



Decision and Reasons for Decision

Application Number: 210713

Applicant: Mr Christophers

Respondent: Redland City Council

Decision Date: 6 August 2009

Catchwords: ADMINISTRATIVE LAW – FREEDOM OF INFORMATION – REFUSAL OF ACCESS – EXEMPT MATTER – MATTER RELATING TO LAW ENFORCEMENT OR PUBLIC SAFETY – applicant sought access to name of dog barking complainant – whether complainant a confidential source of information – whether complainant’s name exempt under section 42(1)(b) of the *Freedom of Information Act* 1992 (Qld)

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REASONS FOR DECISION

Summary

1. In this external review the Applicant seeks access to the name of a complainant as recorded on a number of complaints made to Redland City Council (**Council**) concerning the property and animals of the applicant.
2. Having considered the parties' submissions and evidence, relevant legislation, and relevant decisions of the Information Commissioner, I am satisfied that the complainant's name qualifies for exemption under section 42(1)(b) of the *Freedom of Information Act* (Qld) (**FOI Act**).

Background

3. By letter dated 30 October 2008, the Applicant applied to Council for access to certain complaint information. Following further correspondence, the scope of the Applicant's freedom of information request was narrowed to complaints made by the "barking dog complainant" (**Complainant**) about the Applicant or his property (**FOI Application**).
4. By letter dated 21 November 2008 (**Original Decision**), Mr Grant Bennett, FOI Decision Maker at Council, released four documents subject to the removal of information identifying the Complainant under sections 42(1)(b) and 44(1) of the FOI Act.
5. By letter dated 25 November 2008, the Applicant applied for internal review of the Original Decision (**Internal Review Application**) stating:

There is a reasonable requirement for public interest release of specific information, of this person's name, which is an appropriate request under the Freedom of Information legislation...

...

I formally request the review of my application for information under the Freedom of Information Legislation to supply me with the name of the complainant in this matter.
6. By letter dated 18 December 2008 (**Internal Review Decision**), Mr Luke Wallace, Internal Review Officer at Council, advised the Applicant of his decision to affirm the Original Decision.
7. By letter dated 12 January 2009 (**External Review Application**), the Applicant applied to the Office of the Information Commissioner (**Office**) for external review of the Internal Review Decision.

Decision under review

8. The decision under review is the Internal Review Decision referred to at paragraph 6 above.

Steps taken in the external review process

9. During a telephone conversation with a staff member of the Office on 21 January 2009, and later telephone conversations on 24 March 2009, 26 May 2009, 4 June 2009, 11 June 2009, 18 June 2009, 19 June 2009 and 25 June 2009, the Applicant provided further information about his reasons for seeking access to the name of the Complainant.

10. By letter dated 23 January 2009, I advised Council that the External Review Application had been accepted and requested relevant documents and submissions.
11. By letter dated 27 January 2009, I advised the Applicant that the External Review Application had been accepted and provided him with an opportunity to make submissions on the application of sections 42(1)(b) and 44(1) of the FOI Act prior to my forming of a preliminary view on the issues in the review.
12. By letter dated 6 February 2009, Council provided submissions in response to my letter at paragraph 10 above, together with a copy of the documents containing information claimed to qualify for exemption.
13. By facsimile dated 20 February 2009, the Applicant provided submissions advancing public interest arguments in favour of disclosure, in relation to Council's claim that the matter in issue qualified for exemption under section 44(1) of the FOI Act.
14. On 12 March 2009, the Applicant met with two staff members of the Office to discuss this external review. The Applicant accepted the preliminary view that the release of the substance of the complaints by Council largely precluded any public interest argument the Applicant might make in favour of disclosure on the basis of 'procedural fairness'. However, the Applicant indicated that he wished to take some time to consider the issues discussed, as well as other public interest arguments in favour of disclosure relevant to section 44(1) of the FOI Act.
15. During a telephone conversation with a staff member of the Office on 24 March 2009, the Applicant requested copies of Council's submissions dated 6 February 2009.
16. By letter to the Applicant dated 29 May 2009, I indicated that it was my preliminary view that the matter in issue qualified for exemption under section 44(1) of the FOI Act and provided a copy of Council's submissions dated 6 February 2009.
17. Following discussions between a staff member of the Office and the Applicant on 11 June 2009, I provided a copy of the text of section 102 of the FOI Act for the Applicant's consideration and extended the due date for final submissions to 25 June 2009.
18. On 18 June 2009, the Applicant contacted the Office to express his intention to respond to the preliminary view. In particular, the Applicant contested the application of section 44(1) of the FOI Act and my balancing of the public interest.
19. On 19 June 2009, a staff member of the Office called the Applicant to convey to him that:
 - in making a decision in this matter, I would consider the application of section 42(1)(b) of the FOI Act
 - in preparing his submissions he should consider the application of section 42(1)(b) of the FOI Act and the decision in *Bussey and Council of the Shire of Bowen*¹ (**Bussey**).
20. By letter dated 25 June 2009, the Applicant contested my preliminary view and made submissions in relation to sections 42(1)(b) and 44(1) of the FOI Act.
21. In making my decision in this matter, I have taken the following into account:

