

Decision and Reasons for Decision

Citation: X54 and Gladstone Regional Council [2026] QICmr 133 (29 July 2026)

Application Number: 319129

Applicant: X54

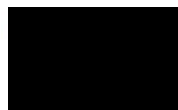
Respondent: Gladstone Regional Council

Decision Date: 29 July 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - OBJECTION TO DISCLOSURE – request for information concerning the applicant’s business operations – applicant objects to disclosure – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

DECISION

1. I affirm¹ the reviewable decision of Gladstone Regional Council (**Council**) and find that there are no grounds under the *Right to Information Act 2009* (Qld) (**RTI Act**) to refuse access to certain information.
2. This means that the information may be released to the party requesting access (**access applicant**).
3. My reasons for the decision follow.



R Moss
Principal Review Officer

Date: 29 July 2026

¹ Under section 110(1)(a) of the *Right to Information Act 2009* (Qld).

REASONS FOR DECISION

Summary

4. The access applicant applied to Council² under the RTI Act for access to certain information relating to the applicant and an individual associated with the applicant. The applicant operates a tourism business within Council's jurisdiction.
5. Council decided³ to give the access applicant full or partial access to information contained on 33 responsive pages, contrary to an objection to disclosure by the applicant.⁴ It deferred access to the information to allow the applicant to exercise its review rights.
6. The applicant applied⁵ to Office of the Information Commissioner (**OIC**) for external review of Council's decision to release information contrary to the applicant's objection. The access applicant did not seek external review of Council's decision to refuse it access to some information. That information is therefore not in issue in this review. The access applicant did, however, confirm to OIC that it continued to seek access to the information that Council had decided to release.⁶

Reviewable decision

7. The decision under review is Council's decision dated 3 November 2025.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).⁷ I have taken account of the applicant's submissions⁸ to the extent they are relevant to the issues for determination in this review.

² Application dated 27 August 2025.

³ Decision dated 3 November 2025.

⁴ Council had consulted with the applicant about disclosure pursuant to section 37 of the RTI Act: letter dated 24 October 2025.

⁵ Application received 27 November 2025.

⁶ Email on 5 December 2025.

⁷ Including the *Human Rights Act 2019* (Qld) (**HR Act**), to the extent necessary to do so. The participants in this review are not 'individuals', and only individuals have human rights under the HR Act (section 11). However, Kingham J in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33 at [90] indicated that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and to not act or make a decision that is not compatible with human rights. To the extent then that it is necessary to observe relevant rights under section 58(1) of the HR Act, I am satisfied that I have done so. This is because in observing and applying the law prescribed in the RTI Act, as I have done in this case, an RTI decision maker will be 'respecting and acting compatibly with' applicable human rights as stated in the HR Act (*XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].) In this regard, I note Bell J's observations at [573] of XYZ on the interaction between the Victorian analogues of Queensland's RTI 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'.

⁸ As contained in the applicant's external review application and in its consultation correspondence with Council during the processing of the access application.

Information in issue

9. The information in issue is contained in pages 1, 6, 12, 25, 31 and 33 in full, and pages 2–5, 7–11, 13–24, 26–30 and 32 in part (**Information in Issue**). It comprises various emails between the applicant and Council concerning the applicant's business operations in the context of seeking advice or clarification from Council about any certificates, permits or consents required by the applicant to operate its business lawfully.

Issue for determination

10. The applicant's objections to disclosure, as communicated to Council, raised public interest considerations in favour of nondisclosure of the Information in Issue.⁹
11. While Council's decision letter to the applicant gave no reasons for its decision to release the Information in Issue contrary to the applicant's objections, it can be surmised that Council rejected the applicant's public interest nondisclosure arguments and was satisfied that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.
12. The issue for determination, therefore, is whether access to the Information in Issue may be refused because its disclosure would, on balance, be contrary to the public interest.
13. Under section 87(2) of the RTI Act, the applicant bears the onus of establishing that a decision not to disclose the Information in Issue is justified, or that the Information Commissioner should give a decision adverse to the access applicant.

Contrary to the public interest

Relevant law

14. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁰ 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, or a substantial segment, of the community, as distinct from matters that concern purely private or personal interests.
15. 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.

⁹ RTI objection form provided to Council by the applicant on 28 October 2025.

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

16. 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,¹¹ together with all other relevant information, in reaching my decision. I have also applied the RTI Act's pro-disclosure bias¹² and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.¹³

Submissions

17. In advising Council of its objection to disclosure of the Information in Issue, the applicant identified the following public interest factors that it contended weighed in favour of nondisclosure of the Information in Issue:¹⁴

- disclosure could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities¹⁵
- disclosure could reasonably be expected to cause a public interest harm through disclosure of information concerning the business, professional, commercial or financial affairs of a person, and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government¹⁶
- disclosure could reasonably be expected to prejudice the business affairs of a person;¹⁷ and
- disclosure could reasonably be expected to cause a public interest harm through disclosure of information that has a commercial value to an agency or another person, and could reasonably be expected to destroy or diminish the commercial value of the information.¹⁸

18. The applicant did not elaborate on the application of these factors to the Information in Issue, other than to submit as follows:

I reject the release of this information based on it being commercial in confidence. The release of this information has real potential to create commercial damage and or loss to myself and my business by allowing a competitor to utilise such information of which I also believe may have inherent intellectual property protection.

