



Decision and Reasons for Decision

Citation: *Z60 and Council of the City of Gold Coast* [2020] QICmr 27 (19 May 2020)

Application Number: 314635

Applicant: *Z60*

Respondent: Council of the City of Gold Coast

Decision Date: 19 May 2020

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENT NONEXISTENT OR UNLOCATABLE - documents relating to the applicant's interactions with the agency - applicant contends additional documents exist - whether agency has taken all reasonable steps to locate documents - whether additional documents are nonexistent or unlocatable - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - documents relating to the applicant's interactions with the agency - whether documents subject to legal professional privilege - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3 section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CONFIDENTIAL SOURCE - documents relating to complaints made to the agency about the applicant - whether disclosure would enable a confidential source of information to be ascertained - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3 section 10(1)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Gold Coast City Council (**Council**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documents (including emails and text messages) about her 'matters' for the period 1 January 2013 to the date of acceptance of the application. Additionally, she specifically sought access to emails and documents involving any police officer, court officer or medical officer, or emails that referred to her dog or the RSPCA.
2. Council located 709 pages and decided² to refuse access to 181 pages and parts of 13 pages on the ground that the information comprised exempt information on the basis that it was either subject to legal professional privilege or its disclosure could reasonably be expected to enable the existence of a confidential source of information to be ascertained.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision refusing access and raised concerns about the sufficiency of the searches conducted by Council for documents responsive to the scope of the access application.
4. During the external review, Council located an additional 11 pages and released them to the applicant in full.
5. For the reasons set out below, I vary Council's decision and find that access may be refused to:
 - further documents on the ground that they are nonexistent or unlocatable; and
 - 181 pages and parts of 13 pages on the ground that they are exempt from disclosure on the basis that:
 - the information is subject to legal professional privilege; or
 - disclosure of the information could reasonably be expected to enable the existence of a confidential source of information to be ascertained.

Background and evidence considered

6. Significant procedural steps taken during the external review are set out in the Appendix to this decision.
7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
8. In reaching my decision, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁴ particularly the right to seek and receive information as embodied in section 21 of the HR Act. I consider that a decision-maker will, when observing and applying the law prescribed in the IP Act, be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act.⁵ I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human

¹ Access application dated 28 March 2019.

² Decision dated 29 May 2019.

³ External review application dated 29 May 2019.

⁴ Which came into force on 1 January 2020.

⁵ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

rights, as required under section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between the Victorian equivalent of Queensland's IP Act and HR Act: *'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.'*⁶

9. The applicant provided extensive submissions during the review. I have considered all this material and specifically referred to those parts relevant to the issues to be determined in this external review.

Preliminary Issue - Alleged bias

10. The applicant has requested that I be removed from her matters⁷ and alleged that I have an undisclosed bias against her.⁸ I have issued a previous decision involving the same applicant in which she raised this issue. As I did on that occasion,⁹ I have carefully considered these submissions, alongside the High Court's test for assessing apprehended bias for a decision maker. The High Court's test requires consideration of *'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide'*.¹⁰ The High Court has also noted that *'[t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made'*.¹¹
11. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.¹² In order to ensure procedural fairness (as required by both the IP Act¹³ and common law), it is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected party. This appraises that party of the issues under consideration and affords them the opportunity to put forward any further information they consider relevant to those issues.
12. During this external review, I conveyed¹⁴ a preliminary view to the applicant that access to further documents can be refused on the basis they are nonexistent or unlocatable and access to information can be refused on the grounds that it comprises exempt information. My letter advised the applicant that the purpose of my view was to give her the opportunity to put forward her views, and if she provided additional information supporting her case, this would be considered and could alter the outcome.¹⁵
13. For this decision, I am the delegate of the Information Commissioner.¹⁶ I have not to my knowledge dealt with the applicant in any capacity prior to her reviews, and cannot identify any conflict of interest in my dealing with her application for review of Council's decision. I do not consider the fact that the applicant has asked for me to be removed

⁶ XYZ at [573].

⁷ Emailed submission dated 27 February 2020.

⁸ Emailed submission dated 12 March 2020.

⁹ *S90 and Veterinary Surgeons Board of Queensland; T38 (Third Party)* [2020] QICmr 23 (20 April 2020).

¹⁰ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

¹¹ *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Kiefel, Bell, Keane and Nettle JJ.

