



## Decision and Reasons for Decision

---

**Citation:** *Madden and Noosa Shire Council; Third Party* [2014] QICmr 36 (26 August 2014)

**Application Number:** 311734

**Applicant:** Madden

**Respondent:** Noosa Shire Council

**Third Party:** Third Party

**Decision Date:** 26 August 2014

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to complaints made by the third party about the applicant's business operations to the local council - whether disclosure could found an action for breach of confidence - whether disclosure could reasonably be expected to enable the existence or identity of a confidential source of information to be ascertained - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - whether access to information may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld) - whether information is exempt under schedule 3, sections 8, 10(1)(b) or (d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to complaints made about the applicant's business operations to the local council - enhancing accountability of local council in dealing with complaints - personal information of complainant - impact on public willingness to make future complaints - whether disclosure of information would, on balance, be contrary to the public interest - whether access to information may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Sunshine Coast Regional Council (**Council**)<sup>1</sup> for a range of information relating to his businesses, Camel Company and Noosa Horse Riding, and related dealings with Council.
2. Council decided to release the majority of the documents it located in response to the application to the applicant. However, on the basis of objections to disclosure raised by a third party, Council refused access to certain information on the basis that it was exempt or that its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision to refuse him access to information and also raised concerns about the sufficiency of Council's searches. On external review process, Council located additional documents and following negotiations with OIC, agreed to release these documents to the applicant. As a result, the applicant agreed to resolve the sufficiency of search issues informally.
4. On external review, the objections raised by the third party required consideration of whether the information in issue was exempt on the basis that disclosure could:
  - found an action for breach of confidence<sup>2</sup>
  - reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained<sup>3</sup> and/or
  - result in a serious act of harassment or intimidation<sup>4</sup> and

whether access to the information in issue should be refused as disclosure would be contrary to the public interest.<sup>5</sup>

5. I have decided to set aside Council's decision refusing access to the information in issue. I find the information is not exempt, nor would its disclosure, on balance, be contrary to the public interest. Therefore, access to the information may not be refused under the RTI Act on those grounds. While this decision represents a departure from other decisions of the Information Commissioner concerning complaint information, this is a result of the particular facts of this case.

### Background

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

---

<sup>1</sup> On 1 January 2014, control of the documents in issue in this external review, and therefore responsibility for the conduct of this review, was transferred from Sunshine Coast Regional Council to Noosa Shire Council pursuant to the *Local Government (De-amalgamation Implementation) Regulation 2013* (Qld) and its related De-amalgamation Transfer Methodology. For ease of reference, I will simply refer to 'Council'.

<sup>2</sup> Section 47(3)(a), section 48 and schedule 3, section 8(1) of the RTI Act.

<sup>3</sup> Section 47(3)(a), section 48 and schedule 3, section 10(1)(b) of the RTI Act.

<sup>4</sup> Section 47(3)(a), section 48 and schedule 3, section 10(1)(d) of the RTI Act.

<sup>5</sup> Section 47(3)(b) and section 49 of the RTI Act.

## Reviewable decision

7. The decision under review is Council's decision dated 2 August 2013 refusing access to information:
- under section 47(3)(a) of the RTI Act on the ground that it is exempt; and, in the alternative;
  - under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

## Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).

## Information in issue

9. The third party objects to disclosure of information contained in 26 pages of correspondence between the third party, Council and other external parties (**Information in Issue**). I am prevented from describing the information in detail.<sup>6</sup> Generally speaking, the correspondence relates to the third party's complaints about the applicant's business operations and some of the actions taken by Council in response to the complaints.

## Issues for determination

10. As a result of agreement reached with the applicant and Council to informally resolve various issues throughout the external review, the issues for determination in this decision concern the objections raised by the third party to disclosure of the Information in Issue.
11. The submissions made by the third party to Council during the consultation process, and to OIC on external review, raise the following grounds for refusal of access:
- disclosure would found an action for breach of confidence<sup>7</sup>
  - disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to enforcement or administration of the law, to be ascertained<sup>8</sup>
  - disclosure could reasonably be expected to result in a serious act of harassment or intimidation<sup>9</sup>; and/or
  - disclosure of the information would, on balance, be contrary to the public interest.<sup>10</sup>
12. Under the RTI Act, an individual has a right to be given access to a document of an agency.<sup>11</sup> An agency should decide to give access to information unless giving access would, on balance, be contrary to the public interest.<sup>12</sup> There are some limitations on the right of access, including grounds for refusal of access.<sup>13</sup>

---

<sup>6</sup> Section 108(1) of the RTI Act.

