



Decision and Reasons for Decision

Citation:	<i>J38 and Brisbane City Council [2022] QICmr 40 (18 August 2022)</i>
Application Number:	316447
Applicant:	J38
Respondent:	Brisbane City Council
Decision Date:	18 August 2022
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - IRRELEVANT INFORMATION - information falling outside the scope of the applicant's request - whether deleted information is irrelevant to the terms of the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information of other individuals - personal information and privacy - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the respondent (**Council**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to:

...any and all information, in any format, including, but not limited to - written correspondence/notes/documentation/emails/letters, verbal/recorded/taped communications, phone calls/notes, photos, manager's notes, medical certificates and/or reports, and meeting notes on or about me, ... held within/by Brisbane City Council for dates 2 August 2014 to 31 December 2014 (inclusive).

[applicant's emphasis]

2. Council located 47 responsive pages. It decided² to give the applicant full access to 20 pages, partial access to 12 pages, and refused access to 15 pages. Council decided

¹ Application dated 26 August 2021.

² Council decision dated 30 September 2021.

that some information was irrelevant to the terms of the applicant's access application. It decided that other information comprised the personal information of persons other than the applicant and its disclosure would, on balance, be contrary to the public interest.

3. The applicant applied to Council for internal review,³ however, Council did not process the application within the requisite timeframe. It was therefore deemed to have affirmed its initial decision on internal review.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's deemed internal review decision.⁴ In her external review application, the applicant appeared to also raise a sufficiency of search issue, submitting that Council may not have located all responsive documents. However, she ultimately did not seek to pursue this issue.⁵
5. For the reasons set out below, I affirm Council's decision.

Background

6. The applicant has made numerous access applications to Council arising out of her interactions with Council occurring either on her own behalf, or while acting as an agent for another person in relation to multiple access applications made to Council by that person.

Reviewable decision

7. The decision under review is Council's deemed internal review decision, affirming its initial decision dated 30 September 2021.

Evidence considered

8. Significant procedural steps relating to the external review are set out in the Appendix.
9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.⁶
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*it is perfectly compatible with the*

³ Application dated 28 October 2021.

⁴ Application dated 28 November 2021.

⁵ Following receipt of OIC's preliminary view letter dated 19 May 2022, the applicant did not indicate that she continued to pursue a sufficiency of search issue in her submissions dated 30 June 2022.

⁶ Including the external review application and the submission dated 30 June 2022.

⁷ Section 21(2) of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

*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.*¹⁰

Information in issue

11. The bulk of the refused information concerns a WorkCover matter involving Council and a third party. It includes correspondence between Council and the third party claimant detailing the basis of the claim, as well as medical information concerning the claimant (**WorkCover Information**).¹¹ As submitted by the applicant and evident from this refused information, the applicant assisted the claimant with his claim by sending and receiving relevant correspondence from her email address on the claimant's behalf.
12. The remainder of the refused information comprises the mobile telephone numbers of Council staff (**Contact Information**).¹²

Issues for determination

13. The issues for determination are:
 - whether access to the WorkCover Information may be refused because it is irrelevant to the access application; and
 - whether access to the WorkCover Information and Contact Information may be refused because disclosure would, on balance, be contrary to the public interest.

Relevant law – irrelevant information

14. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it reasonably considers is not relevant to an application. This is a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
15. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.¹³
16. Council decided that the WorkCover Information was irrelevant to the terms of the applicant's access application and deleted it on that basis.

Applicant's submissions

17. In her external review application, the applicant submitted:

During 2014, [name redacted] & I assisted ... (then) council worker [name redacted]. Numerous emails were sent from my email address of [email address redacted] (with the permission of [name redacted]). I believe a number of redactions are some of these emails (including information to do with [name redacted]'s claim [reference number redacted], a Please Explain notice & I was privy to all this information (including medical documentation). Numerous emails were sent to Matt Anderson (the then A/Manager of Urban Amenities, Field Services). Some emails I believe are also to/from Jenny Cooper and Debbie Flesser (City WorkCover). Documentation & correspondence spanned throughout the 2nd half of 2014 including through September & December 2014.

¹⁰ XYZ at [573].

¹¹ Pages 7, 8, 9, 16, 18, 23, 26, 38, 39 and 40 (part only), and pages 10-15, 17, 19-22, 24-25 and 27-28 (in full).

¹² Pages 3, 7, 8, 38, 39 and 40.

¹³ O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at [52] which was a decision made under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld).

