



## Decision and Reasons for Decision

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**Citation:** *Cook Shire Ratepayers and Residents Association Inc and Cook Shire Council* [2020] QICmr 38 (30 June 2020)

**Application Number:** 314734

**Applicant:** Cook Shire Ratepayers and Residents Association Inc

**Respondent:** Cook Shire Council

**Decision Date:** 30 June 2020

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - documents relating to the Cameron Creek Rural Electrification Scheme - whether documents subject to legal professional privilege - 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 - BREACH OF CONFIDENCE - agreement between agency and third party relating to the Cameron Creek Rural Electrification Scheme - whether disclosure of the document would found an action for breach of confidence - sections 47(3)(a) and 48 and schedule 3, section 8 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - documents relating to the Cameron Creek Rural Electrification Scheme - accountability - reason or background for government decision - business or financial affairs - protection of individual's right to privacy - deliberative process of government - local government closed meeting - personal information - 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)

## REASONS FOR DECISION

### Summary

1. Cook Shire Ratepayers and Residents Association Inc (**CSRRA**) applied<sup>1</sup> under the *Right to Information Act 2009* (Qld) (**RTI Act**) to Cook Shire Council (**Council**) for access to agreements, including documents related to agreements, regarding the Cameron Creek Rural Electrification Scheme (**Scheme**) and Council's original map of the benefitted area for the Scheme.
2. Council decided<sup>2</sup> to release the original map of the benefitted area in full, but otherwise refused access to documents<sup>3</sup> on the ground that they comprised exempt information<sup>4</sup> on the basis the documents were subject to legal professional privilege or disclosure would found an action for breach of confidence.
3. CSRRA applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.
4. For the reasons set out below, I find that the information remaining in issue may be refused on the following grounds:
  - 6 pages and parts of 4 pages are exempt information, as they are subject to legal professional privilege
  - 3 pages are exempt information, as disclosure would found an action for breach of confidence; and
  - disclosure of 1 page and parts of 5 pages would, on balance, be contrary to the public interest.

### Background

5. Council has explained the Scheme as follows:<sup>6</sup>

*The overall plan to construct a "backbone" high voltage power line along Cameron Creek Road was to enable occupiers of the land within the map marked "Benefitted Area, Rural Electrification Cameron Creek Road", to be able to obtain a supply of electricity that otherwise would have been prohibitive. Council funded the construction of a backbone line borrowing \$200,882 from Queensland Treasury Corporation. The annual debt servicing charges are apportioned equally on all properties within the benefitted area, as per the annual implementation plan. These charges will continue to apply irrespective of whether the ratepayer is accessing the service, and irrespective of whether the land is at some point reconfigured.*

6. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

### Reviewable decision

7. The decision under review is Council's decision dated 23 July 2019.

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<sup>1</sup> Access application dated 4 June 2019.

<sup>2</sup> Decision dated 23 July 2019.

<sup>3</sup> Council's decision did not specify how many pages had been located.

<sup>4</sup> Under sections 47(3)(a) and 48 of the RTI Act.

<sup>5</sup> External review application dated 24 July 2019.

<sup>6</sup> *Cameron Creek Rural Electrification Scheme Implementation and Overall Plan*, available at: <http://www.cook.qld.gov.au/council/rates-fees-and-charges/cameron-creek-rural-electrification-scheme/cameron-creek-rural-electrification-scheme-implementation-and-overall-plan.pdf/view> (accessed 29 June 2020).