<sup>7</sup> Section 47(3)(a), section 48 and schedule 3, section 8(1) of the RTI Act.

<sup>8</sup> Section 47(3)(a), section 48 and schedule 3, section 10(1)(b) of the RTI Act.

<sup>9</sup> Section 47(3)(a), section 48 and schedule 3, section 10(1)(d) of the RTI Act.

<sup>10</sup> Under section 47(3)(b) and section 49 of the RTI Act.

<sup>11</sup> Section 23 of the RTI Act.

<sup>12</sup> Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.

<sup>13</sup> Set out in section 47 of the RTI Act.

13. The relevant grounds for refusal of access in this review are whether information is exempt<sup>14</sup> or whether disclosure of information would, on balance, be contrary to the public interest.<sup>15</sup>
14. As Council no longer objects to disclosure of the Information in Issue, the third party has the onus of establishing that the Information in Issue should not be disclosed under the RTI Act.<sup>16</sup>

### **Breach of confidence**

15. Information is exempt information where its disclosure would found an action for breach of confidence.<sup>17</sup> This exemption requires consideration of whether an equitable obligation of confidence exists. The following cumulative criteria must be established to give rise to an equitable obligation of confidence:
  - a) information must be capable of being specifically identifiable as information that is secret, rather than generally available
  - b) information must have the necessary quality of confidence
  - c) circumstances of the communication must create an equitable obligation of confidence
  - d) disclosure to the applicant for access must constitute an unauthorised use of the confidential information;<sup>18</sup> and
  - e) disclosure must cause detriment to the plaintiff.<sup>19</sup>
16. Criteria c) is the key criterion, and usually the most difficult to meet.<sup>20</sup> This criteria requires that the '*recipient should be fixed with an enforceable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it.*'<sup>21</sup> Accordingly, I have considered this criteria first.

### **Criteria c)**

17. The third party submitted to Council that the Information in Issue was provided to Council about Camel Company and Noosa Horse Riding on a confidential basis.<sup>22</sup> On external review, the third party did not provide OIC with any further submissions in support of this claim.
18. To determine whether the communication of the Information in Issue has created an equitable obligation of confidence, I have considered the circumstances<sup>23</sup> surrounding the communication of the complaints made by the third party, particularly:

---

<sup>14</sup> Under section 47(3)(a) of the RTI Act. Schedule 3 of the RTI Act sets out the various categories of information which Parliament has decided are exempt from disclosure.

<sup>15</sup> Under section 47(3)(b) of the RTI Act. Schedule 4 of the RTI Act lists various public interest factors for and against disclosure.

<sup>16</sup> Section 87 of the RTI Act.

<sup>17</sup> Section 47(3)(a), section 48 and schedule 3, section 8(1) of the RTI Act.

<sup>18</sup> *TSO08G and Department of Health* [2011] QICmr 46 (**TSO08G**) at [13].

<sup>19</sup> *Commonwealth of Australia v John Fairfax & Sons Ltd* (1980) 147 CLR 39 per Mason J at 51. This requirement has been questioned by two State appellate court decisions *NP Generations Pty Ltd v Fenely* (2001) 80 SASR 151, per Debelle J at 580 and *National Roads and Motorists Association Ltd v Geeson* (2001) 40 ACSR 1. However, the judgment of Mason J in *Commonwealth of Australia v John Fairfax & Sons Ltd* is that of a single judge of the High Court and is therefore binding on the Information Commissioner. See also *B and Brisbane Regional Health Authority* (1994) 1 QAR 279 (**B and BNRHA**) at [109].

<sup>20</sup> *B and BNRHA* at [76].

<sup>21</sup> *B and BNRHA* at [76].

<sup>22</sup> This submission was made by the third party in an email to Council dated 24 June 2013.

