



Decision and Reasons for Decision

Application Number: 310799

Applicant: Moore

Respondent: Rockhampton Regional Council

Decision Date: 18 April 2012

Catchwords: **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – access applicant sought information concerning dingo baiting – whether disclosure of information would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of *the Right to Information Act 2009 (Qld)***

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REASONS FOR DECISION

Summary

1. On 6 September 2011¹ the applicant applied to the Rockhampton Regional Council (**Council**) under the *Right to Information Act 2009 (RTI Act)* for access to records relating to dingo baiting.
2. The Council located 16 two-page 'Agreements for the Provision of Baits for the Control of Declared Pest Animals Under the *Land Protection (Pest and Stock Route Management) Act 2002 (Qld)*' (**Baiting Agreements**) between the Council and various landholders (**Landholders**). The Council refused access to the Baiting Agreements, on the basis disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.²
3. Having considered the baiting regulatory regime which requires Landholders to notify neighbours of proposed baiting, and the submissions of the applicant and objecting landholders, I am satisfied disclosure of the Baiting Agreements would not, on balance, be contrary to the public interest. The applicant is therefore entitled to access the Agreements, in accordance with the right of access prescribed in section 23 of the RTI Act.

Significant procedural steps

4. During the external review I consulted with each of the third party landholders,³ (**Landholders**) and conveyed to the Council my preliminary view disclosure of the Baiting Agreements⁴ would not, on balance, be contrary to the public interest.
5. The Council accepted my preliminary view.⁵ The Council no longer contends that access to the Baiting Agreements should be refused.
6. Additionally, only two of the eight Landholders contacted the Office of the Information Commissioner to object to disclosure of relevant Baiting Agreements (**Objecting Landholders**).⁶ However, given that disclosure of Baiting Agreements between the Council and non-objecting Landholders may allow for the identification of the Objecting Landholders (by inference or process of elimination), it is appropriate for me deal with all Baiting Agreements by way of formal decision.
7. Significant procedural steps are further set out in the Appendix to this decision.

¹Received 8 September 2011.

²Decision dated 13 October 2011, comprising the '**decision under review**'. The Council's decision was made on the basis disclosure would disclose personal information and prejudice the privacy of third party landholders.

³In accordance with section 97(4) of the RTI Act.

⁴ Apart from signatures appearing at the foot of the first page of each Agreement, information to which the applicant does not seek access (as advised in a telephone conversation with an OIC officer on 5 March 2012) and which is not in issue in this review. Additionally, late in the review process one of the non-objecting Landholders advised the Office of the Information Commissioner (**OIC**) that the Landholder had contacted the applicant directly to arrange release to him of the Landholder's Baiting Agreement, to which the applicant no longer seeks access through the RTI process. The remaining Baiting Agreements less these signatures therefore comprise the '**information in issue**'.

⁵By letter dated 20 March 2012.

⁶Despite express invitation, neither Landholder applied to participate in the review.

Relevant law

8. The RTI Act confers a right of access to documents of an agency.⁷ This right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.⁸ Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.⁹

What is the public interest?

9. The 'public interest' refers to considerations affecting the good order and functioning of the community and governmental affairs for the well-being of citizens. The 'public interest' is usually treated separately from matters of purely private or personal interest. Usually, a public interest consideration is one that is available to all members or a substantial part of the community should they choose to access it. Importantly, however, in some circumstances public interest considerations can apply for the benefit of particular individuals.
10. In assessing the public interest, the RTI Act requires me to disregard irrelevant factors, consider factors for and against disclosure,¹⁰ and weigh these against one another to determine where the balance of the public interest lies in a particular case.

Findings

11. I have not taken into account any irrelevant factors.

Factors favouring disclosure and nondisclosure

12. Names, addresses and property particulars appearing in the Baiting Agreements comprise the personal information of the Objecting Landholders.¹¹ This gives rise to two factors favouring nondisclosure of this information:
- disclosure of the information could reasonably be expected¹² to prejudice¹³ the protection of an individual's right to privacy,¹⁴ and
 - disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person.¹⁵
13. Weighing against these nondisclosure factors, however, are substantial public interest factors favouring disclosure of the Baiting Agreements to the applicant. These arise from the baiting regulatory framework and the impact of baiting on the applicant in this case.

⁷Section 23 of the RTI Act.

⁸Section 47 of the RTI Act.

⁹Section 47(3)(b) of the RTI Act.

¹⁰Sections 47(3)(b) and 49(3) of the RTI Act.

