



Decision and Reasons for Decision

Citation:	<i>News Corp Australia Pty Ltd and Gympie Regional Council [2019] QICmr 34 (28 August 2019)</i>
Application Number:	314155
Applicant:	News Corp Australia Pty Ltd ACN 163 992 774
Respondent:	Gympie Regional Council
Decision Date:	28 August 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - information about a review of Council water and sewerage services - accountability and transparency - informed debate on important issues - prejudice to business and commercial affairs of entities - prejudice future supply of information to Council - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Gympie Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents relating to a review of Council's water and sewerage operations (**Water and Sewerage Documents**) and the Mary Valley Rattler Project (**Railway Documents**).¹
2. Council decided to refuse access to the relevant documents on the basis that disclosure would, on balance, be contrary to the public interest, based upon Council's concern that disclosure would contravene certain provisions of the *Local Government Act 2009* (Qld) (**LG Act**) and the *Local Government Regulations 2012* (Qld) (**LG Regulation**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.²
4. The applicant did not contest my view that 11 documents located by Council fell outside the scope of the application³ and that access may be refused⁴ to the Railway Documents and certain personal information within the Water and Sewerage Documents.⁵

¹ The access application is dated 6 September 2019 and was made by the applicant's regional media outlet, the Gympie Times.

² External review application dated 12 September 2019.

³ As identified by letter to the applicant dated 15 November 2018.

⁴ Under sections 47(3)(a) and 47(3)(b) of the RTI Act, as set out in OIC's letter to the applicant dated 17 April 2019.

⁵ As a result, this information does not form part of the information being considered in these reasons for decision.

5. Council maintains its objection to disclosure of the remaining information in the Water and Sewerage Documents and has the onus of establishing that its decision to refuse access to that information was justified.⁶
6. During the review, I sought the disclosure views of two third parties⁷ in respect of one of the Water and Sewerage Documents (**Report**). One third party objected to disclosure of the Report and the other third party objected to disclosure of certain information within the Report. Both third parties declined to participate in the review, however, I have considered the responses of each third party as relevant evidence in reaching my decision.⁸
7. For the reasons set out below, I vary Council's decision and find that disclosure of the information remaining in issue would not, on balance, be contrary to the public interest.

Reviewable decision and evidence considered

8. The decision under review is Council's decision dated 11 September 2018.
9. Significant procedural steps taken during the external review are set out in the Appendix. Evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).

Background

10. The minutes of Council's meetings⁹ confirm that:
 - in a closed session of the meeting held on 7 September 2016, Council deferred consideration of a water and sewerage review agenda item to its next meeting; and
 - on 28 September 2016, after considering a water and sewerage review agenda item in a closed session of the meeting, Council carried a motion that it:
 1. *Applies the principles of commercialisation as outlined in S28 of the Local Government Act Regulations to its Water and Sewerage operation.*
 2. *Adopts the structure as described in the report.*
 3. *Advises the Department of Environment and Heritage Protection of its actions.*
 4. *Develops terms of reference for the establishment of a Water and Sewerage Technical Advisory Board.*
11. In its 2016-2017 Annual Report, Council also confirmed that:¹⁰

Council restructured the water and sewerage branch to form a Water Business Unit in September following a review of water and sewerage operations.

...

The establishment of the Water Business Unit enables alignment with commercial principles and that risks are managed effectively.

⁶ Under section 87 of the RTI Act. In *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 (**SJM**) at [72]-[75], Daubney J gave consideration to the identical agency onus under the *Information Privacy Act 2009* (Qld) (**IP Act**).

⁷ Pursuant to section 37 of the RTI Act.

⁸ Under section 89(2) of the RTI Act, a person whose views were sought under section 37 of the RTI Act may apply to participate in the external review. As neither third party sought to participate in this external review, the identities of these third parties are not disclosed.

⁹ Council's minutes may be accessed via Council's website at <<https://www.gympie.qld.gov.au/minutes>>.