## Evidence considered

8. In reaching my decision, I have had regard to the submissions, evidence, legislation and other material referred to throughout these reasons (including footnotes and Appendix).
9. I have also had regard to the *Human Rights Act 2019 (Qld) (HR Act)*,<sup>7</sup> 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 RTI Act, be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act.<sup>8</sup> I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human 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 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.*'<sup>9</sup>

## Information in issue

10. Following a request from OIC, Council provided<sup>10</sup> OIC with copies of its original map of the benefitted area for the Scheme, which had been released to the CSRRA in accordance with Council's decision, and a further 18 pages, being the pages to which access was refused in Council's decision.<sup>11</sup>
11. During the external review, Council agreed to release a further 3 pages<sup>12</sup> and parts of 5 pages<sup>13</sup> to the CSRRA.
12. Accordingly, the information remaining for consideration is contained within 10 pages<sup>14</sup> and parts of 5 pages.<sup>15</sup>

## Issues for determination

13. The issues for determination are:
  - **Legal professional privilege** – whether access to information may be refused on the ground that it is subject to legal professional privilege and is therefore exempt information.
  - **Breach of confidence** – whether access to information may be refused on the ground that disclosure would found an action for breach of confidence and is therefore exempt information.
  - **Contrary to public interest** – whether access to information may be refused on the ground that disclosure would, on balance, be contrary to the public interest.

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<sup>7</sup> Which came into force on 1 January 2020.

<sup>8</sup> 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].

<sup>9</sup> *XYZ* at [573].

<sup>10</sup> On 29 August 2019.

<sup>11</sup> For the purposes of this external review, the further 18 pages have been numbered as pages 1 to 18. As Council's original map of the benefitted area for the Scheme was released to the CSRRA in accordance with Council's decision, this page has not been included in the page numbering.

<sup>12</sup> Being pages 12 and 14-15.

<sup>13</sup> Being pages 1-4 and 13.

<sup>14</sup> Being pages 5-11 and 16-18.

<sup>15</sup> Being pages 1-4 and 13.

## Legal professional privilege

### Relevant law

14. The RTI Act gives a right to access documents of government agencies.<sup>16</sup> This right is subject to other provisions of the RTI Act, including grounds on which access may be refused. Access may be refused to information, to the extent the information comprises exempt information.<sup>17</sup> 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.<sup>18</sup>
15. Legal professional privilege 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).<sup>19</sup>
16. Legal professional privilege can extend to copies of non-privileged documents where they are attached to privileged communications,<sup>20</sup> and to internal client communications repeating legal advice, whether verbatim or in substance, or gathering information necessary in order to seek legal advice.<sup>21</sup>
17. When the requirements at paragraph 15 above are met, legal professional privilege is established. However, qualifications and exceptions to privilege<sup>22</sup> 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

18. I have considered information contained within 6 pages<sup>23</sup> and parts of 4 pages<sup>24</sup> (**LPP Information**). I am limited by the operation of the RTI Act<sup>25</sup> in the extent to which I can describe this information, as to describe it in detail will necessarily result in disclosure of that which is sought. For this reason, my explanation below is necessarily circumspect.
19. I am satisfied that:
  - the LPP Information comprises correspondence received by Council from an external legal advisor and discussion of and/or references to that advice within Council documents
  - the advice was received from a suitably qualified and independent legal advisor
  - the communication was for the dominant purpose of providing legal advice; and
  - there is no evidence indicating that the advice was not confidential or that Council has otherwise waived privilege.

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<sup>16</sup> Section 23 of the RTI Act.

<sup>17</sup> Section 47(3)(a) of the RTI Act.

<sup>18</sup> Schedule 3, section 7 of the RTI Act.

<sup>19</sup> *Esso 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.

<sup>20</sup> *Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501.

<sup>21</sup> *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).

<sup>22</sup> Such as waiver or improper purpose.

<sup>23</sup> Pages 6 to 11 of the documents located by Council.

<sup>24</sup> Pages 2-4 and 13 of the documents located by Council.

<sup>25</sup> Specifically, section 108(1) of the RTI Act.