¹² Section 108 of the IP Act.

¹³ Section 110 of the IP Act.

¹⁴ Letter to applicant dated 14 January 2020.

¹⁵ Footnote 1 of letter to applicant dated 14 January 2020.

¹⁶ Section 139 of the IP Act.

from her matters has altered my conduct of the review or consideration of the issues before me in any way. In these circumstances, paraphrasing the High Court's test, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I¹⁷ might not bring an impartial and unprejudiced mind to the resolution of this matter. Accordingly, I have proceeded to make this decision.

Reviewable decision

14. The decision under review is Council's decision dated 29 May 2019.

Information in issue

15. The information in issue is contained within 181 pages and parts of 13 pages.

Issues for determination

16. The issues for determination are whether access can be refused¹⁸ to:

- **(Sufficiency of search)** further documents on the basis that they are nonexistent or unlocatable.¹⁹
- **(Refusal of access)** the Information in Issue on the grounds that it is exempt from disclosure as:
 - it is subject to legal professional privilege²⁰ (**Category A Information**);²¹ or
 - its disclosure could reasonably be expected to enable the existence of a confidential source of information to be ascertained²² (**Category B Information**).²³

Sufficiency of search

Relevant law

17. Under the IP Act, an individual has the right to access documents of an agency to the extent they contain the individual's personal information.²⁴ However this right is subject to certain limitations, including grounds for refusing access.²⁵
18. Access to a document may be refused if the document is nonexistent or unlocatable.²⁶ A document is 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.²⁷ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.²⁸ Where circumstances that account for nonexistent and unlocatable documents are adequately explained by an agency, it will not be necessary for the agency to conduct additional searches.
19. On external review, if an applicant contends that all relevant documents have not been located, then the applicant must show there are reasonable grounds to believe that the

¹⁷ As a delegate of the Information Commissioner under section 139 of the IP Act.

¹⁸ Under section 67(1) of the IP Act.

¹⁹ Under sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

²⁰ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 7 of the RTI Act.

²¹ Information refused on this basis is contained within 181 pages.

²² Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 10(1)(b) of the RTI Act.

²³ Information refused on this basis is contained within parts of 13 pages.

²⁴ Section 43 of the IP Act.

²⁵ Section 67(1) of the IP Act and section 47 of the RTI Act.

²⁶ Sections 47(3)(e) and 52 of the RTI Act.

²⁷ Section 52(1)(b) of the RTI Act.

²⁸ Section 52(1)(a) of the RTI Act.

agency or Minister has not searched properly to locate all documents. A mere assertion that more documents should have been created and/or located without any specific information which points to the likely existence of further documents is not sufficient to found a reasonable belief as to the existence of further relevant documents.

Findings

20. In Council's decision, Council stated:²⁹

I note your advice in your email dated Friday 29 March 2019 that you require we process everything you have requested under IP and then "...pick and choose what [Council will] release and provide these reasons." and you will then seek a review with the Office of the Information Commissioner.

However, as previously advised, matters that do not relate to you personally, for example, the investigation by Council of [Officer LS] as a result of your many complaints, will not be dealt with under your Information Privacy application.

21. In seeking an external review, the applicant submitted:³⁰

I'm not sure why the dog reports and related [investigation] and the ranger responsible [Officer LS] complaints are not included.

22. The applicant further submitted:³¹

...in the documents released I saw a lot of spreading around en masse that I am on a notifiable persons register.

Could you see who put me on it and related reasons and incidents and anything showing what it means.

I took [Officer LS] to get a DVO for breaking into my house, creeping up the stairs and complained that he was ... a foreigner, and his criminal record in NZ or previous country was unknown, yet he was breaking in to my house without a warrant.

I'd like to see texts and emails, especially deleted ones between him, [Officer AC], [Officer JM].

I believe their IT or security guy also created some emails and claimed they were from me, while the large group organised to have my dog killed, all with false allegations - because I made a complaint about a huge islander, unannounced creeping up my stairs and breaking in. This was a ranger. The dog incident was an attack by three islanders. The police officer also was an islander who showed up to the incident.

I believe the officer defamed me and got the rest involved to make false allegations. The video showed a brutal attack on me and the dog. They organised to conceal the video and pretend they didn't know it was a brutal attack on us so they could prosecute me and slaughter the innocent dog.

