



Decision and Reasons for Decision

Citation: *U34 and Brisbane City Council* [2026] QICmr 94 (10 June 2026)

Application Number: 318840

Applicant: U34

Respondent: Brisbane City Council

Decision Date: 10 June 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - personal information of other individuals - internal property plans - contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - whether an agency has conducted all reasonable searches - whether access may be refused on the basis further documents are nonexistent - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

DECISION

1. I vary¹ the reviewable decision² of Brisbane City Council (**Council**) and find that access to the Remaining Information³ may be refused under section 47(3)(b) of the RTI Act. I also find that access to further documents may be refused on the basis they are nonexistent under section 47(3)(e) of the RTI Act.
2. This means that no further information is to be released to the applicant.
3. My reasons for the decision follow.



Katie Shepherd
Assistant Information Commissioner

Date: 10 June 2026

¹ Under section 110(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**). I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

² As defined in footnote 9 below.

³ As defined in paragraph 7 below.

REASONS FOR DECISION

Summary

4. The applicant applied to Council under the RTI Act⁴ for access to documents about two development applications for a neighbouring property.⁵
5. Council located 230 pages, decided to give full access to 141 pages and partial access to 89 pages, and refused access to the remaining parts of 89 pages on the basis that disclosure of information would, on balance be contrary to the public interest.⁶ Access to some of the partial release pages, consisting of architectural plans, was granted by way of inspection only, due to copyright.⁷
6. The applicant applied to Council for an internal review.⁸ Council affirmed the original decision and also found that the searches undertaken were adequate.⁹
7. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the internal review decision and raised concerns that Council had not located all responsive documents.¹⁰ During the review:
 - Council provided OIC with a copy of the documents located, a submission and records of its searches¹¹
 - OIC conveyed¹² a view to the applicant that:
 - access to information within the partial access pages¹³ (**Remaining Information**) could be refused under section 47(3)(b) of the RTI Act; and
 - Council had conducted all reasonable searches and access to further documents could be refused on the basis they are nonexistent; and
 - the applicant submitted to OIC that access to the Remaining Information should be granted and raised concerns that further documents should exist.¹⁴
8. The issues for determination are whether:
 - access to the Remaining Information may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest; and

⁴ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Applicable versions of those Acts can be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> respectively.

⁵ Access application dated 7 April 2025. The request excluded publicly available documents.

⁶ Decision dated 10 June 2025.

⁷ In accordance with section 68(4)(c) of the RTI Act.

⁸ Internal review application dated 26 June 2025.

⁹ Internal review decision dated 22 July 2025. This is the *reviewable decision* for the purpose of this review.

¹⁰ External review application dated 15 August 2025. The applicant did not seek review of the decision to give only inspection access. Accordingly, the issue of form of access under section 68(4) of the RTI Act is not considered in this decision.

¹¹ On 22 September 2025.

¹² Letter dated 20 February 2026.

¹³ The documents provided to OIC by Council revealed 88 partial access pages.

¹⁴ Submission dated 26 April 2026.

- all reasonable searches have been conducted by Council and whether access to further documents may therefore, be refused under section 47(3)(e) of the RTI Act on the basis they are nonexistent.
9. In making my decision, I have considered evidence, submissions, legislation and other material set out in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression,¹⁵ which includes the right to seek and receive information. I consider a decision-maker will be acting compatibly with this right when applying the law prescribed in the RTI Act and, therefore, I have acted in accordance with section 58(1) of the HR Act.

Issue – Remaining Information

Relevant law

10. The RTI Act provides individuals with a right to be given access to documents held by a Queensland government agency.¹⁶ While the legislation is to be administered with a pro-disclosure bias,¹⁷ the right of access is subject to certain limitations, including grounds for refusing access, as set out in the RTI Act.¹⁸
11. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁹ 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.
12. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.
13. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of public interest lies in a particular case I have considered these,²⁰ together with all other relevant information, in reaching my decision. I have also applied the RTI Act's pro-disclosure bias²¹ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²²

¹⁵ Section 21 of the HR Act.

¹⁶ Section 23 of the RTI Act.

¹⁷ Section 44 of the RTI Act.

¹⁸ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: section 47(2)(a) of the RTI Act.

¹⁹ Sections 47(3)(b) and 49 of the RTI Act.

²⁰ I have the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning innovation and the facilitation of research.

²¹ Section 44 of the RTI Act.

²² Section 47(2)(a) of the RTI Act.