¹⁰ At page 16 of the Annual Report, which is accessible via Council's website at: <<https://www.gympie.qld.gov.au/documents/40005057/41307257/Annual%20Report%202016-2017.pdf>>.

Information in issue

12. The information remaining in issue (**Information in Issue**) comprises the Water and Sewerage Documents, apart from portions of personal information within them.
13. The Information in Issue consists of three documents, including two documents tabled at Council's meetings on 7 September 2016 and 28 September 2016, and the Report, authored by a third party retained by Council to undertake a review of its water and sewage operations. Each of these documents relate to the review of Council's water and sewage operations in the 2016/2017 financial year.¹¹

Issue for determination

14. On external review, Council notified OIC¹² that one of the third parties '*strongly opposed*' disclosure of the Report, on the ground its disclosure would found an action for breach of confidence and therefore comprised exempt information.¹³ However, Council did not itself contend that any part of the Information in Issue comprised exempt information.
15. As noted in paragraph 6, I sought the disclosure views of this third party. The third party did not provide any evidence or contentions to suggest that disclosure of the Report would found an action for breach of confidence. Instead, the third party contended that disclosing some limited information within the Report—which does not form part of the Information in Issue—would, on balance, be contrary to the public interest.¹⁴ As no evidence has been advanced to suggest that the Information in Issue comprises exempt information, it is unnecessary for me to address the application of the breach of confidence exemption in these reasons for decision.¹⁵
16. Council also indicated during the external review that I should consult with further third parties as they were also identified in the Information in Issue. These third parties were senior officers of Council at the time and the Information in Issue relates to their roles with Council. I did not consult with these other third parties as there was no reasonable expectation that disclosure of the Information in Issue would be of concern to them.¹⁶
17. Council's submissions indicate that it seeks to refuse access to the Information in Issue on the basis that disclosure would, on balance, be contrary to the public interest.¹⁷ Accordingly, I consider this the issue for determination in this review.¹⁸

Relevant law

18. The RTI Act confers on an individual a right to access documents of an agency.¹⁹ This right of access is subject to certain limitations, including grounds for refusal of access.²⁰

¹¹ Section 108(3) of the RTI Act provides that the Information Commissioner must not, in a decision, or in reasons for a decision, include information that is claimed to be contrary to public interest information. For this reason I am unable to provide any further description of these documents in my reasons for decision.

¹² Submissions dated 25 March 2019.

¹³ Under schedule 3, section 8 of the RTI Act (**breach of confidence exemption**).

¹⁴ OIC agreed with the third party's contentions that this information comprised the personal information of other individuals and the access applicant agreed to not to proceed with seeking access to this information.

¹⁵ However, for completeness, I note that, having given careful consideration to the provisions of schedule 3 to the RTI Act, I am satisfied that the Information in Issue does not comprise exempt information.

¹⁶ Under section 37(1) of the RTI Act.

¹⁷ Council submissions dated 25 March 2019, 7 May 2019 and 29 May 2019.

¹⁸ Sections 47(3)(b) and 49 of the RTI Act.

¹⁹ Section 23 of the RTI Act.

²⁰ Grounds for refusal of access are set out in section 47 of the RTI Act.

19. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.²¹ 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 the following steps in deciding the public interest:
- identify any irrelevant factors and disregard them
 - identify any relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and decide whether disclosure would, on balance, be contrary to the public interest.²²
20. In the decision under review, Council refused access to the information and therefore, in this review, Council has the onus of establishing that its decision refusing access to Information in Issue was justified or that the Information Commissioner should give a decision adverse to the applicant.²³

Findings

21. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.²⁴
22. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant to determining where the balance of the public interest lies in a particular case. I have carefully considered these factors, the RTI Act's pro-disclosure bias²⁵ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly²⁶ in reaching this decision.