20. In response to a preliminary view setting out the above,<sup>26</sup> the CSRRA stated<sup>27</sup> that, as OIC cannot disclose the content of the LPP Information to the CSRRA, this 'prevents [the CSRRA] from making any relevant comment' in relation to this information. While I acknowledge this constraint, as set out at paragraph 18 above, the RTI Act prevents me from providing the CSRRA with any further detail about the LPP Information.
21. Based on my findings of fact set out at paragraph 19 above, I find that the LPP Information is subject to legal professional privilege and is therefore exempt information under schedule 3, section 7 of the RTI Act. Accordingly, access to the LPP Information may be refused under section 47(3)(a) of the RTI Act.

## Breach of confidence

### Relevant law

22. Another category of exempt information is information the disclosure of which would found an action for breach of confidence.<sup>28</sup>
23. An action for breach of confidence can be an action for an equitable breach of confidence or a breach of a contractual obligation of confidence.<sup>29</sup> An action for breach of a contractual confidentiality requires there to be a contract in place. If the agreement is not a contract or the confidentiality clause is not legally binding (which may be the case if the parties are still negotiating or the clause has expired) there can be no breach of contractual confidence.<sup>30</sup> It is also necessary to consider if there has been an exchange of consideration between the parties in relation to the contract. In the absence of some form of consideration, then a confidentiality clause will not be capable of supporting an obligation of confidence.<sup>31</sup>

### Findings

24. I have reviewed information contained within 3 pages<sup>32</sup> (**BOC Information**).
25. As with the LPP Information, I am limited by the operation of the RTI Act<sup>33</sup> in the extent to which I can describe this information. However, I can state that I am satisfied that:
- there is a legally binding contract which has not expired
  - the contract includes a confidentiality clause; and
  - an exchange of consideration has taken place between the parties in relation to the contract.
26. The CSRRA's statement about limited ability to make comment at paragraph 20 above was also made in relation to the BOC Information. Again, I acknowledge the constraint, however, the RTI Act prevents me from providing the CSRRA with any further detail about the BOC Information.

<sup>26</sup> Preliminary view letter to the CSRRA dated 28 February 2020.

<sup>27</sup> Submission to OIC dated 12 March 2020.

<sup>28</sup> Section 48 and schedule 3, section 8(1) of the RTI Act.

<sup>29</sup> *Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66 at [66].

<sup>30</sup> *Palmer and Townsville City Council* [2019] QICmr 43 (3 October 2019), referring to *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (**B and BNRHA**).

<sup>31</sup> *B and BNRHA* at [45]. *Adani Mining Pty Ltd v Information Commissioner & Ors* [2020] QCATA 52 at [23] states that a form of consideration is one party providing information in consideration for another party's promise to keep that information confidential.

<sup>32</sup> Pages 16 to 18 of the documents located by Council.

<sup>33</sup> Specifically, section 108(1) of the RTI Act.

27. Given the circumstances set out at paragraph 25 above, I find that the BOC Information comprises exempt information under schedule 3, section 8 of the RTI Act. Accordingly, access to the BOC Information may be refused under section 47(3)(a) of the RTI Act.

28. The CSRRA submits:<sup>34</sup>

*We also submit the factors favouring nondisclosure, in this instance, disclosing the personal information of certain ratepayers, causing public harm and prejudicing their right to privacy is based on assumptions that this could be the case. It is our understanding, it is Council who doesn't want the information released in this matter, not the ratepayers given exemptions. Council has a history of requiring people to sign settlement deeds with confidentiality clauses to protect Council interests only. The other party is required to sign to get the payout and this payout is the driving factor for the other parties, not the need for non disclosure in the public domain.*

29. While it is unclear whether the CSRRA is making the above submission in relation to the BOC Information as well as the CTPI Information, when information is found to be exempt information, 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.<sup>35</sup> Further, the Information Commissioner does not have the power to direct that access be given to information that is found to be exempt.<sup>36</sup>

30. If my above findings of fact regarding the BOC Information are incorrect, I am satisfied that the BOC Information would, on balance, be contrary to the public interest to disclose for the same reasons as set out below in relation to the CTPI Information.