Submissions

14. In summary, the applicant submits:²³

- the development applications were required to be lodged ‘because the proposed development was not a regular “within the rules” private certifier development’
- the ‘proposed design of the new build ... sought six (6) significant relaxations of the required minimum set-back for side boundaries [which] impacted both adjoining neighbours’
- despite her objections, the ‘relaxations sailed through the Brisbane City Council without amendment, explanation or justification’; and
- ‘the people of Brisbane deserve transparency and accountability from the Brisbane City Council.’

Findings

15. The Remaining Information can generally be described as:

- information about the owners of the neighbouring property to which the development applications relate, including names, signatures, telephone and mobile numbers, and email addresses (**Third-party information**); and
- plans showing the interior layout of the proposed dwelling (**Property information**).²⁴

16. I have not taken any irrelevant public interest factors into account in making this decision.

Factors favouring disclosure

17. The RTI Act recognises that public interest factors favouring disclosure will arise if disclosing the information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government’s accountability²⁵
- 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;²⁶ and
- reveal the reason for a government decision and any background or contextual information that informed the decision.²⁷

18. I am satisfied transparency and accountability in agency operations and decision making extends to decisions made by Council in response to development applications.²⁸ I also consider that affording transparency in development matters

²³ Submission dated 26 April 2026.

²⁴ Appearing at pages 79, 84–87, 92–96, 121, 126 and 129 regarding the first development application and pages 9–12, 41–44, 46–60, 65–68 and 70 regarding the second development application.

²⁵ Schedule 4, part 2, item 1 of the RTI Act.

²⁶ Schedule 4, part 2, item 3 of the RTI Act.

²⁷ Schedule 4, part 2, item 11 of the RTI Act.

²⁸ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

is a matter of interest to community members, particularly within their local neighbourhood. I accept that if the Remaining Information were to be disclosed, this would provide further insight into what was available to Council when making decisions on the development applications. However, I am satisfied that the information which Council has already disclosed to the applicant under the RTI Act, and information which is publicly available via Council's online development portal²⁹ regarding the development applications, has already served to discharge these factors to a significant degree. Taking this into account and given the particular nature of the Third-party and Property information, I afford these factors favouring disclosure low weight.

Factors favouring nondisclosure

19. I am satisfied that the Third-party information comprises the personal information³⁰ of the owners of the neighbouring property arising in the context of the development applications. The RTI Act recognises that disclosing an individual's personal information to someone else could reasonably be expected to cause a public interest harm³¹ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.³² Given the nature of the Third-party information, I consider that it is reasonable to expect that disclosing it would be a significant intrusion into the privacy of the property owners and would disclose their personal information. Accordingly, I am satisfied that significant weight should be afforded to these two factors favouring nondisclosure regarding the Third-party information.
20. The Property information consists of plans showing the interior layout of the proposed dwelling. I recognise that floor plans of houses are published regularly online particularly when a property is listed for sale. However, I am also satisfied that plans of *proposed* dwellings are not generally publicly available and that these plans, showing the proposed interior layout of a residential property, are not in the public domain. Until such time as these plans are made publicly available, I consider there is a degree of privacy which attaches to this type of information.³³ Accordingly, I afford moderate weight to the factor favouring nondisclosure relating to privacy in relation to the Property information.
21. In affording weight to the factors favouring nondisclosure, I have also taken into account that under the RTI Act, where information is disclosed, there can be no limitation or control over further dissemination.³⁴

Balancing the public interest

22. I have taken the pro-disclosure bias into account in deciding the issue of access to the Remaining Information.³⁵ On balance, I consider the weight of the privacy and

²⁹ Accessible at <<https://developmenti.brisbane.qld.gov.au/>>.

³⁰ As defined in section 12 of the IP Act, see schedule 5 of the RTI Act.

³¹ Schedule 4, part 4, item 6(1) of the RTI Act.

³² Schedule 4, part 3, item 3 of the RTI Act.

³³ *P80 and Queensland Building and Construction Commission; F80 (Third Party)* [2021] QICmr 17 at [26].

³⁴ *FLK and Information Commissioner* [2021] QCATA 46 at [17].

³⁵ Section 44 of the RTI Act.

personal information nondisclosure factors outweigh the accountability and transparency disclosure factors. Accordingly, I find that access to the Remaining Information may be refused as its disclosure would, on balance, be contrary to the public interest, in accordance with section 47(3)(b) of the RTI Act.

Issue – Further documents

Relevant law

23. Access to a document may be refused if it is nonexistent or unlocatable.³⁶ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.³⁷ A document will be unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.³⁸
24. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures, and the nature and age of requested documents.³⁹ By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such a case, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are explained. Where searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
25. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁴⁰ The Information Commissioner also has the power to require additional searches be conducted on an external review.⁴¹ However, the RTI Act *'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents'*, rather, the Information Commissioner relies on the agency's officers to search for relevant documents.⁴²
26. On external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁴³ However, where the issue of missing documents is raised, the applicant bears a practical onus of

³⁶ Sections 47(3)(e) and 52 of the RTI Act.