The police officer was known as JT.

...

The police officer came ready for corruption due to the QPS warnings about me prior to him meeting me. He wanted to arrest me regardless of whether I was victim or any other facts.

²⁹ At page 3.

³⁰ Received by email dated 29 May 2019.

³¹ Submission dated 25 July 2019.

23. To address the applicant's concerns regarding documents about complaint's made by her, OIC:³²
- conveyed a preliminary view to Council that the applicant's request for documents about complaints she made fell within the scope of her IP Act application, provided the documents contained her personal information; and
 - if Council accepted OIC's preliminary view, required Council to undertake searches for documents about complaints made by the applicant during the period 1 January 2013 to 2 April 2019.
24. In response, Council stated '*whilst Council does not agree with the view that the documents fall within the scope of an Information Privacy application, [Council] would accept [OIC's] view and proceed as requested.*'³³
25. In relation to the additional searches conducted, Council submitted:³⁴
- an additional 11 pages (**Additional Pages**) had been located which Council agreed to release in full to the applicant
 - the searches exceeded 8 hours and encompassed both physical and electronic files; and
 - in relation to the searches of the electronic files, search terms used included the applicant's name, the names of relevant council officers and known matter numbers.
26. Based on the information before OIC, a preliminary view was conveyed³⁵ to the applicant that all reasonable searches for documents about complaints made by her had been conducted, and that it was not necessary for any further searches to be conducted. In response, the applicant submitted:³⁶

I was persecuted relentlessly by GCCC starting when police officer [sic] JT showed up to an incident a magistrate said I and my dog were assaulted and it was on CCTV. [The police officer] and [Officer LS] paired up as Samoans and began a persecution campaign including trying to criminalise me when I was the victim.

Request the CCTV.

REQUEST the emails and notes with their alleged VICTIM ... who [the] Magistrate ... asked police to charge with assault. They had [the complainant] pose photos with his foot in a cast. Emails asking him for a doctor report and him not providing one.

27. Following release of the Additional Pages to the applicant by Council,³⁷ the applicant further submitted:³⁸

Where are the records of abusive conduct and incident reports, where are the records of alleged vexatious legal proceedings?

Where are the complaints by [DM] and staff?

³² Letter to Council dated 13 August 2020.

³³ Submission to OIC dated 17 September 2019.

³⁴ Submission to OIC dated 17 September 2019.

³⁵ By letter dated 14 January 2020.

³⁶ Submission dated 14 January 2020.

³⁷ By Council on 21 January 2020.

³⁸ Emailed submission dated 21 January 2020.

Legal officer not wanting her name known indicates she has a file and long history of illegal conduct and her defamation and false allegations are a legal defence tactic against my complaints and anticipated or actual legal action.

I applied for an apprehended violence order against [Officer LS]. He and [Officer AC] and police officer ... then sent multiple emails and texts to each other and [a complainant] trumping up false allegations against me and recording plans and acts of violence against me and corrupt use of government powers.

Where are these records and [Officer JM] emails?

Where are these allegations of my dog being a danger for having its head out the window of a parked car and of me parked at the library for days?

Parked at the library using Wi-Fi because I was a law student studying, this was deemed an incident where all staff told to call police. Video of any allegation against me was requested on legal hold. Where is it?

28. I have carefully consider the applicant's submissions at paragraphs 26 to 27 above. A review of the information released to the applicant³⁹ reveals that Council has released information about complaints made by the applicant about various Council employees, including Officers LS and AC, and complaints made about the applicant, including a matter where her vehicle was parked near a library. The applicant has not provided any specific information which points to the existence of further documents, such as dates and/or detail of the complaints she has made and more particular details about what documents she believes should exist that have not been released to her by Council. She has made a number of assertions about what she believes Council officers did but no submissions that provide information about documents that correlate with those beliefs. However, given the information that has been released and the extent of the searches conducted, I am satisfied that the searches undertaken by Council for documents about complaints made by or about the applicant are reasonable and I cannot identify any additional searches that could reasonably be conducted for responsive documents.
29. In the absence of specific evidence pointing to the existence of further documents, I am satisfied that all reasonable searches for documents about complaints made by the applicant have been conducted, and that it is not necessary for any further searches to be conducted. On this basis, I find that access to further documents responsive to the access application may be refused under sections 67(1) of the IP Act and section 47(3)(e) of the RTI Act on the basis that the documents sought are nonexistent or unlocatable under section 52(1) of the RTI Act.