¹ (Unreported, Queensland Information Commissioner, 24 June 1994).

- the FOI Application and Original Decision
- the Internal Review Application and Internal Review Decision
- the External Review Application
- Redland Shire Council Local Law No 2 (Animal Management)
- Redland Shire Council Local Law No. 18 (Control of Nuisances)
- Redland City Council Customer Charter
- Relevant provisions of the *Integrated Planning Act 1997* (Qld) and parts of the Redlands Planning Scheme as referred to in this decision
- written submissions from Council dated 6 February 2009
- written submissions received from the Applicant on 20 February 2009
- notes taken during a meeting with the Applicant at the office of the Information Commissioner on 12 March 2009
- files notes of telephone conversations with the Applicant on 24 March 2009, 26 May 2009, 4 June 2009, 11 June 2009, 18 June 2009, 19 June 2009 and 25 June 2009
- the Applicant's letter dated 24 June 2009 contesting my preliminary view
- the matter in issue and other relevant information from the complaint documents
- relevant sections of the FOI Act, case law from Australian jurisdictions and previous decisions of the Information Commissioner as referred to in this decision.

Matter in issue

22. The matter in issue in this external review comprises the Complainant's name as it appears on three complaints made by that individual to Council concerning the Applicant's property and/or animals.

Findings

Relevant law

23. The FOI Act was repealed by the *Right to Information Act 2009 (RTI Act)*² which commenced on 1 July 2009.³ However, because the FOI Application was made under the FOI Act and has not yet been finalised, for the purposes of this decision, I am required to consider the application of the FOI Act (and not the RTI Act) to the matter in issue.⁴

Section 42(1)(b) of the FOI Act

24. As set out in paragraph 6 of this decision, Council refused access to the matter in issue on the basis of sections 42(1)(b) and 44(1) of the FOI Act.
25. I am satisfied that the matter in issue in this external review qualifies for exemption under section 42(1)(b) of the FOI Act. Accordingly, it is unnecessary for me to consider the possible application of section 44(1) of the FOI Act.
26. Section 42(1)(b) of the FOI Act provides:

42 Matter relating to law enforcement or public safety

² Section 194 of the RTI Act.

³ With the exception of sections 118 and 122 of the RTI Act.

⁴ Section 199 of the RTI Act.

Matter is exempt matter if its disclosure could reasonably be expected to –

...

(b) *enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or*

...

27. Lane indicates that:⁵

[i]n some respects, s 42(1)(b) is analogous with the common law doctrine of “public interest privilege” concerning the circumstances where an enforcement authority, on behalf of the State, may resist disclosure of documents or evidence during litigation which would reveal the identity of an informer. This doctrine has been extended beyond the realm of police informers to encompass those who supply information to government agencies charged with the responsibility of administering and policing various kinds of welfare and regulatory schemes.

28. Section 42(1) of the FOI Act does not contain a public interest test. However, paragraph (a) of subsection 42(2) of the FOI Act lists exceptions to the application of subsection (1). It is only these exceptions which are subject to a public interest test.

29. I am satisfied that the matter in issue is not of a type described in paragraph (a) of subsection 42(2) of the FOI Act and therefore the application of section 42(1) is not excluded.

30. To establish that information is exempt under section 42(1)(b) of the FOI Act the following requirements must be satisfied:⁶

Requirement 1 There must be a confidential source of information.

Requirement 2 The information supplied by the confidential source must relate to the enforcement or administration of the law.

Requirement 3 If the information in issue were disclosed, the disclosure could reasonably be expected to enable the existence or identity of the confidential source of information to be ascertained.