### **Contrary to public interest**

#### **Relevant law**

31. Access to information may also be refused if its disclosure would, on balance, be contrary to the public interest.<sup>37</sup> The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and explains that a decision-maker must take specific steps in reaching a decision, as follows:<sup>38</sup>

- identify any irrelevant factors and disregard them<sup>39</sup>
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

#### **Findings**

32. I have carefully considered the 1 page<sup>40</sup> and parts of 5 pages<sup>41</sup> (**CTPI Information**) which is contained within 'Ordinary Council Meeting Agenda' for closed session meetings held

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<sup>34</sup> Submission to OIC dated 2 May 2020.

<sup>35</sup> Section 48(2) of the RTI Act.

<sup>36</sup> Section 118(2) of the RTI Act.

<sup>37</sup> Sections 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.

<sup>38</sup> Section 49(3) of the RTI Act.

<sup>39</sup> In my view, no irrelevant factors arise in this case.

<sup>40</sup> Page 5 of the documents located by Council.

<sup>41</sup> Pages 1-4 and 13 of the documents located by Council.

on 21 August 2018 and 18 September 2018. My description of the CTPI Information is circumspect given limitations imposed by the RTI Act.<sup>42</sup>

### Factors favouring disclosure

33. Factors favouring disclosure arise where disclosure could reasonably be expected to:
- enhance accountability and transparency<sup>43</sup>
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;<sup>44</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>45</sup>
34. The CSRRA submits:<sup>46</sup>
- it has been approached by 10 ratepayers, who collectively own eight parcels of land within the benefitted area and represents approximately 50% of the ratepayers within the benefitted area
  - Council has provided the CSRRA with conflicting information about the number of parcels of land within the benefitted area, citing both 19 and 23 lots
  - Council has failed to proportionally reduce the levies applied to each parcel of land to take into account the greater number of parcels now within the benefitted area
  - there is a lack of transparency about the parcels of land which are now exempt
  - Council's current map of the benefitted area is not accurate
  - none of the ten ratepayers who have contacted the CSRRA have been approached by Council; and
  - the CTPI Information should be released following the annual budget being decided and that Council should be transparent about its reasons for making decisions.
35. The CSRRA further submits<sup>47</sup> that the Scheme *'is one which has an impact on all ratepayers of Cook Shire Council, not only the affected landholders'* and that the CSRRA has concerns relating to *'Council's dealings with members in our community; in this case a demonstrated inconsistency.'*
36. I accept that disclosure of the CTPI Information could reasonably be expected to:
- enhance Council's accountability and transparency in relation to the special charge relating to the Scheme (**Special Charge**)
  - inform the community of Council's operations in relation to the Scheme
  - reveal reasons for Council's decisions about the Scheme and Special Charge; and
  - provide background or contextual information which informed decisions made about the Scheme and Special Charge.
37. However, the Scheme and Special Charge only relate to a limited number of ratepayers within the benefitted area of the Scheme and Council has been in contact with these ratepayers directly about the Scheme and Special Charge. While the CSRRA contends<sup>48</sup> that the ratepayers who have contacted the CSRRA have not been approached by

<sup>42</sup> Specifically, section 108(1) of the RTI Act.

<sup>43</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>44</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>45</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>46</sup> Submission to OIC dated 12 March 2020.

<sup>47</sup> Submission to OIC dated 2 May 2020.

<sup>48</sup> Submission to OIC dated 12 March 2020.

Council, the information which has been disclosed in response to the access application, information which is publicly available about the Scheme on Council's website,<sup>49</sup> and information provided to OIC by the CSRRA<sup>50</sup> indicates that ratepayers within the benefitted area were required to provide confirmation of their acceptance of the proposed Special Charge for the term of the loan and that they are notified of the amount of the Special Charge levied in each rates notice issued by Council. In addition to this, the information which has been released by Council includes details of Council's decisions about exemptions granted in relation to the Special Charge following Council's review of the Special Charge.