<sup>23</sup> The relevant circumstances to consider include, but are not limited to the nature of the relationship between the parties; the nature and sensitivity of the information; the purpose(s) for which the information was communicated; the nature and extent of any detriment to the interests of the information-supplier that would follow from an unauthorised disclosure of the information; and circumstances relating to the information's communication. See *TSO08G* at [23].

- the third party communicated their complaints/concerns to several parties external to Council<sup>24</sup>
  - there is no evidence in the third party's correspondence of a request that the complaints/communications be kept confidential
  - in its communications the third party requested that Council act on the complaints and ensure compliance with local laws; and
  - based on the information available to OIC, there is no evidence that an express assurance of confidentiality was given by Council to the third party at the time of the third party's communications.
19. Further to the issue of whether Council gave the third party an assurance of confidentiality, I have been unable to identify any Council policy or publication which deals specifically with complaints made to Council by one member of the public about another member of the public.<sup>25</sup> Accordingly, there is no clear policy statement from Council as to how it intends to deal with such matters, and certainly no indication that it intends to deal with such matters in confidence. Therefore I am of the opinion that complainants to Council in circumstances such as those which present in this matter, cannot proceed on the assumption that their complaint will be dealt with in confidence.
20. As noted in *B and BNRHA*:<sup>26</sup>
- ... when a confider purports to impart confidential information to a government agency, account must be taken of the uses to which the government agency must reasonably be expected to put that information, in order to discharge its functions. Information conveyed to a regulatory authority for instance may require an investigation to be commenced in which particulars of the confidential information must be put to relevant witnesses, and in which the confidential information may ultimately have to be exposed in a public report or perhaps in court proceedings.*
21. Council has statutory obligations<sup>27</sup> to ensure compliance with local laws when performing its regulatory function in governing commercial activities on community land. Where a matter is brought to Council's attention, it is reasonable for the confider of information to expect that Council will disclose this information in investigation of the complaint. Indeed, as noted above, it is clear from the Information in Issue that the third party expected Council to act upon their concerns.

## Findings

22. I consider the above circumstances are not consistent with establishing an equitable obligation of confidence around the communications. Particularly, given the multiple parties to which the third party communicated their concerns and the clear expectation that they be acted upon by Council. I find that the information was not communicated in such circumstances so as to import an obligation of confidence on Council, and criteria c) is not satisfied.
23. As the test for breach of confidence requires that all criterion of the test be made out it is not necessary to consider the other criteria. Where one criteria is not made out, there is no foundation for an equitable action for breach of confidence and the information will not be exempt under schedule 3, section 8 of the RTI Act.

---

<sup>24</sup> Including elected officials, other businesses, tourist organisations and other residents of the Council area.

<sup>25</sup> I have considered the Council publications about complaints, which appear to apply to administrative action complaints made to Council by external parties about Council staff and/or its contractors. See <http://www.noosa.qld.gov.au/complaints-process>.

<sup>26</sup> At [93].

<sup>27</sup> The *Local Government Act 2009* (Qld) provides for the nature and extent of the responsibilities and powers of local governments, which includes Council.

24. Accordingly, I consider that the requirements for establishing that disclosure of the Information in Issue would found an action for breach of confidence are not established in the circumstances of this case. I find that the Information in Issue is not exempt on this basis.

### **Confidential source of information**

25. Information will be exempt if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.<sup>28</sup>
26. A confidential source of information supplies information on the understanding (whether express or implied) that their existence or identity will remain confidential.<sup>29</sup>
27. As noted in the discussion of the breach of confidence exemption above, the third party provided the information to other parties external to Council thus identifying himself.
28. Further, the third party's submission to Council dated 24 June 2013 stated that '*we are aware that the subject business owners know we have complained about their illegal operations*'.
29. It is commonly the case with matters before the OIC concerning complaints to government agencies that the complainant is considered to be a confidential source and therefore, the identity of the complainant is considered to be exempt. However, I am satisfied that the facts in this particular case, namely, the third party's distribution of the complaint; including the third party's identity; to multiple parties are inconsistent with the maintenance of confidentiality. I consider, therefore, that disclosure of the Information in Issue could not be expected to reveal a confidential source of information.
30. For the reasons stated above, I consider that the information does not meet the requirements for exemption under schedule 3, 10(1)(b) of the RTI Act.