Refusal of access

Category A Information: legal professional privilege

Relevant law

30. Access to information may be refused where information is exempt.⁴⁰ Information will be exempt where it would be privileged from production in a legal proceeding on the basis that it is protected by legal professional privilege (**LPP**).⁴¹

³⁹ Comprising the Additional Pages and the 709 pages located and dealt with in Council's decision dated 29 May 2019, a copy of which were provided to OIC by Council on 24 April 2020.

⁴⁰ Section 47(3)(a) of the RTI Act.

⁴¹ Schedule 3, section 7 of the RTI Act.

31. LPP protects confidential communications between a lawyer and their client, made for the dominant purpose of:
 - seeking or giving legal advice or professional legal assistance (advice privilege), or
 - use in legal proceedings either on foot or reasonably anticipated, at the time of the relevant communication (litigation privilege).⁴²
32. LPP can extend to copies of non-privileged documents where they are attached to privileged communications,⁴³ and to internal client communications repeating legal advice, whether verbatim or in substance, or gathering information necessary in order to seek legal advice.⁴⁴
33. When the requirements at paragraph 31 above are met, legal professional privilege is established. However, qualifications and exceptions to privilege⁴⁵ may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore is exempt under the RTI Act.

Findings

34. In seeking an external review, the applicant submitted:⁴⁶

The legal documents were for the purpose of prosecuting me so I think these must be made transparent.

35. During the external review, the applicant submitted:⁴⁷

Nothing is confidential or [privileged] and GCCC after my 2013 complaint against [Officer LS] teamed with [a named] police [officer] to start to continuously detain me, break into my house, create false evidence of crime and have me criminally convicted and dog killed.

Their staff flagged me to be followed and harassed several times a day.

[Their] conduct was in full for an unlawful purpose.

I seek to overturn wrongful conviction and pursue legal action against them.

You need to see the communications with the police and prosecutor combined. You concealed both.

The key witness to convict me has lied by saying I was not on a watchlist when he was the person who placed me on it.

I was persecuted relentlessly by GCCC starting when police officer JT showed up to an incident a magistrate said I and my dog were assaulted and it was on CCTV. [The police officer] and [Officer LS] paired up as Samoans and began a persecution campaign including trying to criminalise me when I was the victim.

⁴² *Eso Australia Resources Ltd v Commission of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552.

⁴³ *Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501.

⁴⁴ *Brambles Holdings v Trade Practices Commission (No. 3)* (1981) 58 FLR 452 at 458-459; *Komacha v Orange City Council* (Supreme Court of New South Wales, Rath J, 30 August 1979, unreported).

⁴⁵ Such as waiver or improper purpose.

⁴⁶ Email dated 29 May 2019.

⁴⁷ Email dated 14 January 2020.

36. I have carefully considered the Category A Information. I am limited by the operation of the IP Act and RTI Act in the extent to which I can describe this information, so my descriptions below are necessarily circumspect.⁴⁸
37. I am satisfied that:
- the Category A Information comprises communications detailing advice which was sought or received from a suitably qualified and independent legal advisor
 - the communications were between staff of Council and both in-house legal officers and external legal counsel and were for the dominant purpose of seeking and/or providing legal advice; and
 - there is no evidence indicating that the communications were not confidential or that Council has otherwise waived privilege.
38. The applicant's submissions at paragraph 35 above suggest that the application of LPP to the Category A Information would be in furtherance of an improper purpose (concealing corrupt or criminal actions of Council and other agency officers).
39. For the improper purpose exception to apply a communication must be made in pursuit of an illegal or improper purpose.⁴⁹ In summarising an established line of relevant case law the Assistant Information Commissioner in *Secher and James Cook University*⁵⁰ explained that:
- This exception operates to displace legal professional privilege where evidence exists that the relevant client has embarked on a deliberate course of action knowing that the proposed actions were contrary to law, and has made the relevant communications in furtherance of that illegal or improper purpose.*
- In establishing improper purpose, the standard of proof is high. The High Court has observed that it "is a serious thing to override legal professional privilege where it would otherwise be applicable" and as a result "vague or generalised contentions of crimes or improper purposes will not suffice."⁵¹*
40. I have carefully considered the Category A Information and the applicant's submissions at paragraph 35 above. I am satisfied that the contents of the Category A Information do not evidence the applicant's view that legal advice was obtained to conceal corrupt or criminal actions of Council and other agency officers. There is no evidence in the information before me that the communications that comprise the Category A Information were made in preparation for, or in furtherance of, an illegal or improper purpose. Accordingly, I find that the improper purpose exception does not apply to preclude the application of LPP to the Category A Information.
41. Based on the above, I find that the Category A Information is subject to LPP and therefore comprises exempt information under schedule 3, section 7 of the RTI Act. Access to the Category A Information may therefore be refused.⁵²
42. Where information is found to be exempt, there is no scope under the legislation to consider public interest arguments because Parliament has decided that it would be contrary to the public interest to disclose exempt information. Accordingly, I am unable