¹¹ That is, '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.': RTI Act, schedule 6, importing the definition set out in section 12 of the *Information Privacy Act 2009* (Qld). Most of the information contained in the Baiting Agreements merely comprises standard terms and conditions, which does not comprise any person's personal information and disclosure of which could not therefore prejudice any individual's privacy. I can identify no grounds either in the decision under review or generally on which access to this standard information could be refused.

¹²The phrase 'could reasonably be expected to' requires an expectation that is reasonably based, ie. neither absurd, irrational or ridiculous: see *Channel Seven and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at paragraph 20 for a restatement of the principles applying to the interpretation of this phrase as it used throughout the RTI Act.

¹³Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (220020, 24 November 2010) at paragraph 17 for a succinct exposition of the meaning of 'prejudice' as used throughout the RTI Act.

¹⁴Schedule 4, part 3, item 3 of the RTI Act.

¹⁵Schedule 4, part 4, item 6 of the RTI Act.

14. Each Baiting Agreement contains a condition that persons intending to lay baits notify neighbours with property boundaries fronting or falling within two kilometres of a proposed bait site. This condition has the force of law.¹⁶
15. The Queensland Government's guidelines¹⁷ on the use of baits explain the reasons for this binding obligation to notify:

Neighbour notification

Neighbours must be notified to allow them to take appropriate action.

Owners must give at least 72 hours notification to all neighbours whose property falls within 2km of the proposed bait site and any property having frontage to the holder where baits are to be laid.

The notification must advise that steps (e.g. restraint, muzzling) need to be taken to ensure that domestic dogs do not gain access to 1080 baits or poisoned animals.

16. The Council advised during the review¹⁸ that this notification obligation applied to relevant Landholders as regards the applicant. The applicant submits that he did not receive notification. He contends that consequently he lost a working dog to bait poisoning.¹⁹
17. One of the Objecting Landholders advised OIC that the Landholder did not provide notice as required.²⁰ There is a significant public interest in disclosure to the applicant of Baiting Agreements in this context so as to:
 - ensure that the applicant is aware of neighbours who are using or have previously used baits (as he was entitled to be made aware by way of the bait use notification requirement discussed above), and
 - enable the applicant to take future precautions or other remedial action as necessary.
18. Disclosure of Baiting Agreements will also serve to reveal environmental or health risks,²¹ by making available the identity of persons who are using or have used a highly toxic regulated pesticide without fully complying with applicable legal conditions. Disclosure will also contribute to the protection of the environment,²² by not only disclosing the identity of bait users and location of past bait use, but by encouraging future compliance with the baiting regulatory regime.
19. The second of the Objecting Landholders submits that the Landholder has always complied with the requirements applying to baiting programs,²³ which presumably includes giving notice. Assuming notice was given, the applicant will be therefore be aware of this Landholder's identity such that any privacy interest attaching to relevant information as appearing on the Baiting Agreement would be significantly, if not entirely, diminished. Disclosure of this information would therefore have a marginal impact – if any – on the Landholder's privacy interests.

¹⁶ Section 272 of the *Health (Drugs and Poisons) Regulation 1996*.

¹⁷ 'Toxin 1080: A guide to safe and responsible use of sodium fluoroacetate in Queensland', Department of Employment, Economic Development and Innovation, 2009, p. 9. Available at: http://www.dpi.qld.gov.au/documents/Biosecurity_EnvironmentalPests/IPA-1080-Guidelines-Fluoroacetate.pdf

¹⁸ In a telephone conversation with an OIC officer on 13 February 2012.

¹⁹ See for example applicant's email correspondence with OIC dated 26 October 2011, 10 January 2012 and 10 February 2012.

²⁰ In a telephone conversation with an OIC officer on 9 March 2012.

²¹ A factor favouring disclosure of information in the public interest: schedule 4, part 2, item 13 of the RTI Act.

²² Schedule 4, part 2, item 14 of the RTI Act.

²³ Written submissions dated 23 March 2012.

20. Conversely, disclosure in this context will allow for confirmation of the Landholder's compliance, and therefore enhance the transparency of the baiting regulatory framework.