Factors favouring disclosure

Accountability and transparency

23. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability²⁷
 - contribute to positive and informed debate on important issues or matters of serious interest²⁸
 - inform the community of the Government's operations, including, in particular, the policies, guidelines, codes of conduct followed by the Government in its dealings with members of the community²⁹
 - ensure effective oversight of expenditure of public funds³⁰

²¹ Section 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²² As set out in section 49 of the RTI Act.

²³ Under section 87 of the RTI Act.

²⁴ Set out in schedule 4, part 1 of the RTI Act.

²⁵ Section 44 of the RTI Act.

²⁶ Section 47(2) of the RTI Act.

²⁷ Schedule 4, part 2, item 1 of the RTI Act.

²⁸ Schedule 4, part 2, item 2 of the RTI Act.

²⁹ Schedule 4, part 2, item 3 of the RTI Act.

³⁰ Schedule 4, part 2, item 4 of the RTI Act.

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;³¹ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³²
24. Water and sewerage management is one of the primary services Council delivers to the local community. There are important public health impacts in providing this service, as recognised by Council's obligations as a Water Service Provider under the *Water Supply (Safety and Reliability) Act 2008* (Qld). For the financial year ended 30 June 2017, Council's water and sewerage management affected nearly 30,000 properties and involved an operational budget of \$15.3 million, capital projects in progress of \$10.2 million and infrastructure to the value of \$227 million.³³
25. As noted in paragraphs 10 and 11, a review of Council's water and sewerage services led to Council's September 2016 resolution to commercialise these services and restructure them 'as described in the report'. That is, the review led to Council deciding to fundamentally change how it would deliver water and sewerage services.
26. The decision to restructure and commercialise Council's water and sewerage services was made in a closed meeting.³⁴ Apart from confirming that its water and sewerage services have been restructured,³⁵ Council has disclosed limited details about why the restructure and commercialisation of these services was required and the actions it has taken to implement the September 2016 resolution.³⁶
27. I consider that Council is accountable for the actions it has taken in respect of the various matters raised in the review of its water and sewage services and whether, or not, Council's actions have been successful in dealing with those matters. I am therefore satisfied that disclosing the Information in Issue could reasonably be expected to enhance Council's accountability and transparency, as it would:
- demonstrate how Council responded to any deficiencies identified in its water and sewerage services and otherwise demonstrate how Council addressed the review recommendations; and
 - reveal background and contextual information to Council's decision to restructure and commercialise its water and sewerage services.
28. Given the large number of people impacted by Council's water and sewerage services, the essential nature and health implications of those services and the significant level of expenditure involved in providing those services, I consider Council's September 2016 resolution is a matter of serious public interest. I also note that, subsequent to Council's resolution, concerns about the lack of information explaining the reasons for the restructure and how the water and sewerage services would be operated post restructure were raised in local media reporting.³⁷ Reflecting a wider community interest in local

³¹ Schedule 4, part 2, item 5 of the RTI Act.

³² Schedule 4, part 2, item 11 of the RTI Act.

³³ Pages 6, 7 and 16 of Council's 2016-2017 Annual Report. Similar information appears in a 'Report on Water Business Unit 2016/17', which is available on Council's website at: <<https://www.gympie.qld.gov.au/documents/40005057/41304478/Water%20Business%20Unit%20Annual%20Report%202016-17.pdf>>.

³⁴ Under section 275 of the LG Regulation, a local government may resolve to close a meeting to members of the public where it considers necessary to discuss certain identified matters. Council's meeting minutes refer to the closed sections of the meetings as being 'in committee'.

³⁵ As referred to in paragraph 11.

³⁶ For example, in its 'Report on Water Business Unit 2016/17', Council noted: '*The purpose of the new structure will enable alignment with commercial principles, improve confidence that our expenditure is prudent and efficient and that we are managing our risks effectively*'.