19. In its application for external review, the applicant briefly reiterated that it regarded the Information in Issue as 'commercial in confidence' information. It did not provide any additional submissions during the review in response to OIC's preliminary view¹⁹ that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.

¹¹ I have considered each of 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.

¹² Section 44 of the RTI Act.

¹³ Section 47(2)(a) of the RTI Act.

¹⁴ RTI objection form: see footnote 9 above.

¹⁵ Schedule 4, part 3, item 2 of the RTI Act.

¹⁶ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁷ Schedule 4, part 3, item 15 of the RTI Act.

¹⁸ Schedule 4, part 4, section 7(1)(b) of the RTI Act.

¹⁹ Communicated to the applicant in a letter dated 4 June 2026.

Findings

20. In order for the nondisclosure or harm factors relied upon by the applicant to apply, there must be reasonable grounds for expecting that the relevant prejudicial or adverse effect will occur as a result of disclosure of the specific Information in Issue.²⁰
21. Having reviewed the Information in Issue, I am unable to identify reasonable grounds for expecting that its disclosure could prejudice or have an adverse effect on the applicant's business or commercial affairs. The emails exchanged between the applicant and Council merely relate to checking with Council that the applicant was operating lawfully and that no additional permits, consent or licences were required from Council. While I acknowledge that some of the Information in Issue describes aspects of the applicant's operations in this context (such as, for example, the type of vessel used by the applicant), I am satisfied that such information is not commercially sensitive but is, in fact, publicly observable by any interested member of the community. Given that, I am not satisfied that any of the Information in Issue could properly be regarded as secret or 'commercial-in-confidence' within the meaning of that term.
22. While the applicant has contended that release of the Information in Issue will cause it commercial loss or damage, it has not explained how this could reasonably be expected to occur. I am unable, for example, to identify how a competitor could utilise the Information in Issue to cause loss or harm to the applicant given the routine and publicly observable nature of the information.²¹
23. Nor am I satisfied that disclosure of the Information in Issue could reasonably be expected to prejudice the future supply of information of this type to government. I do not consider that there are reasonable grounds for expecting that disclosure would cause a substantial number of businesses from communicating similar, non-sensitive business information to Council in the future for the purpose of seeking confirmation from Council that they are operating lawfully.
24. As regards whether any of the Information in Issue could reasonably be regarded as having a commercial value, this phrase has a specific meaning in the RTI Act as follows:

Information will have a commercial value if:

²⁰ Each of the public interest factors contains the phrase 'could reasonably be expected to'. The term requires that the expectation must be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

²¹ While not strictly relevant to the nondisclosure factors relied upon by the applicant, I would simply note for completeness that, for the same reason, I do not accept the applicant's contention that the Information in Issue is capable of being regarded as the applicant's intellectual property such as to attract the associated legal protections.

- *it is valuable for the purposes of carrying on the commercial activity in which that agency or other person is engaged (i.e. because it is important or essential to the profitability or viability of a continuing business operation, or a pending "one-off" commercial transaction); or*
- *a genuine arms-length buyer is prepared to pay to obtain that information from that agency or person, such that the market value of the information would be destroyed or diminished if it could be obtained from a government agency which has possession of it.*²²

25. Applying those meanings to the Information in Issue, I am not satisfied that any of the information can be regarded as 'valuable' for the purposes of carrying on the business, or that a genuine arms-length buyer would be prepared to pay to obtain access to it. But even if any of the information could be shown to have a commercial value, it is still necessary for the applicant to show that its disclosure could reasonably be expected to destroy or diminish that commercial value. Given that the information that refers to the way in which the applicant operates its business is of a routine nature and is publicly observable, I am not satisfied that its disclosure under the RTI Act could reasonably be expected to destroy or diminish any commercial value that the information might have.
26. For these reasons, I am not satisfied that any of the public interest factors favouring nondisclosure that are relied upon by the applicant apply to the Information in Issue.
27. In terms of public interest factors favouring disclosure, there is a general public interest in the community accessing government-held information, and in the accountability and transparency of Council regarding its dealings with businesses that operate within its jurisdiction and in ensuring that such businesses are operating lawfully.²³ I consider that disclosure of the Information in Issue would enhance these public interest factors to a certain extent. I therefore afford these factors low to moderate weight when balancing the public interest.
28. In summary, and for the reasons explained above, I am not satisfied that the various public interest nondisclosure factors relied upon by the applicant apply to the Information in Issue. I afford low to moderate weight to the public interest factors favouring disclosure of the Information in Issue. It follows, then, that after applying the public interest balancing test, I am not satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest. Access therefore may not be refused on that basis.

Conclusion

29. The above are the reasons for my decision set out in paragraph 1 above.

²² *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at [54]–[55]), considering section 45(1), a similar exemption which appeared in the FOI Act. The information must have a commercial value at the time that the decision is made; information which was once valuable may become aged or out-of-date such that it has no remaining commercial value: [56].

²³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

30. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

--End--