Previously BCC's Internal Review officer has included 'located documents was either provided by you, with your [redacted]'s authority or its content was otherwise known to you', in other IP matter/s. Although this is in regard to information of [name redacted], I believe it is also relevant in this matter with [name redacted]. This information does not involve conveying personal information not already known to me. In fact, [name redacted] emailed me requesting what information I email to Mr Anderson (including medical certificate / medical referral). Majority of emails were sent/received via [email address redacted] with the odd one from [email address redacted], & this included READ RECEIPT emails from BCC. BCC emailed me directly regarding [name redacted] and documentation was sent from my email address/es which BCC accepted & responded to.

18. In my 'preliminary view' letter to the applicant dated 19 May 2022, I advised the applicant that I did not consider that the WorkCover Information fell within the terms of her access application under the IP Act because it could not properly be regarded as being 'on or about' her, and nor could it be regarded as her personal information under the IP Act. In her submissions in response dated 30 June 2022, the applicant stated:

During 2014, [name redacted] and myself represented a then Council employee, [name redacted]. We had permission to correspond with not only Council Management, but also City WorkCover and other/s. We were effectively representing [name redacted] (including his workers' compensation matter). This was not only [name redacted], but included myself.

...

I'm providing copies of some emails that are evidence that [name redacted] has sought support and help from [name redacted] and I with Council issues (including documentation/emails/correspondence), and this included 'my kindest regards to you both and deepest appreciation'. [Name redacted] also requested we forward medical information, so this certainly confirms were [sic] were acting in a representative/agent role.

...

I guess you have to make a decision about the emails. These were generally drafted or completed by myself and/or [name redacted], they were sent from or to my/our email address of [address redacted] with permission from [the claimant]. Who owns the documentation, especially considering it involves my personal email address? I believe it is my personal information because it contains my email address, and my name ... on the email.

Do you consider the meanings of 'on' and 'about' as there are not sufficient meanings contained in either the relevant IP Act or RTI Act that I have been able to locate. If you take the dictionary meanings (Collins) then these are:-

'on' – "concerned with or relating to"; and

'about' – "relating to; concerning; on the subject of".

...

Finding

19. I am not satisfied that the mere fact that the WorkCover Information was sent to or from the applicant's email address is sufficient to characterise it as being 'on or about' her, thereby bringing it within the terms used in her access application. It is clearly 'on or about' another person and their WorkCover claim. Using the ordinary dictionary meanings cited by the applicant, the information does not concern or relate to the applicant in any way.¹⁴ The fact that the claimant may have asked the applicant to assist him with his claim is irrelevant to the operation of section 88 of the IP Act, as is the fact that the applicant is aware of the nature of the information.

¹⁴ See also *H76 and Brisbane City Council [2022] QICmr 24 (27 April 2022)* at [34].

20. As to the applicant's assertion regarding her name and email address appearing in the documents, I note that Council has given her access to this information, and it is not in issue.
21. I am satisfied that none of the WorkCover Information falls within the terms of the access application. I find that Council was therefore entitled to delete it as irrelevant information under section 88 of the IP Act.
22. Furthermore, even if the Workcover Information could be regarded as falling within the terms of the applicant's access application, I am satisfied, for the reasons discussed below, that its disclosure would, on balance, be contrary to the public interest.

Relevant law – contrary to the public interest information

23. Under the IP Act, a person has a right to be given access to documents of an agency.¹⁵ However, this right is subject to provisions of the IP Act and RTI Act including the grounds on which an agency may refuse access to documents.¹⁶ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹⁷
24. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁸
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
25. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,¹⁹ together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias²⁰ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.²¹

Applicant's submissions

26. In terms of the WorkCover Information, the applicant again argued that the fact that information was sent or received from her email address (which address contains her name), and that she was, in effect, representing the claimant in his WorkCover claim, were sufficient to make it her 'personal information' within the meaning of section 12 of

¹⁵ Section 40 of the IP Act.

¹⁶ 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.

¹⁷ Section 67(1) of the IP Act and sections 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.

¹⁸ Section 49(3) of the RTI Act.

¹⁹ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below.

²⁰ Section 64 of the IP Act.

²¹ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

the IP Act.²² The applicant submitted that there was therefore a public interest in her receiving access to this information under the IP Act.

27. As to the public interest in nondisclosure in recognition of protecting the personal information/privacy interests of the claimant, the applicant argued that, as she was already aware of the nature of the claim and the associated information concerning the claimant, the claimant's right to privacy was significantly reduced. The applicant provided copies of emails between her and the claimant as evidence that she was acting as the claimant's agent/representative at the relevant time at his request.
28. In respect of the Contact Information, the applicant made no submissions in support of disclosure of this information.