38. Based on the above, I consider that the weight afforded to factors favouring disclosure set out at paragraph 33 above is reduced to some degree. I afford these factors favouring disclosure moderate weight.
39. In relation to the last dot point at paragraph 34 above, the CSRRA clarified<sup>51</sup> that this submission was in relation to the 2018/2019 financial year and that *'after all the confidential meetings etc were concluded and decisions made, Council should enhance both accountability and transparency by revealing the reason for the decision and any background or contextual information that informed the decision.'*
40. I accept the CSRRA's submission about the importance of transparency in government decision making and provision of contextual information wherever possible. I have afforded moderate weight to those factors favouring disclosure given aspects of this review which discount those factors to some degree.
41. The CSRRA has concerns<sup>52</sup> about *'Council's expenditure of public funds; in this instance legal correspondences, agreements, rates and levies.'* This raises the factor favouring disclosure where disclosure could reasonably be expected to ensure effective oversight of expenditure of public funds.<sup>53</sup> The information disclosed to the CSRRA includes:
  - information about the overall costs of the Scheme, including the Special Charges levied as at August 2018
  - the revised Special Charges levied as at August 2018 excluding the two proposed ex gratia payments
  - the estimated overall cost of the Scheme; and
  - the charges levied on each ratepayer per year.
42. The specific amount of each of the two proposed ex gratia payments has not been disclosed. In these circumstances, while disclosure of the CTPI Information would further enhance oversight of Council's expenditure of public funds in relation to that aspect, I am satisfied that the information which has been disclosed substantially reduces the weight I must afford this factor favouring disclosure. I consider it attracts low weight.
43. The CSRRA also has concerns<sup>54</sup> relating to *'Council's fair treatment of individuals; in this instance exemption's given to some still on the scheme and listed on Council's current benefitted map.'* If disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies<sup>55</sup> it is relevant to consider this public interest factor favouring disclosure.

<sup>49</sup> See <http://www.cook.qld.gov.au/council/rates-fees-and-charges/cameron-creek-rural-electrification-scheme/cameron-creek-rural-electrification-scheme-implementation-and-overall-plan.pdf/view> (accessed 29 June 2020).

<sup>50</sup> Rates notices issued to a ratepayer within the Scheme benefit area enclosed with the submission to OIC dated 12 March 2020.

<sup>51</sup> Submission to OIC dated 2 May 2020.

<sup>52</sup> Submission to OIC dated 2 May 2020.

<sup>53</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>54</sup> Submission to OIC dated 2 May 2020.

<sup>55</sup> Schedule 4, part 2, item 10 of the RTI Act.



However, this public interest factor does not require a decision maker to ensure that an applicant is provided with sufficient information to enable that applicant to be *subjectively* satisfied that he, she or another individual received fair treatment.

44. I find that based on the information released to the CSRRA, including the information released on external review, that CSRRA, and therefore the ratepayers who have approached the CSRRA, have been afforded procedural fairness in this matter. CSRRA has been provided with information about why Council decided to grant exemptions to particular ratepayers within the benefitted area of the Scheme. I consider that the release of the CTPI Information may further advance the fair treatment of the CSRRA to a modest extent and by extension the ratepayers who have approached the CSRRA, but given the information already released, I am satisfied that the weight to be afforded to this factor favouring disclosure is reduced and attracts moderate weight.
45. The CSRRA submits<sup>56</sup> there are *'Deficiencies in Council administration, including negligence and improper behaviour; in this instance a failure to correct errors.'*; *'Council's fair treatment of individuals; in this instance exemption's given to some still on the scheme and listed on Council's current benefitted map.'*; and *'Council's failure to advise on decisions which are demonstrably incorrect, misleading and out of date.'*
46. It is not my role to investigate Council's management of the Scheme and Special Charge. My role is limited to undertaking merits review of Council's decision on access to information under the RTI Act. However, the RTI Act recognises that factors favouring disclosure arise where disclosure could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official<sup>57</sup>
  - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;<sup>58</sup> and
  - reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>59</sup>
47. The information Council has released to the CSRRA during this external review includes:
- background/contextual information and reasons for Council's decisions about exemptions granted and ex gratia payments made in relation to the Special Charge; and
  - information about the overall cost of the Scheme, the amount of the charges levied on each ratepayer and the amount of the proposed ex gratia payments.
48. I am satisfied that the CSRRA has been provided with sufficient information to allow or assist inquiry into possible deficiencies in the conduct or administration of Council or an official in relation to the implementing and managing of the Scheme and Special Charge. I have carefully reviewed the CTPI Information and I am satisfied that these three public interest factors do not apply. However, if I am wrong and they do apply, I consider that they would warrant only low weight.