### **Serious act of harassment or intimidation**

31. Information will be exempt from disclosure if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.<sup>30</sup>
32. The RTI Act does not define '*a serious act of harassment or intimidation*'. Therefore, the terms are given their ordinary meanings.<sup>31</sup> The Information Commissioner has previously accepted<sup>32</sup> the following definitions:
- '*harass*' includes '*to trouble by repeated attacks, ... to disturb persistently; torment*'; and
  - '*intimidate*' includes '*to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear*'.

<sup>28</sup> Section 47(3)(a), section 48 and schedule 3, section 10(1)(b) of the RTI Act.

<sup>29</sup> *McEnery and Medical Board of Queensland* (1994) 1 QAR 349 at [20-22].

<sup>30</sup> Schedule 3, section 10(1)(d) of the RTI Act.

<sup>31</sup> *Sheridan & South Burnett Regional Council, Local Government Association of Queensland Inc, Dalby Regional Council and Crime and Misconduct Commission* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [188]. The decision in *Sheridan* concerned section 42(1)(ca) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as the provision considered in *Sheridan*. Therefore, the Information Commissioner's findings in that matter are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

<sup>32</sup> *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) applying *Sheridan* at [194 – 197] referring to the *Macquarie Dictionary Online* (Fourth Edition) and *Sheridan* at [200].

33. Significantly, the expected harassment or intimidation must be *serious* in nature before the exemption in schedule 3, section 10(1)(d) will apply. Relevant dictionary definitions of 'serious' include 'weighty or important',<sup>33</sup> 'giving cause for apprehension; critical',<sup>34</sup> and 'having (potentially) important, esp. undesired consequences; giving cause for concern'.<sup>35</sup> Accordingly, some degree of harassment or intimidation is likely to be tolerated before the exemption is able to be invoked.<sup>36</sup>

**Would disclosing the Information in Issue reasonably be expected to result in a person being subject to a serious act of harassment or intimidation?**

34. No, for the reasons set out below.
35. The Information Commissioner has previously indicated that a '*serious act of harassment*' is an action that '*attacks, disturbs or torments a person and that causes concern or apprehension or has undesired consequences*'. Further that '*[a]cts which induce fear or force a person into some action by inducing fear or apprehension are acts of intimidation*', and '*[a]cts of intimidation which have undesired consequences or cause concern and/or apprehension are serious acts of intimidation*'.<sup>37</sup>
36. The third party submitted<sup>38</sup> that '*for more than 12 months now I have been subject to a continued campaign of verbal abuse and antagonistic gestures by [the applicant]*'. In particular, the third party alleges that the applicant:
- was verbally abusive and made offensive gestures toward an employee of the third party in mid 2012
  - blocked the third party's path on a number of occasions while the third party was working during 2012 and 2013
  - jumped in front of the third party's business vehicle, yelled abuse and made threatening gestures towards the driver of the vehicle in 2013; and
  - has (or has instructed other persons to) engage in activities which have caused a nuisance to the third party.

***The expectation must be reasonably based and arise as a result of disclosing the Information in Issue, rather than independently or from any other circumstance***

37. Factors that might be relevant to considering whether a serious act of harassment or intimidation '*could reasonably be expected to*'<sup>39</sup> occur include, but are not limited to:<sup>40</sup>
- past conduct or a pattern of previous conduct
  - nature of the information in issue
  - nature of the relationship between the parties and/or relevant third parties; and
  - relevant contextual and/or cultural factors.
38. I have very carefully considered the third party's submissions regarding the applicant's alleged behaviour. I have also considered the Information in Issue and other documents already released to the applicant.

<sup>33</sup> Macquarie Dictionary Online (Fifth Edition).

<sup>34</sup> Macquarie Dictionary Online (Fifth Edition).

<sup>35</sup> Macquarie Dictionary Online (Fifth Edition).

<sup>36</sup> Sheridan at [187].

<sup>37</sup> Sheridan at [199 - 200].

<sup>38</sup> Submission to OIC dated 6 August 2014.

<sup>39</sup> The Right to Information Commissioner considered the meaning of the phrase 'could reasonably be expected to' in *Seven Network (Operations) Limited and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at [19].