31. In the context of section 42(1)(b) of the FOI Act, a ‘confidential source of information’ is a person who has supplied information on the understanding, express or implied, that his or her identity will remain confidential.⁷

32. In *McEniery*, the Information Commissioner considered the factors that, in the absence of express agreement, are relevant for determining whether or not there is a “common implicit understanding” that the identity of the person providing the information will remain confidential. In that decision, the Information Commissioner stated:⁸

The determination of whether the relevant information was supplied by the informant and received by the respondent on the implicit understanding that the informant's identity would remain confidential (and hence whether the informant qualifies as a confidential source of information for the purposes of s.42(1)(b)) requires a careful evaluation of all the relevant circumstances including, inter alia, the nature of the information conveyed, the relationship of the informant to the person informed upon, whether the informant stands in

⁵ Thomson Lawbook Co, *Queensland Administrative Law* (at 44) para 2.1785.

⁶ *McEniery and Medical Board of Queensland* (1994) 1 QAR 349 (**McEniery**) at paragraph [16].

⁷ See *McEniery* at paragraph [21] and [22].

⁸ At paragraph [50].

a position analogous to that of an informer (cf. paragraph 25 above), whether it could reasonably have been understood by the informant and recipient that appropriate action could be taken in respect of the information conveyed while still preserving the confidentiality of its source, whether there is any real (as opposed to fanciful) risk that the informant may be subjected to harassment or other retributive action or could otherwise suffer detriment if the informant's identity were to be disclosed, and any indications of a desire on the part of the informant to keep his or her identity confidential (e.g. a failure or refusal to supply a name and/or address, cf. Re Sinclair, McKenzie's case, cited in paragraph 36 above).

33. The identity of a confidential source of information may pass through a chain of persons without losing its confidential status, provided the recipients are obliged to respect the understanding of confidentiality.⁹
34. The term "could reasonably be expected to" in section 42(1)(b) of the FOI Act, requires a decision-maker to consider whether the expectation claimed, in this case, the expectation that disclosure of the matter in issue could enable the existence or identity of the confidential source of information to be ascertained, is reasonably based.¹⁰

Submissions and relevant information

Council's submissions

Confidential source of information

35. Council contends that the Complainant is a confidential source of information for the purposes of section 42(1)(b) of the FOI Act.
36. In submissions dated 6 February 2009, Council states:

Council's Customer Charter specifically commits us to keep complainant's details confidential. The Charter is available publicly on our website and in the foyers of our offices.

...

The requirement for confidentiality is reinforced with every customer who makes a complaint whether in person or at our customer service centre or by telephone. On that basis, our assessment is that customer expectations regarding the release of their names ...and confidentiality are already clear.

37. Under the heading 'Your Rights', the Customer Charter provides:

When you contact Council with a request or a complaint you can expect to:

...

- have your personal details kept confidential.

Enforcement and administration of the law

38. In submissions dated 6 February 2009, Council states:

The complaints Council received about [the Applicant] raised the possibility of breaches of our Local Laws or Planning Scheme relating to matters such as unlawful use of residential properties, noise nuisance (barking dogs), and obstruction of the footpath.

⁹ *McEniery* at paragraph [34].

¹⁰ See *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**) at 106 and consideration of *Cockcroft* in the context of section 42(1)(ca) in *Sheridan and Dalby Regional Council* (Unreported, Queensland Information Commissioner, 9 April 2009).

Our view is that an exemption under section 42(1)(b) is triggered under these circumstances.

39. In response to enquiries from this Office, Council provided the following information in relation to the complaint about the Applicant's dogs and the relevant local laws:

- a) Council is responsible for the administration of Redland Shire Council Local Law No. 2 (Animal Management) as adopted by Council 26 September 2007 and gazetted 16 November 2007. Section 23 of Local Law No. 2 imposes a duty to avoid nuisances:

23 Duty to avoid nuisances

(1) A person must not keep an animal on land if:-

(a) the animal causes a nuisance; or

...

(2) Without limiting subsection (1)(a), an animal causes a nuisance if:-

(a) it makes a noise which is excessive in all the circumstances; or

...

(5) An authorised person may, on receiving a complaint of a contravention of subsection (1), give a written notice to the keeper of the animal requiring the keeper to take specified action to prevent further contravention or to remove the animal within a period of time specified in the notice.

(6) A person must not fail to comply with a notice under subsection (5) within the time allowed in the notice.

Maximum penalty: 50 penalty units.

