



## **Decision and Reasons for Decision**

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**Application Number:** 310582

**Applicant:** Thomas

**Respondent:** Cook Shire Council

**Decision Date:** 25 May 2012

**Catchwords:** **RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – applicant seeking information regarding work undertaken on Marton Fire Trails – whether disclosure would, on balance, be contrary to public interest – section 47(3)(b) and section 49 of the *Right to Information Act 2009* (Qld)**

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## REASONS FOR DECISION

### Summary

1. The Applicant seeks access<sup>1</sup> to all correspondence received by Cook Shire Council (**Council**) since 1 July 2010 regarding work undertaken on the Marton Fire Trails.
2. Council identified information relevant to the application (**Relevant Information**)<sup>2</sup> and consulted with the provider/s of the Relevant Information who object to release.
3. Council refused<sup>3</sup> access to the Relevant Information on the basis that disclosure could reasonably be expected to result in a serious act of harassment or intimidation.<sup>4</sup>
4. The Applicant sought external review of Council's decision.
5. After carefully considering all of the information before me,<sup>5</sup> I am satisfied that Council is entitled to refuse access to the Relevant Information on the basis that its disclosure would, on balance, be contrary to public interest.

### Significant procedural steps

6. Significant procedural steps relating to the application are set out in the Appendix.

### Reviewable decision

7. The decision under review is Council's Internal Review Decision dated 22 February 2011.

### Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching my decision is disclosed in these reasons (including footnotes and Appendix).

### Relevant law

9. Under section 23 of the *Right to Information Act 2009 (RTI Act)*, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access.<sup>6</sup>

### Contrary to public interest

10. An agency may refuse access to information where disclosure of the information would, on balance, be contrary to public interest.<sup>7</sup>
11. The term 'public interest' is not defined in the RTI Act. Instead the RTI Act recognises that many factors can be relevant to the concept of the public interest. 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 notion of the public interest is usually treated as separate from matters of purely private or personal interest.

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<sup>1</sup> Significant procedural steps relating to the application are set out in the Appendix.

<sup>2</sup> Council originally identified 16 responsive pages. This was later confirmed to be 15 pages.

<sup>3</sup> By decision dated 11 January 2011.

<sup>4</sup> Pursuant to sections 47(3)(a) and 48 schedule 3, section 10(1)(d) of the *Right to Information Act 2009 (RTI Act)*. Council upheld its initial decision on internal review. See Internal Review Decision dated 22 February 2011.

<sup>5</sup> Including relevant submissions made by the Applicant, Council and the information provider/s.

<sup>6</sup> As set out in section 47(3) of the RTI Act.

<sup>7</sup> Pursuant to sections 47(3)(b) and 49 of the RTI Act.

12. In determining whether disclosure of the Relevant Information would, on balance, be contrary to public interest, I must:
- identify and disregard irrelevant factors
  - identify factors favouring disclosure of the information in the public interest
  - identify factors favouring nondisclosure of the information in the public interest
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information would, on balance, be contrary to public interest.

#### **Irrelevant factors**

13. I am satisfied that no irrelevant factors apply.

#### **Factors favouring disclosure and nondisclosure in the public interest**

14. After carefully considering all of the information before me, I am satisfied that the public interest factors favouring disclosure include that:
- disclosure of the Relevant Information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability;<sup>8</sup> and
  - some of the Relevant Information comprises the Applicant's personal information.<sup>9</sup>
15. After carefully considering all of the information before me, I am satisfied that the public interest factors favouring nondisclosure include that disclosure of the Relevant Information could reasonably be expected to:
- prejudice an agency's ability to obtain confidential information;<sup>10</sup> and
  - prejudice an individual's right to privacy<sup>11</sup> and cause a public interest harm as it would disclose an individual's personal information.<sup>12</sup>

#### **Balancing public interest factors favouring disclosure and nondisclosure**

16. The Applicant seeks correspondence received by Council relating to erosion controls (also known as 'whoa boys') constructed on the Marton Fire Trails.<sup>13</sup>
17. I understand that Council maintains the fire trails (which are located on State land) to ensure<sup>14</sup> vehicular access to relevant areas in emergency situations.
18. Council encourages individuals to:
- provide feedback, both positive and negative, about services provided by Council; and
  - raise issues about decisions made or actions taken by Council.

<sup>8</sup> Schedule 4, Part 2, Factor 1 of the RTI Act.

<sup>9</sup> Schedule 4, Part 2, Factor 7 of the RTI Act.

<sup>10</sup> Schedule 4, Part 3, Factor 16 of the RTI Act.

<sup>11</sup> Schedule 4, Part 3, Factor 3 of the RTI Act.

<sup>12</sup> Schedule 4, Part 4, section 6(1) of the RTI Act.

<sup>13</sup> Correspondence dated 16 March 2011.

<sup>14</sup> Among other things.

19. To facilitate this process, Council:

- relies on its ability to obtain confidential information from members of the public; and
- has implemented its General Complaints Policy<sup>15</sup> which provides that a complainant's details will remain confidential, subject to any overriding statutory requirement.

20. With respect to confidentiality, I note that:

- the information provider/s confirm that the Relevant Information was provided to Council on the basis that their identity would remain confidential in accordance with Council's advice and policy;<sup>16</sup> and
- Council confirms that it received the Relevant Information on the understanding that the identity of the information provider/s would remain confidential in accordance with its policy.