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<sup>56</sup> Submission to OIC dated 2 May 2020.

<sup>57</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>58</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>59</sup> Schedule 4, part 2, item 12 of the RTI Act.

## Factors favouring nondisclosure

49. The RTI Act recognises that disclosing an individual's personal information to someone else could reasonably be expected to cause a public interest harm<sup>60</sup> and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>61</sup>
50. Some of the CTPI Information relates to a small number of lots within the Scheme benefitted area and contains the personal information<sup>62</sup> of the owners of those lots. I consider that disclosure of this information would disclose the personal information of those lot owners and thereby prejudice the protection of their right to privacy.
51. The CSRRA questions how disclosing the CTPI Information will cause a public interest harm in relation to the right to privacy of individuals, stating that it is a small community, and everyone knows the names of the owners of the parcels of land which have been given an exemption.<sup>63</sup> The CSRRA further submits.<sup>64</sup>

*... the factors favouring nondisclosure, in this instance, disclosing the personal information of certain ratepayers, causing public harm and prejudicing their right to privacy is based on assumptions that this could be the case. It is our understanding, it is Council who doesn't want the information released in this matter, not the ratepayers given exemptions. Council has a history of requiring people to sign settlement deeds with confidentiality clauses to protect Council interests only. The other party is required to sign to get the payout and this payout is the driving factor for the other parties, not the need for non disclosure in the public domain.*

52. While I acknowledge that the information sought, including the CTPI Information, relates to ratepayers within a small community who know each other and may be aware of exemptions given to a number of those ratepayers, I am satisfied that disclosing the CTPI Information would still disclose the personal information of certain ratepayers (by expressly disclosing that information, or by allowing that information to be deduced from disclosed information), thereby causing a public interest harm, and prejudice the right to privacy of those ratepayers. I afford these two factors favouring nondisclosure significant weight.
53. The CTPI Information also includes discussion about various issues arising in relation to the Special Charge, some of which are ongoing and require further discussion at future Council budget meetings. This raises factors favouring nondisclosure relating to Council's business and/or financial affairs<sup>65</sup> and Council's deliberative processes.<sup>66</sup> Council needs to be able to freely discuss such matters without information being prematurely released publicly, particularly in circumstances where deliberations are ongoing and form part of Council's budgetary processes. I afford these factors favouring nondisclosure moderate weight.
54. Council submits that disclosure of the CTPI Information is prohibited by section 275(1) of the *Local Government Regulation 2012 (LGR)*. I have carefully considered section 275(1) of the LGR and it does not specifically prohibit disclosure of information.<sup>67</sup> Rather, it provides a mechanism for Council to resolve to hold a closed meeting when Council is

<sup>60</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>61</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>62</sup> 'Personal information' 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' – see definition in schedule 5 of the RTI Act and section 12 of the IP Act.

<sup>63</sup> Submission to OIC dated 12 March 2020.

<sup>64</sup> Submission to OIC dated 2 May 2020.

<sup>65</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>66</sup> Schedule 4, part 3, item 20 and part 4, section 4 of the RTI Act.