<sup>40</sup> Sheridan at [193].

39. It is clear, on the face of both the Information in Issue and the documents already released, that the applicant and the third party are well known to one another and the relationship between them has deteriorated over the past five years. It is also evident from that material that the deterioration was caused by a long-running dispute about the operation of their respective businesses.
40. As to whether this past conduct and relationship between the parties results in a conclusion that, if an act of harassment or intimidation were to follow disclosure of the Information in Issue, it would be a **serious** act of harassment or intimidation, in my opinion there is insufficient evidence to reach such a conclusion. In any event, I consider that it is not necessary to make a finding as to the seriousness of the conduct because, even if the past conduct is considered to amount to a **serious** act, there would be no nexus between release of the Information in Issue and the actions of the parties.
41. It is clear from the information before me, including the submissions of the third party, that the relationship between the third party and the applicant has been antagonistic for some time<sup>41</sup> and the alleged past behaviour attributed to the applicant by the third party has not been triggered by disclosure of information.
42. I also note that the third party's submission to Council dated 24 June 2013 stated that *'we are aware that the subject business owners know we have complained about their illegal operations'*.
43. Accordingly, I consider that it is not reasonable to expect that disclosure of the Information in Issue would result in the third party being subjected to a serious act of harassment or intimidation.
44. Therefore, I find that the Information in Issue is not exempt pursuant to Schedule 3, section 10(1)(d) of the RTI Act.

### **Contrary to public interest**

45. The RTI Act provides that access should be given to information unless disclosure would, on balance, be contrary to the public interest.<sup>42</sup>
46. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
47. The RTI Act lists factors which may be relevant to deciding the balance of the public interest<sup>43</sup> and sets out the following steps<sup>44</sup> for a decision-maker to take in deciding where the public interest lies in relation to disclosure of information:
  - identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure

---

<sup>41</sup> The third party submitted that incidents have occurred over a period of approximately five years (since 2009).

<sup>42</sup> Section 44 and 47(3)(b) of the RTI Act.

<sup>43</sup> In schedule 4 of the RTI Act. This is not an exhaustive list and therefore, other factors not listed in the schedule may be relevant in a particular case.

<sup>44</sup> In section 49(3) of the RTI Act.



- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information, on balance, would be contrary to the public interest.

### **Assessment of public interest factors**

48. I do not consider that any irrelevant factors arise in this case.
49. I note that on external review, the third party did not provide OIC with any further submissions in support of the claim that the disclosure of the Information in Issue would be contrary to the public interest.
50. As set out above, the RTI Act adopts a pro-disclosure bias in deciding access to information.<sup>45</sup> There is a public interest in disclosing the Information in Issue as it demonstrates the actions taken by Council in response to the third party's complaints. I consider disclosing this information could reasonably be expected to enhance Council's accountability.<sup>46</sup> I attribute moderate weight to this factor in favour of disclosure.
51. I also consider that disclosing the Information in Issue could reasonably be expected to provide contextual/background information which informed Council's decisions regarding horse and camel riding operations on Noosa's north shore.<sup>47</sup> Disclosure of this information is in the public interest as it illustrates Council performing its regulatory function in governing commercial activities on community land. I attribute moderate weight to this factor in favour of disclosure.
52. I acknowledge that the Information in Issue contains the third party's personal information<sup>48</sup>; this raises a public interest factor favouring nondisclosure.<sup>49</sup> I consider the harm that could result from disclosing the third party's personal information is relatively low as the third party was corresponding with Council on behalf of the third party's business and communicated their concerns to a wide audience within Council and externally. For these same reasons, I consider the privacy interest attaching to the information is very limited.
53. I have also considered whether disclosing the information could reasonably be expected to impact on future complaints made to Council. This raises public interest factors in favour of nondisclosure; where disclosure could reasonably be expected to prejudice the flow of information to a regulatory agency or prejudice an agency's ability to obtain confidential information;<sup>50</sup> and cause a public interest harm if the information consists of information of a confidential nature that was communicated in confidence; and disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.<sup>51</sup>
54. As discussed in paragraphs [15-24], I do not consider that the circumstances of the communication of the complaints made by the third party to Council create an equitable obligation of confidence. Therefore, disclosure of the Information in Issue could not reasonably be expected to prejudice Council's ability to obtain confidential information,

---

<sup>45</sup> Section 44 of the RTI Act.