³⁷ To avoid revealing the Information in Issue, I am unable to provide further details of this media reporting in these reasons for decision.

government transparency and accountability, I note that, following the tabling of the Belcarra Report, the Queensland Government announced that it is pursuing a *'rolling Local Government reform agenda ... aimed at increasing transparency and accountability'*.³⁸ A Bill to amend certain local government legislation, including the LG Regulation, was introduced to Parliament on 1 May 2019 as part of that reform agenda,³⁹ however, the State Government has indicated it will also give consideration to *'tightening controls around the topics council may discuss in closed meetings'* and ensuring *'resolutions and minutes have enough information for the community to understand why councils have made decisions'*.⁴⁰

29. Given the limited information which has been released about the decision to restructure and commercialise these essential Council services, I am satisfied that disclosing the Information in Issue, could reasonably be expected to promote open discussion of public affairs and contribute to positive and informed debate on a matter of serious interest.
30. In the circumstances, and given the content of the Information in Issue goes directly to the decision making processes and conduct of Council business, I am satisfied that the public interest factors listed at paragraph 23, carry significant weight in favour of disclosure.

Factors favouring nondisclosure

Disclosure prohibited by an Act

31. Where disclosure of information is prohibited by an Act, this gives rise to a factor favouring nondisclosure.⁴¹ Council submits⁴² this factor deserves *'high weighting'* because disclosure of the Information in Issue would contravene section 200(5) of the LG Act.
32. A local government employee is prohibited, under section 200(5) of the LG Act, from releasing information that they know, or should reasonably know, is information which is confidential to the local government and which the local government wishes to keep confidential. A similar nondisclosure obligation is imposed upon Councillors.⁴³
33. The minutes for Council's 7 and 28 September 2016 meetings confirm that:
 - the meetings were closed pursuant to section 275 of the LG Regulation in respect of the water and sewerage review agenda items; and
 - *'all matters and all documents (whether in hard copy, electronic, optical, visual or magnetic form) discussed, raised, tabled and/or considered whilst the meeting is closed and "in committee" are confidential to the Council and the Council wishes to keep them confidential'*.

³⁸ Refer to the statements of the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs dated 5 March 2019 and 1 April 2019, which are accessible at <<http://statements.qld.gov.au/Statement/2019/3/5/local-government-reform-on-the-agenda>> and <<http://statements.qld.gov.au/Statement/2019/4/1/consultation-informs-local-government-reforms>>. Details of the proposed reform agenda are accessible at <<http://www.dlgrma.qld.gov.au/local-government-reform.html>>.

³⁹ Namely, the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019*.

⁴⁰ Refer to <<http://www.dlgrma.qld.gov.au/local-government-reform.html>>.

⁴¹ Schedule 4, parts 3, item 22 of the RTI Act.

⁴² Submissions dated 25 March 2019.

⁴³ Section 171(3) of the LG Act. Additionally, on 27 March 2013, Council adopted a *'Councillor Confidentiality Procedure' (Procedure)*, which obliges *Councillors* not to disclose confidential information—defined in section 7 to include all information relating to the matters discussed during a closed meeting—*'unless and until Council resolves to the contrary'*. Refer to pages 169-173 of Council's minutes for the meeting on 27 March 2013, which are accessible at: <<https://www.gympie.qld.gov.au/documents/40005057/40024731/2013-03-27%20Ordinary%20Meeting%20Minutes.pdf>>.