Objecting Landholders' submissions

21. The Objecting Landholders submit that their baiting activity could not have resulted in the poisoning of the applicant's dog, given the timing of baiting as against when the poisoning was said to have occurred, and the fact that weather conditions would have neutralised the toxicity of any baits by the time the dog was poisoned.²⁴
22. The second of the Objecting Landholders further submits that the applicant is only seeking access to the requested information for financial gain.²⁵
23. Underpinning these submissions appears to be a concern the Objecting Landholders may be exposed to legal action if their Baiting Agreements are disclosed to the applicant. Submissions of this kind essentially amount to matters of personal concern, rather than public interest factors favouring nondisclosure. Additionally, the submissions raise matters going to the cause of the poisoning and who may ultimately bear responsibility for that poisoning. These are questions of legal liability beyond the scope of this external review.
24. If the Baiting Agreements are disclosed it does not follow that the applicant will necessarily commence, let alone succeed, in any legal action. Furthermore, if the 'complying' Landholder's contentions are correct, then it is difficult to see how disclosure of relevant Baiting Agreements to the applicant could expose this Landholder to any detriment, let alone a detriment that could conceivably amount to a public interest factor favouring nondisclosure. The Landholder's identity will, as I have noted in paragraph 19, be known to the applicant in accordance with the mandatory notification process. Further, both Landholders will on their accounts be able to demonstrate that their baiting activities did not lead to the poisoning of the applicant's dog.
25. Yet even accepting that possible exposure to legal action could consist of a detriment or adverse effect capable of comprising a public interest factor favouring nondisclosure, there is a countervailing public interest in allowing persons such as the applicant access to information that may assist them in determining whether they have legal rights which may be asserted, and possibly vindicated.
26. The applicant is entitled to access information that may enable him to assess options available by way of redress for the loss of his dog – including information identifying or confirming the identity of neighbours who have baited. There is a recognised public interest in providing individuals with access to information that may assist them to pursue, or consider pursuing, a legal remedy for loss for which a remedy may exist under the law.²⁶ Disclosure of the Baiting Agreements could reasonably be expected to advance that public interest.

²⁴ One Objecting Landholder made relevant submissions in a telephone conversation with an OIC officer on 9 March 2012, the second provided written submissions dated 23 March 2012.

²⁵ Written submissions dated 23 March 2012.

²⁶ Schedule 4, part 2, item 17 of the RTI Act, '*disclosure could reasonably be expected to contribute to the administration of justice for a person*', reflecting the principles set out by the Information Commissioner in *Willsford and Brisbane City Council* (1996) 3 QAR 368.

Conclusion – balance of the public interest

27. I have discussed at paragraphs 17-20 and 26 above the public interest considerations favouring disclosure of the Baiting Agreements, each of which merit substantial weight in the circumstances of this case. Weighing against these public interest factors is the possible prejudice to the privacy of the Objecting Landholders. Given the notification obligation, I consider that the privacy interests attaching to relevant personal information contained in the Baiting Agreements are not particularly strong in this case, and are insufficient to displace the significant public interests favouring disclosure.
28. Disclosure of the Baiting Agreements will inform the applicant as to the use of baits on neighbouring properties, ensure the baiting regulatory framework operates transparently and effectively, and foster future compliance with that framework, particularly the mandatory notice obligation. In these circumstances, I consider disclosure of the Baiting Agreements would not, on balance, be contrary to the public interest under the RTI Act.

DECISION

29. I set aside the Council's decision dated 13 October 2011, and in substitution find that disclosure of the Baiting Agreements would not, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act. The applicant is therefore entitled to access the Baiting Agreements, in accordance with the right of access prescribed in section 23 of the RTI Act.
30. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Jenny Mead
Right to Information Commissioner

Date: 18 April 2012

APPENDIX**Significant procedural steps**

Date	Event
8 September 2011	Council received applicant's RTI access application.
13 October 2011	Council refused access to the information in issue under section 47(3)(b) of the RTI Act.
20 October 2011	The applicant applied to OIC for external review of the Council's decision.
27 October 2011	OIC notified the applicant and Council the external review application had been accepted. OIC requested Council provide copies of the information in issue.
2 November 2011	Information in issue received from Council.
7 March 2012	OIC wrote to third party Landholders and Council conveying preliminary view disclosure of information in issue would not, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
9 March 2012	Objecting Landholder contacted OIC, advised did not accept preliminary view, and conveyed submissions via telephone in support of objection to disclosure of information in issue. Further Objecting Landholder contacted OIC and advised the Landholder did not accept OIC's preliminary view, with written submissions in support to follow.
14 March 2012	OIC wrote to both Objecting Landholders confirming position and invited each to apply to participate in the external review.
21 March 2012	Council advised OIC that it accepted OIC's preliminary view.
25 March 2012	Written submissions received from Objecting Landholder in support of objections to disclosure.
16 April 2012	In a telephone conversation with an OIC officer, a non-objecting Landholder advised the Landholder had contacted the applicant directly and arranged to provide him with a copy of the Landholder's Baiting Agreement. OIC subsequently confirmed with the applicant that the applicant no longer sought access to that Agreement.