- b) Council submits that the complaint received on 27 October 2008 was in relation to dog barking which is a nuisance under Local Law No.2.
- c) In response to the complaint, Council commenced an investigation into the potential nuisance.
- d) Council is also responsible for the administration and enforcement of section 9 of Local Law No. 2 (Animal Management) 2007, which imposes an obligation on Redland City Council residents to register their dogs:

9 Obligation to register

(1) A person must not keep an animal for which registration is required unless the person holds a current registration receipt for the animal from the local government.

Maximum penalty: 20 penalty units.

- e) Upon receipt of the dog barking complaint, Council was alerted to the possible presence of unregistered animals on the Applicant's property.
- f) Council took steps to investigate a potential breach of section 9.

40. In response to enquiries from this Office, Council provided the following information in relation to the complaint of an unlawful home business and the relevant law:

- a) Chapter 2, Part 1 of the *Integrated Planning Act 1997* (Qld) (**IPA**) provides that a planning scheme is an instrument made by a local government. Division 6 of Chapter 2, Part 1 of IPA states:

2.1.23 Local planning instruments have force of law

(1) A local planning instrument is a statutory instrument under the Statutory Instruments Act 1992 and has the force of law.

- b) The Redlands Planning Scheme (**RPS**) was adopted by Council on 15 March 2006 and its notification was published in the Queensland Government Gazette on 24 March 2006. The RPS functions as part of the integrated development assessment system detailed in Chapter 3 of the IPA and must be read in conjunction with the IPA.
- c) Council is responsible for the investigation of breaches, including any complaints alleging unlawful use of premises.
- d) Relevantly in this instance, part 9, schedule 3 of the RPS defines a vehicle repair premises as a "Division 1 Use" for which a development permit is required:

Vehicle Repair Premises

Means the use of premises for the carrying out, either with or without servicing, of repairs to motor vehicles, including motor vehicle components such as radiators and windscreens, farm machinery or boats. The term includes panel beating, spray painting and car detailing.

- e) Council submits that the complaint received on 13 September 2008 related to a possible breach under this provision of the RPS.
- f) In response to the complaint, Council conducted an investigation into the possible existence of a vehicle repair station on the Applicant's property.
41. In response to enquiries from this Office, Council has provided the following information in relation to the complaint about unsightly accumulation of waste and the relevant local law:

- a) (As noted above) Council is responsible for the administration of Redland Shire Council Local Law No. 18 (Control of Nuisance). Section 15 of Local Law No. 18 prohibits visual pollution resulting from unsightly accumulations of objects and materials:

15 Prohibition of visual pollution

(1) An occupier on whose land objects or materials are brought, or allowed to accumulate, that seriously detract from the visual amenity of the land, commits a nuisance.

Examples of objects that may seriously detract from the visual amenity of land:-

- discarded or disused machinery or machinery parts;*
- broken-down or severely rusted vehicles;*
- discarded bottles, containers or packaging;*
- refuse or scrap material.*

- g) Council submits that the compliant received on 27 August 2008 (via the Mayor's Office)¹¹ was in relation to unsightly accumulation of material on the Applicant's property.
 - b) Council subsequently transferred the request from the Compliance Unit to the Development Control Unit which investigated the complaint regarding unlawful use of premises.
42. Council submits that its ability to effectively administer local laws relies heavily on information provided by members of the community on a confidential basis.

Applicant's submissions

43. In his Application for External Review, the Applicant expresses concerns about Council's conduct and attitude toward him and the motivation of the Complainant, stating:

I am not satisfied that the review by RCC provides an independent and unbiased review of my request for information...

This is only one of many complaints, subsequently found to be unfounded, levied against me by the RCC, over the past two years or so, I personally consider this attitude, by the RCC towards me to be unabated Harassment by the RCC which is causing me extreme personal difficulties including serious personal health issues. I believe that this action, of lodging unfounded complaints, is encouraged by the systems in place which are endorsed by RCC Officials, and in my opinion is totally un-Australian and unacceptable in and destructive to our community development.

I have a legitimate public interest in being advised the name of this person, who has complained unreasonably about me to the RCC on quite a number of occasions.

44. In submissions dated 20 January 2009 the Applicant alleges that the Complainant was motivated by malice:

My request is that the release of this persons name is a reasonable request under the Public Interest test of FOI. I consider that this person is a serial complainant who has made a number of unsubstantiated allegations and complaints to the RCC about me, which have been found upon investigation to be generally untrue or unsubstantiated.

The issue in my case is clearly one that relates to the actions of this person to defame me by providing intentionally false statements to RCC, which in themselves I consider to be libellous, intended to cause a public nuisance and are openly litigious in their words and by their intention to cause me mischief.