21. On the basis of the matters set out above, I am satisfied that:

- there is a strong public interest in:
  - Council being able to effectively monitor and maintain relevant fire trails to ensure, amongst other things, that vehicular access is available to relevant areas in emergency situations
  - protecting Council's ability to obtain information of the type contained in the Relevant Information to assist it to provide appropriate services and effectively administer and enforce local laws for the benefit of the local community<sup>17</sup>
  - protecting an individual/s right to privacy by ensuring that their identity remains confidential in accordance with Council's General Complaints Policy
- disclosure of any part of the Relevant Information could reasonably be expected to enable the identity of the information provider/s to be ascertained, particularly given the relatively small size of the community
- disclosure of the Relevant Information leading to identification of the information provider/s could reasonably be expected to prejudice Council's ability to obtain confidential information of this type in the future; and
- these public interest factors favouring nondisclosure should be afforded significant weight in the circumstances of this external review.

22. Against this, I must weigh the public interest factors favouring disclosure including that the Relevant Information contains some personal information of the Applicant which is '*information or an opinion... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.<sup>18</sup>

23. After carefully considering the content of the Relevant Information, I am satisfied that it comprises both the personal information of the information provider/s and the Applicant.<sup>19</sup>

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<sup>15</sup> See Council's website, [www.cook.qld.gov.au](http://www.cook.qld.gov.au)

<sup>16</sup> I am unable to set out these submissions in any further detail in these reasons as to do so could reasonably be expected to allow the identity of the information provider/s to be ascertained.

<sup>17</sup> See OIC decision of *Matthews and Gold Coast City Council* (23 June 2011) at paragraphs 25 to 27.

<sup>18</sup> See section 12 of the *Information Privacy Act 2009* (Qld).

<sup>19</sup> I am constrained by the RTI Act from discussing the content of the Relevant Information in any greater detail – see section 108(3) of the RTI Act.

24. I also note the Applicant's submission that:

*...[he] understand[s] that Council must keep the complainant's identity confidential but there couldn't possibly be a reference or identification marker to the complainant in every sentence of the letter. Therefore I fail to see why I cannot be given access to the parts of the letter that would not identify the writer. If allegations are being made about me personally I feel I have the right to know what is being said and what I am supposed to have done wrong. ..."*

25. I have carefully considered this submission and the Relevant Information.

26. On the information before me, I am satisfied that:

- the Applicant's personal information is interwoven with that of others in such a way that it cannot be separated<sup>20</sup> and therefore cannot be released without also releasing the personal information of others
- Council has taken no relevant action against the Applicant, rather the only action taken by Council in relation to the Relevant Information has been its ongoing monitoring and maintenance of the Marton Fire Trails for the benefit of the local community; and
- on the basis of the matters set out above, minimal weight should be afforded to this public interest factor favouring disclosure.

27. While I acknowledge that disclosure of the Relevant Information could promote open discussion of public affairs and enhance Government accountability, I am satisfied that this factor favouring disclosure should be afforded minimal weight in the circumstances, given that the only relevant action taken by Council took place on State land and falls wholly within Council's obligation to monitor and maintain the Marton Fire Trails.<sup>21</sup>

28. In summary and on the basis of the matters set out above, I am satisfied that:

- the public interest factors favouring nondisclosure of the Relevant Information outweigh those favouring disclosure; and
- disclosure of the Relevant Information would, on balance, be contrary to public interest.

## **DECISION**

29. I vary Council's Internal Review Decision by finding that Council is entitled to refuse access to the Relevant Information on the basis that its disclosure would, on balance, be contrary to public interest under section 47(3)(b) 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).

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**Assistant Commissioner Henry**

**Date: 25 May 2012**

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<sup>20</sup> And is properly characterised as 'mutual personal information'.

<sup>21</sup> To ensure vehicular access is available to relevant areas in emergency situations for the benefit of the local community.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
24 November 2010	Council receives the Applicant's RTI application ( <b>Access Application</b> ).
11 January 2011	Council locates the relevant information ( <b>Relevant Information</b> ) and decides ( <b>Decision</b> ) to refuse access in full.
4 February 2011	The Applicant applies to Council for internal review of the Decision.
22 February 2011	Council decides ( <b>Internal Review Decision</b> ) to affirm the Decision.
21 March 2011	The Applicant applies to OIC for external review and provides a submission dated 16 March 2011 in support of his application.
29 March 2011	OIC informs Council and the Applicant that the external review application has been accepted.
1 April 2011	Council provides OIC with copies of the Relevant Information.
1 June 2011	The Applicant provides a verbal submission in support of his case.
20 January 2012	OIC conveys a written preliminary view to Council and invites Council to provide submissions in support of its case by 6 February 2012 if the view is contested.
23 January 2012	Council accepts OIC's preliminary view and provides an electronic copy of the photographs.
25 January 2012	OIC consults with the information provider/s.
25 January 2012	OIC conveys a written preliminary view to the Applicant and invites the Applicant to provide submissions in support of his case by 8 February 2012 if the view is contested.
31 January 2012	The information provider/s object/s to release of the Relevant Information, by way of verbal submission/s.
1 February 2012	OIC grants the information provider/s an extension to provide written submission/s by 15 February 2012.
6 February 2012	The Applicant accepts the preliminary view.
13 February 2012	OIC receives the information provider/s written submission.
15 February 2012	OIC clarifies information provider/s submissions by phone.
29 March 2012	OIC obtains a copy of Council's General Complaints Policy and Council provides OIC with a verbal submission in support of the claim that disclosure of the Relevant Information would, on balance, be contrary to public interest.
19 April 2012	OIC conveys a 2 <sup>nd</sup> written preliminary view to the Applicant and invites submissions in support of the Applicant's case by 4 May 2012 if the view is contested.
4 May 2012	The Applicant objects to the preliminary view and provides a submission in support of his case.