⁴⁸ Section 121 of the IP Act and section 108 of the RTI Act.

⁴⁹ *R v Bell; Ex parte Lees* (1980) 146 CLR 141.

⁵⁰ (Unreported, Queensland Information Commissioner, 6 June 2012).

⁵¹ See *Shaw and Department of Justice and Attorney-General* [2014] QICmr 33 at [16]; see also *Commissioner of Australian Federal Police and Another v Propend Finance Limited and Others* (1997) 188 CLR 501 at 591-592 and *Murphy and Treasury Department* (1998) 4 QAR 446 at 31-43.

⁵² Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

to consider the applicant's submission that because the communications were in relation to legal proceedings about her, they should be made transparent. In addition, the Information Commissioner does not have the power to direct that access be given to information that is found to be exempt.⁵³

Category B Information: confidential source

Relevant law

43. Information will be exempt where disclosure could reasonably be expected to enable the existence of a confidential source of information in relation to the enforcement or administration of the law to be ascertained.⁵⁴
44. To satisfy this exemption, there are three requirements which must be met:
 - a) the source of information is confidential;
 - b) the information obtained was in relation to the enforcement or administration of the law; and
 - c) the disclosure of the information could reasonably be expected to enable the existence or identity of the confidential source to be ascertained.

Findings

45. In the context of the exemption, a 'confidential source of information' is a person who has supplied information on the understanding, express or implied, that their identity will remain confidential.⁵⁵
46. Council's website states that a complainant's personal information will remain confidential.⁵⁶ OIC has previously recognised that the supply of complaint information to a government agency is done with the implied understanding that the identity of the complainant will not be disclosed.⁵⁷ Accordingly, I consider that there was a common implied understanding between Council and the complainants that their identity would remain confidential. On this basis, I am satisfied that the complainant in relation to each complaint is a confidential source of information and, therefore, requirement a) of the exemption is met.
47. The term 'in relation to the enforcement or administration of the law' has been interpreted broadly and has been recognised as extending to various government activities in relation to which the relevant agency has regulatory responsibilities. The Information Commissioner has previously found that a complaint to Council relates to the enforcement or administration of Council-by-laws.⁵⁸ In the present case, I note that the information supplied in respect to the complaints relate to the Council Local Law No. 12 (Animal Management),⁵⁹ which Council administers and/or enforces. Accordingly, I am satisfied that the information provided by the complainants relates to the enforcement or administration of the law for the purposes of the exemption. Therefore, I consider that requirement b) of the exemption is met.
48. The third element of the exemption requires that disclosure of the information could reasonably be expected to enable the existence or identity of a confidential source of

⁵³ Section 118(2) of the IP Act.

⁵⁴ Schedule 3, section 10(1)(b) of the RTI Act.

⁵⁵ *McEnery and the Medical Board of Queensland* (1994) 1 QAR 349 at [21]-[22].

⁵⁶ See <http://www.goldcoast.qld.gov.au/complaints-6221.html>.

⁵⁷ *Sedlar and Logan City Council* [2017] QICmr 52 (7 November 2017) at [76].

⁵⁸ *Bussey and Bowen Shire Council* (1994) 1 QAR 530 at [28]-[29].

⁵⁹ See www.goldcoast.qld.gov.au/documents/ll/local-law-no12-2013.pdf.

information to be ascertained. In the present case, given that the information consists essentially of the personal details of the complainants, including their names and contact details, there is no doubt that its disclosure would enable their identities to be ascertained. Accordingly, I am satisfied that requirement c) of the exemption is met.