<sup>67</sup> And therefore does not give rise to the factor favouring nondisclosure in schedule 4, part 3, item 22 of the RTI Act.

satisfied that it would, on balance, be contrary to the public interest to discuss the matter in an open meeting. In the circumstances here, Council resolved not to discuss matters pertaining to the Special Charge in an open meeting on the basis that it dealt with rating concessions.<sup>68</sup> I consider that this raises a factor favouring nondisclosure relating to closed meeting discussions of Council.

55. The CSRRA submits:<sup>69</sup>

*... Council has a repeated history of stalling, denying transparency, an unwillingness to provide information to ratepayers, and will make use of "processes" to do so, including their submissions that [the CTPI Information] is prohibited by sections 275(1) of the Local Government Regulation 2012. Closed meetings provide another mechanism for Council to withhold information and explanations to their ratepayers...*

56. While I acknowledge the CSRRA's submission, Parliament has determined that local governments should have the ability to discuss certain matters, including ratings concessions, within closed meetings. In the circumstances of this matter, I afford moderate weight to this factor favouring nondisclosure. On the other hand, I have also afforded moderate weight to factors favouring disclosure relating to enhancing accountability and transparency or revealing the reason for a government decision and any background or contextual information that informed the decision as discussed at paragraphs 33 to 40 above.

### **Balancing the factors**

57. I have considered the pro-disclosure bias in deciding access to information.<sup>70</sup>

58. For the reasons set out above I afford:

- moderate weight to the public interest factors in enhancing the government's accountability, informing the community of government operations and revealing the reasons for a government decision or any background or contextual information that informed the decision; and
- low weight to the public interest factor relating to effective oversight of expenditure of public funds.

59. Balanced against these factors favouring disclosure of the CTPI Information are the following factors favouring nondisclosure:

- the CTPI Information contains the personal information of other individuals and its disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy and cause a public interest harm, to which I afford significant weight; and
- disclosure of the CTPI Information could reasonably be expected to prejudice Council's business and/or financial affairs, Council's deliberative processes and the process of enabling Council to discuss ratings concessions within a closed meeting in accordance with the LGR, to which I afford moderate weight.

60. Having balanced the relevant factors in this case, I consider the nondisclosure factors outweigh the disclosure factors. Accordingly, I find that access to the CTPI Information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

<sup>68</sup> As detailed in the Ordinary Council Meeting Minutes dated 21 August 2018 and 18 September 2018.

<sup>69</sup> Submission to OIC dated 2 May 2020.

<sup>70</sup> Section 44 of the RTI Act.

## DECISION

61. I vary Council's decision by finding that:

- 6 pages and parts of 4 pages are exempt information, as they are subject to legal professional privilege
- 3 pages are exempt information, as disclosure would found an action for breach of confidence; and
- disclosure of 1 page and parts of 5 pages would, on balance, be contrary to the public interest.

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

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Louisa Lynch  
**Right to Information Commissioner**

**Date: 30 June 2020**

## APPENDIX

### Significant procedural steps

Date	Event
24 July 2019	OIC received the applicant's application for external review.
30 July 2019	OIC notified Council and the applicant that the external review application had been received and requested procedural documents from Council.
1 August 2019	OIC received the procedural documents from Council.
15 August 2019	OIC notified Council and the applicant that the external review had been accepted and requested a copy of the documents located from Council.
29 August 2019	OIC received the requested documents from Council.
1 November 2019	OIC conveyed a preliminary view to Council.
28 November 2019	OIC received a submission from Council.
28 February 2020	OIC conveyed a further preliminary view to Council OIC conveyed a preliminary view to the applicant.
12 March 2020	OIC received a submission from the applicant.
18 March 2020	Council advised OIC that it accepted OIC's further preliminary view.
9 April 2020	OIC requested Council release information to the applicant in accordance with Council's acceptance of OIC's further preliminary view. OIC wrote to the applicant confirming OIC's preliminary view.
21 April 2020	OIC received notification from the applicant that it had received the information released by Council.
2 May 2020	OIC received a submission from the applicant.