.
23 September 2015	The applicant's representative spoke with an OIC staff member about OIC's preliminary view and confirmed the applicant's acceptance of OIC's preliminary view regarding exempt information on page 3 of the Report.
12 October 2015	OIC conveyed a preliminary view to the applicant on various issues and requested submissions by 2 November 2015.
30 October 2015	The applicant provided further submissions in support of his case.
12 November 2015	OIC conveyed a preliminary view to the applicant on various issues and requested submissions by 26 November 2015.
22 November 2015	The applicant provided further submissions in support of his case.
25 November 2015	The applicant's representative spoke with an OIC staff member about OIC's preliminary view and confirmed the applicant did not accept OIC's preliminary view regarding the information deleted from page 2 of the released Report.
7 December 2015	OIC confirmed the applicant did not accept OIC's preliminary view regarding the information deleted from page 2 of the released Report and provided information to the applicant about the external review process.