45. In submissions dated 24 June 2009, the Applicant reiterates his view that the Complaints were unsubstantiated:

...having regard to the Freedom of Information Act 1992, and in particular Section 42 (1) (b), I believe the Complainant cannot hide his identity for the following reasons:

It is quite clear from my further investigation that the complainant has intentionally or wilfully made a number of unsubstantiated allegations and complaints to RCC about me.

...

These allegations [wreckers yard, unlawful home-based business] ***could not be substantiated as they were absolutely completely and totally untrue.***

¹¹ On the basis of a letter from the Complainant, the Mayor's Office initiated customer request CRLL506261 and asked Council officers to follow up and advise the Complainant.

Further, this complainant knew full well that these allegations were totally untrue... These allegations have been found to be unable to be substantiated by the Redland City Council as there was not one ounce of truth in them.

46. Parts of both the Applicant's and Council's submissions suggest a significant history of difficulty in the dealings between Council and the Applicant. Whilst I acknowledge that these difficulties have impacted the parties and their relationship, in this external review I am required to review Council's Internal Review Decision. The fractured relationship between the parties and matters that may have contributed to this outcome are not relevant considerations in this decision.

Findings of fact and application of the law

Requirement 1 – confidential source of information

47. I have considered *Council's Customer Charter* as published online and referred to at paragraph 35 above. I accept that this document provides an assurance that complainants' personal details will be kept confidential.
48. At paragraph 36 above, Council submits that the assurance of confidentiality contained in its Charter is reinforced with every customer making a complaint, whether in person, at Council's customer service centre or over the telephone. It is therefore likely that the Complainant was given an express assurance by Council that their name would remain confidential. In any event, I am satisfied, for the reasons that follow, that there was a "common implicit understanding" between Council and the Complainant, that the Complainant's name would be kept confidential.
49. In *Bussey*¹² the applicant sought access to information identifying the author of a dog barking complaint. In that matter there had been no express assurance of confidentiality, however, the Information Commissioner found that there was an implied understanding of confidence:¹³

...in this case, the evidence discloses that there was a common understanding on the part of the third party and relevant Council officers as to how complaints of this nature ought to be, and would be, treated, even though there is no suggestion in the evidence that Council's policy was made known to the third party, or that the third party sought any express assurance as to confidentiality of identity.

50. Council makes it clear to the public, through publishing its Customer Charter online that the personal details of complainants who lodge complaints such as those lodged by the Complainant are treated confidentially. Council Policy in this regard is reinforced at the time the complaint is received. In my view, it was also reasonable, given the nature of the particular complaints, for both the Complainant and Council to expect that the complaints could be effectively investigated and any necessary action taken, without disclosing the Complainant's name.
51. The Applicant has said in his submissions that the information provided by the Complainant was false. Documents released to the Applicant detail the actions taken by Council. These documents indicate that at least some of the complaints were substantiated and there is nothing in the information available to me to suggest that the complaints were 'false'. In any event, I am satisfied that nothing turns on the veracity or otherwise of the complaints in this review.

¹² As in this external review, the applicant in *Bussey* sought access to the name of a complainant.

¹³ at paragraph [24].

52. The issue of incorrect information being provided to an agency was considered by the Federal Court in *Mackenzie v Secretary to Department of Social Security*¹⁴ (**Mackenzie**) in relation to a provision of the *Freedom of Information Act 1982* (Cth) (**Commonwealth FOI Provision**) which is substantially similar to section 42(1)(b) of the FOI Act.

53. In *Mackenzie*, the applicant received a pension from the Department of Social Security (**Department**) on the grounds that her husband had deserted her. The Department subsequently received a letter stating that the applicant was financially supported by her husband. On investigation, the allegation was found to be false and it was noted on the departmental file that the '*purported information was to be disregarded.*' In contesting the Department's position that the signature on the letter qualified for exemption under the Commonwealth FOI Provision, the applicant argued that that the author of the letter was not a confidential source of 'information' as they had provided only false allegations and disinformation and that the exemption could only apply if the information was valid or accurate. Muirhead J did not accept this narrow interpretation, indicating that:

Information prompting administrative inquiry is still properly classified as information in the hands of the Department, be it true or false. The Department in the exercise of its responsibilities must and does regularly review the eligibility of recipients of public moneys. Some information may prove of value, some of no value.