<sup>46</sup> Section 47(3)(b), section 49 and schedule 4, part 2, item 1 of the RTI Act.

<sup>47</sup> Section 47(3)(b), section 49 and schedule 4, part 2, item 11 of the RTI Act.

<sup>48</sup> *Personal information* is defined in section 12 of the *Information Privacy Act 2009* (Qld) as *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.*

<sup>49</sup> Section 47(3)(b), section 49 and schedule 4, part 4, item 6 of the RTI Act.

<sup>50</sup> Section 47(3)(b), section 49 and schedule 4, part 3, items 13 and 16 of the RTI Act.

<sup>51</sup> Section 47(3)(b), section 49 and schedule 4, part 4, section 8 of the RTI Act.

nor prejudice the supply of information by deterring the public from making complaints to Council in the future.

55. Given the broad range of services provided by Council to the community, there will always be an expectation, and indeed a statutory obligation, that Council will act upon complaints made by members of the public, regardless of the nature of the complaint. Therefore, I do not consider that these factors in favour of nondisclosure have any weight in the circumstances of this matter.
56. Having considered the factors for and against disclosure, I consider that the weight to be attributed to protecting the third party's personal information and privacy is outweighed by the public interest in enhancing Council's accountability and providing contextual/background information for its decisions relating to tourism operations in the Noosa region. Therefore, disclosure of the Information in Issue would not, on balance, be contrary to the public interest.

## **DECISION**

57. I set aside Council's decision to refuse access to the Information in Issue under sections 47(3)(a) and (b) of the RTI Act. In substitution, I find that access to the Information in Issue may not be refused on those grounds.
58. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

---

**Assistant Information Commissioner Corby**

**Date: 26 August 2014**

**APPENDIX**

**Significant procedural steps**

Date	Event
9 May 2013	Council received the access application.
2 August 2013	Council decided to release 1404 pages in full; refuse access to 417 pages on the basis the information was exempt under schedule 3, section 7 of the RTI Act; and refuse access to 76 pages on the basis that the information was exempt under schedule 3, section 10(1)(b) of the RTI Act.
27 August 2013	The applicant applied to OIC for external review.
6 September 2013	OIC informed Council and the applicant that the application for external review had been accepted.
16 September 2013	OIC received a copy of the Information in Issue from Council.
11 November 2013	OIC clarified the applicant's sufficiency of search issues.
4 December 2013	OIC requested Council provide further information and submissions in response to the applicant's sufficiency of search issues.
17 December 2013	OIC received submissions from Council about scope and additional searches.
7 January 2014	OIC were notified that Noosa Shire Council ( <b>NSC</b> ) had taken over responsibility for the documents in issue from Sunshine Coast Regional Council ( <b>SCRC</b> ) following de-amalgamation of the local government area of the SCRC.
8 January 2014	OIC provided Council with a view about scope and requested submissions from Council about document searches.
4 and 6 February 2014	OIC advised NSC and SCRC of their status in the external review.
13 and 18 February 2014	Council provided OIC with additional information located as a result of further searches undertaken.
10 July 2014	OIC consulted with the third party about the release of the Information in Issue.
15 July 2014	OIC conveyed to Council the preliminary view on all information refused and additional information located on later searches.
1 August 2014	Council confirmed that it accepted OIC's preliminary view and that it had released additional information to the applicant.
5 August 2014	OIC conveyed its preliminary view to the applicant via telephone and confirmed that Council had accepted OIC's preliminary view and agreed to release information to the applicant.
6 August 2014	The third party provided OIC with submissions.
14 August 2014	OIC confirmed with the applicant via telephone that the applicant had received all information as per OIC's preliminary view to Council and that the only outstanding issue in the external review is the Information in Issue and the next step was a formal decision. The applicant accepted OIC's preliminary view.
15 August 2014	OIC notified the third party that the next step in the external review was a formal decision about the Information in Issue.
18 August 2014	OIC wrote to Council and the applicant and confirmed that the remaining issue in the external review was the Information in Issue and that the next step was a formal decision.