³⁷ Section 52(1)(a) of the RTI Act.

³⁸ Section 52(1)(b) of the RTI Act.

³⁹ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]–[38].

⁴⁰ Section 130(2) of the RTI Act.

⁴¹ Under section 102 of the RTI Act.

⁴² *Webb v Information Commissioner* [2021] QCATA 116 at [6].

⁴³ Section 87(1) of the RTI Act.

demonstrating that the agency has not discharged its obligation to locate all relevant documents.⁴⁴ Suspicion and mere assertion will not satisfy this onus.⁴⁵

Searches and submissions

27. As set out at paragraph 4, the application sought access to all documents not publicly available about two development applications for a neighbouring property. The documents located by Council in response to the application can generally be described as:
- Application & Permit Details Report, Work Request Details Reports and Notes from Council's Development and Regulatory Tracking (**DART**) system
 - relevant sections of the *Brisbane City Council Plan 2014* and Queensland Development Code published 11 March 2010
 - meeting outcomes, specialist assessments, assessment workbook, internal emails and lodgement confirmation
 - architectural plans
 - the applicant's Request for Referral Agency Response form and submission regarding the proposed development
 - assessment report regarding the Referral Agency Response and Council's Endorsement of Referral Agency Response; and
 - correspondence with a certification business acting on behalf of the owners of the neighbouring property.
28. The applicant sought review of Council's internal review decision which concluded that Council had '*evaluated the searches undertaken in the original decision and found them to be adequate.*'⁴⁶ OIC requested Council provide a copy of its search records and a submission explaining why those particular searches were reasonable to undertake.⁴⁷ The search record provided by Council in response revealed that searches were undertaken by Development Services within the DART system, which is where documents relating to development applications are stored, using the development application numbers contained within the access application.⁴⁸ In addition, Council submitted:⁴⁹

... as the application related exclusively to development applications a search request was only sent to Development Services. They would be the only business area in Council that [Council] would anticipate to hold the documents due to their general area of responsibility.

⁴⁴ See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

⁴⁵ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁴⁶ At page 2 of Council's internal review decision.

⁴⁷ Letter dated 5 September 2025.

⁴⁸ Search Action Form dated 19 May 2025 provided to OIC on 22 September 2025.

⁴⁹ Submission dated 22 September 2025.

29. Council's submissions were conveyed to the applicant along with OIC's view that all reasonable searches had been conducted and access to further documents responding to the application could be refused on the basis they were nonexistent.⁵⁰
30. In response, the applicant submitted that within the documents disclosed to her, there are no *'internal correspondence, file notes, memoranda, briefing notes, records of verbal discussions, records of how decisions were reached, and minutes of team meetings.'*⁵¹

Findings

31. I have examined the documents located and submissions made by Council during the review regarding the document searches conducted. I am satisfied that in undertaking searches in response to the access application, Council contacted the relevant business unit responsible for dealing with development applications and that searches were undertaken in the record keeping system that Council maintains in relation to development applications.
32. Having considered the content of the located documents and Council's submissions, I consider it was reasonable for Council to undertake searches of the DART system based on the scope of the application and this is further confirmed by the fact that relevant documents were located through those searches. I am satisfied that Council has provided reasonable explanations, including by referring to its recordkeeping practices, as to why further documents do not exist. There is also no material before me to suggest that further searches are reasonable.⁵²
33. I acknowledge that the documents located by Council have not met the applicant's expectations regarding the records she considers Council should hold about Council's decision-making processes regarding the development applications. However, OIC does not have jurisdiction to interrogate Council's record keeping practices, nor the actions taken by Council in response to the development applications. The issue for me to consider is whether Council has taken reasonable steps to locate all relevant documents responding to the application.
34. Taking into account the scope of the application, the documents located by Council, and Council's searches and record keeping practices, I am satisfied that Council has undertaken reasonable searches, and that access to further documents responding to the scope of the application can be refused on the basis they do not exist, in accordance with sections 47(3)(e) and 52(1)(a) of the RTI Act.
35. Paragraphs [4] to [34] are the reasons for my decision set out at paragraph [1].

⁵⁰ Letter dated 20 February 2026.

⁵¹ Submission dated 26 April 2026.

⁵² I am also satisfied that in the circumstances of this case, searches of Council's backup systems were not required under section 52(2) of the RTI Act.