54. In view of the nature of the information conveyed, the circumstances in which it was conveyed, Council's policy in relation to the receipt of information and the fact that the complaints could be investigated without disclosing the name of the Complainant, I am satisfied there was a common implicit understanding between Council and the Complainant that the Complainant's identity would remain confidential.

55. Accordingly, I am satisfied that the:

- Complainant is a confidential source of information
- first requirement for exemption under section 42(1)(b) of the FOI Act is met.

Requirement 2 – in relation to the enforcement or administration of the law

56. 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.

57. A complaint to a Council has previously been found to relate to the enforcement or administration of Council by-laws.¹⁵

58. In relation to the complaint made about the Applicant's dogs, I accept that:

- a) Council is responsible for administering the Redland Shire Council Local Law No. 18 (Control of Nuisances) and Redland Shire Council Local Law No. 2 (Animal Management)
- b) the following information was recorded by an officer of Council on 27 October 2008, upon receiving the complaint:

caller stated that two dogs at the above property are creating a noise nuisance. Dogs bark and howl whenever owners come and go. This occurs both weekdays

¹⁴ (1986) 65 ALR 645.

¹⁵ *Bussey* at 28-29.

and weekends mostly though the day time. Dogs are described as medium sized, one black and the other brown...

- c) the complaint information relates Council's responsibility for administering and enforcing local laws.

59. In relation to the complaint made about a potential unlawful use of the Applicant's premises, I accept that:

- a) Council is responsible for administering the RPS as part of the integrated development assessment system detailed in Chapter 3 of the IPA
- b) read in conjunction with IPA, the RPS defines uses for which a permit is required, including a "vehicle repair station"
- c) the following information was recorded by an officer of the Development Control Unit on 13 September 2008, upon receiving the complaint:

CATEGORY 3 (Unlawful Use – residential) ...

Complaint received stating possible unlawful home business – mechanic – is operating from the above mentioned property. Checked Proclaim however could not locate any approvals for business. Local Laws initially received the complaint, however upon [Council employee] inspecting premises, it appeared that owner is running a business rather than just storing the vehicles on the block (fixes them up in the garage). Complainant claims there are always approx 4 or 5 wrecked vehicles laying out on the property, waiting to be fixed up. Officer to investigate further...

- d) the complaint information relates to Council's responsibility for administering and enforcing the RPS, in accordance with a local government's functions under IPA.

60. In relation to the complaint made about visual pollution resulting from unsightly accumulations of objects and materials, I accept that:

- a) Council is responsible for administering Redland Shire Council Local Law No. 18 (Control of Nuisance), section 15 of which prohibits visual pollution resulting from unsightly accumulations of waste
- b) in a letter of complaint to the Mayor of Redland City Council, the Complainant stated:

The property at [the Applicant's address] is being used as what I can only describe as a "wrecker's yard". There are always a minimum of four wrecks either on the lawn, across the footpath or on the road. In addition to this there are part dismantled white goods in the driveway...

... I cannot believe that the "wrecker's yard" ... does not breach any by laws...

- d) the complaint information relates to Council's responsibility for administering and enforcing Redland Shire Council Local Law No. 18 (Control of Nuisance).

61. In respect of each complaint, I am satisfied that:

- the information supplied relates to laws which Council administers and/or enforces
- the information provided by the Complainant relates to the enforcement or administration of the law for the purposes of section 42(1)(b) of the FOI Act
- the second requirement for exemption under section 42(1)(b) of the FOI Act has been met in respect of each complaint, and therefore, in respect of the matter in issue.

Requirement 3 – identity of confidential source of information

62. The third element of section 42(1)(b) of the FOI Act requires that disclosure of the information in issue could reasonably be expected to:
- enable the existence of a confidential source of information to be ascertained; or
 - enable the identity of a confidential source of information to be ascertained.
63. In the present case, the matter in issue consists solely of the Complainant's name. Accordingly, I am satisfied that:
- there is a reasonable basis for the expectation that disclosing the matter in issue will enable the identity of the Complainant to be ascertained
 - the third requirement for exemption under section 42(1)(b) of the FOI Act has been met.

Conclusion

64. For the reasons set out above, I find that the matter in issue qualifies for exemption under section 42(1)(b) of the FOI Act.

DECISION

65. I vary the decision under review by finding that the matter in issue qualifies for exemption from disclosure under section 42(1)(b) of the FOI Act.
66. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

S Jefferies
Acting Assistant Commissioner

Date: 6 August 2009