49. In evaluating whether the Category B Information is subject to the exemption outlined above, I have considered the exceptions outlined in schedule 3, section 10(2) of the RTI Act, in line with *Commissioner of the Police v Shelton & Anor*.⁶⁰ Her Honour Chief Justice Holmes held that ‘*an agency cannot reach the view necessary...in relation to information which may be exempt under sch 3 s 10 without a consideration of the documents the subject of the application to ascertain whether they fall within s 10(2)*’.⁶¹ I have closely reviewed the Category B Information to determine this question of fact and am satisfied that the information does not consist of any of the types of specific information referred to in schedule 3, section 10(2) of the RTI Act.
50. For the reasons set out above, I find that the Category B information qualifies for exemption under schedule 3, section 10(1)(b) of the RTI Act. Accordingly, access to the Category B information may be refused.⁶²
51. While I acknowledge the applicant’s submissions that ‘[n]othing is confidential’ and that she is seeking to overturn a wrongful conviction, as set out at paragraph 42 above, where information is found to be exempt, there is no scope under the legislation to consider public interest arguments because Parliament has decided that it would be contrary to the public interest to disclose exempt information.

DECISION

52. For the reasons set out above, I vary Council’s decision and find that access may be refused to:
- further documents on the ground that they are nonexistent or unlocatable; and
 - the Category A Information on the ground that it is exempt from disclosure on the basis that it is subject to legal professional privilege; and
 - the Category B Information on the ground that it is exempt from disclosure on the basis that disclosure could reasonably be expected to enable the existence of a confidential source of information to be ascertained.
53. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 19 May 2020

⁶⁰ [2020] QCA 96 (*Shelton*).

⁶¹ *Shelton* at [47] per Holmes CJ.

⁶² Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

APPENDIX**Significant procedural steps**

| Date | Event |
|-------------------|---|
| 29 May 2019 | OIC received the applicant's application for external review. |
| 30 May 2019 | OIC received two emailed submissions from the applicant. |
| 3 June 2019 | OIC notified the applicant and Council that the application had been received and requested procedural documents from Council. OIC received the requested procedural documents from Council. |
| 5 June 2019 | OIC requested and received from Council clearer copies of two pages of the access application. |
| 6 June 2019 | OIC advised Council and the applicant that the external review application had been accepted and requested a copy of the documents located from Council. |
| 21 June 2019 | Council provided OIC with a copy of the pages containing information to which access had been refused. |
| 25 July 2019 | OIC received an emailed submission from the applicant. |
| 13 August 2019 | OIC conveyed a preliminary view to Council and, if Council accepted, requested Council undertake searches for additional documents. |
| 23 August 2019 | OIC provided clarification to Council about the preliminary view. |
| 27 August 2019 | OIC received an emailed submission from the applicant. |
| 28 August 2019 | OIC received two emailed submissions from the applicant. |
| 11 September 2019 | OIC received four emailed submissions from the applicant. |
| 12 September 2019 | OIC received an emailed submission from the applicant. |
| 17 September 2019 | OIC received Council's submission and search records. |
| 18 September 2019 | OIC received four emailed submissions from the applicant. |
| 19 September 2019 | OIC received two emailed submissions from the applicant. |
| 25 September 2019 | OIC wrote to the applicant about her external review. |
| 26 September 2019 | OIC received an emailed submission from the applicant. |
| 9 December 2019 | OIC received a copy of the additional documents located from Council. |
| 14 January 2020 | OIC conveyed a preliminary view to the applicant. OIC received an emailed submission from the applicant. OIC requested Council release the additional documents located to the applicant. |
| 21 January 2020 | OIC received notification from Council that the additional documents located had been released to the applicant as requested. OIC received an emailed submission from the applicant. |
| 27 February 2020 | OIC received an emailed submission from the applicant. |
| 5 March 2020 | OIC received an emailed submission from the applicant. |

| Date | Event |
|---------------|---|
| 11 March 2020 | OIC received an emailed submission from the applicant. |
| 12 March 2020 | OIC received an emailed submission from the applicant. |
| 14 April 2020 | OIC requested Council provide a copy of the documents located as released to the applicant in accordance with Council's decision. |
| 24 April 2020 | OIC received the requested documents released to the applicant in accordance with Council's decision. |