Findings

(a) WorkCover Information

29. Again, I am not satisfied that the mere fact that the applicant sent or received the WorkCover Information from her email address is sufficient to characterise it as the applicant's '*personal information*'. For the reasons discussed above, it is not information '*about*' the applicant within the meaning of section 12 of the IP Act.
30. As such, I am satisfied that the public interest factor favouring disclosure of an applicant's personal information²³ does not apply. Further, I cannot identify any other public interest factors weighing in favour of disclosure of this information to the applicant under the IP Act. I do not consider that its disclosure would enhance the accountability or transparency²⁴ of Council in any meaningful way.
31. Given the nature of the information - it is over seven years old and contains sensitive information about the claimant's employment, health, and family circumstances - I consider that there are strong public interest factors favouring its nondisclosure, namely, the public interest in protecting the personal information²⁵ and right to privacy²⁶ of another person.
32. I note the applicant's submission that, at the relevant time, she was privy to the WorkCover Information. While the fact that an applicant is aware of the personal information of others may sometimes lessen the weight to be afforded to the public interest in protecting the right to privacy of those persons, it must be remembered that disclosure under the IP Act is to be regarded as disclosure to the world at large.²⁷ The IP Act recognises the importance of protecting the right to privacy of persons and the prejudice to that right that can flow from disclosure of their personal information to the world at large.
33. In addition, while the claimant may have regarded the applicant as his agent at the time of the WorkCover claim, the applicant has provided no evidence to indicate that the claimant has consented to the release to the applicant under the IP Act of this

²² '*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*'.

²³ Schedule 4, part 2, item 7 of the RTI Act.

²⁴ Such as, for example, schedule 4, part 2, items 1, 3 or 11 of the RTI Act.

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

²⁶ Schedule 4, part 3, item 3 of the RTI Act.

²⁷ Noting that '*there is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination*' – see *FLK v Information Commissioner* [2021] QCATA 46 at [17] per McGill J.

sensitive, personal information about him. Accordingly, I consider that the privacy and personal information nondisclosure and harm factors remain deserving of significant weight when balancing the public interest. The claimant is entitled to make his own access application to Council under the IP Act should he wish to access his personal information.

34. For the reasons explained, I find that disclosure of the WorkCover Information would, on balance, be contrary to the public interest. I can identify no public interest factors favouring its disclosure that would be sufficient to outweigh the strong public interest in protecting the personal information and right to privacy of the claimant.

(b) Contact Information

35. As to the Contact Information, OIC has now issued numerous decisions explaining why disclosure of the mobile phone numbers of Council staff would, on balance, be contrary to the public interest.²⁸ The Information Commissioner has held that *'a mobile phone number is different to other contact details (such as email addresses or office phone numbers) in that it allows an individual to be contacted directly and potentially outside of working hours...[and] permits potential contact with an employee when off duty and/or engaged in private activity, which gives rise to a reasonable expectation of intrusion into the officer's private life or "personal sphere"'*.²⁹
36. I am unable to identify any public interest factors favouring disclosure of the Contact Information to the applicant, and the applicant has identified none. In contrast, I would afford moderate to significant weight to the public interest nondisclosure and harm factors that seek to protect the personal information and privacy of other individuals.³⁰
37. For the reasons explained, I find that disclosure of the Contact Information would, on balance, be contrary to the public interest.

DECISION

38. For the reasons explained above, I affirm Council's decision to refuse access to the information in issue in this review because it is irrelevant information under section 88 of the IP Act and/or because it is contrary to the public interest information under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.
39. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Acting Right to Information Commissioner

Date: 18 August 2022

²⁸ See, for example, *F66 and Brisbane City Council* [2021] QICmr 53 (20 October 2021) at [23]-[25].

²⁹ *Smith and Sunshine Coast Regional Council; Diamond Energy Pty Ltd (Third Party)* [2017] QICmr 42 (5 September 2017) at [16]. See also *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [66]-[68].

³⁰ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
28 November 2021	OIC received the applicant's application for external review.
29 November 2021	OIC asked Council to provide preliminary documents.
14 December 2021	Council provided preliminary documents.
27 January 2022	OIC advised the applicant and Council that it had accepted the applicant's application for external review. OIC requested the information in issue from Council.
31 January 2022	Council provided OIC with the information in issue.
19 May 2022	OIC communicated its preliminary view to the applicant.
2 June 2022	The applicant requested and was granted an extension of time to respond due to her disabilities/impairment issues.
30 June 2022	The applicant provided her response to OIC's preliminary view.