34. In the context of the LG Act prohibitions, as the Information in Issue was discussed, raised, tabled and/or considered at Council's 7 and 28 September 2016 meetings, it is information considered confidential to Council. On this basis, I consider this factor favouring nondisclosure applies to the Information in Issue.
35. Council contends⁴⁴ that this is a '*strong factor favouring nondisclosure*' because of the legislative prohibitions on disclosure and the penalties associated with any breach of confidentiality.⁴⁵
36. The RTI Act overrides the provisions of other Acts prohibiting disclosure of information,⁴⁶ except in the case of those provisions listed in schedule 3, section 12 of the RTI Act. The disclosure prohibitions in the LG Act are not included in schedule 3, section 12 of the RTI Act. Section 170(1) of the RTI Act confirms that no action for breach of confidence lies against an officer because of the authorising or giving of access under the RTI Act, where that officer acted in the genuine belief that the access was required or permitted to be given under the RTI Act.
37. I note that Council's reason for considering the water and sewerage review agenda item in closed meetings (and identifying the supporting information for the agenda items as being confidential to Council) was that it related to industrial matters affecting employees.⁴⁷ I acknowledge that, at the time, Council's considerations would have had a significant impact on the employment of some Council staff. However, almost three years have passed since Council made its restructuring decision and, in that time, Council has publicly confirmed that the restructure has been implemented. It is therefore reasonable to assume that any industrial matters associated with the review, and implemented restructure, have been finalised and the nominated basis for considering information about the organisational review in a closed meeting is no longer relevant. In this regard, I note that I have not seen any evidence from Council or the consulted third parties to indicate that disclosure of the Information in Issue could be expected to prejudice a currently ongoing industrial action.
38. Taking these matters into account, I afford low weight to this factor favouring nondisclosure.

Business affairs

39. The RTI Act recognises that the public interest will favour nondisclosure of information where disclosure could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities⁴⁸
 - prejudice business affairs of an agency or person;⁴⁹ and
 - cause a public interest harm because it would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person and could reasonably be expected to have an adverse effect on those affairs or to

⁴⁴ Submissions dated 25 March 2019.

⁴⁵ The maximum penalty nominated in both sections 171 and 200(5) of the LG Act, is 100 penalty units or 2 years imprisonment.

⁴⁶ Section 6 of the RTI Act.

⁴⁷ Section 275(1)(b) of the LG Regulation permits the closure of a local government meeting to discuss industrial matters affecting employees. Council's minutes confirm that this was the basis on which the September 2016 meetings were closed in respect of the water and sewerage review agenda items.

⁴⁸ Schedule 4, part 3, item 2 of the RTI Act.

⁴⁹ Schedule 4, part 3, item 15 of the RTI Act; section 32D(1) of the *Acts Interpretation Act 1954* (Qld) provides that 'a reference to a person generally includes a reference to a corporation as well as an individual'.

prejudice the future supply of information of this type to government (**business harm factor**).⁵⁰

40. The Information in Issue generally relates to a Council initiated review of its water and sewerage services. Given this, I am not satisfied that disclosure of the Information in Issue could reasonably be expected to prejudice the future supply of business information of this type to government. Accordingly, I do not consider that this aspect of the business harm factor applies.
41. Council submits that disclosure of the Information in Issue would '*likely prejudice the private business and professional affairs*' of certain former employees.⁵¹
42. Establishing a reasonable expectation of prejudice or adverse effect requires more than simply asserting that disclosure will result in prejudice or adverse consequences. There must be some evidentiary basis from which it may be inferred that disclosure of relevant information could reasonably be expected to result in particular prejudice or adverse effect.⁵²
43. Council has not detailed the nature of the claimed prejudice, nor has it explained how such prejudice could reasonably be expected to arise from disclosure of the Information in Issue, or any particular part of it. Given Council's concerns and the content of the Information in Issue, I sought the disclosure views of two third parties and, as noted above, neither third party elected to participate in the review. For this reason, I have sought to summarise each third party's concerns in a way that does not identify them.
44. In responding to OIC, one of the consulted third parties strongly disagreed with the water and sewage review process and the contents of the Report. For this reason, I accept that that the matters raised in the review of Council's water and sewerage services may not have been endorsed by all individuals who were involved in or affected by the review. However, it is not clear, on the material before me, how any prejudice to, or adverse effect on, the private, business and professional affairs of any entity or individual would '*likely*' arise from disclosure of the Information in Issue, particularly given the organisational review, and Council's decisions which arose from it, occurred almost three years ago and, in that time, Council has implemented the restructure of its water and sewerage services.
45. On this basis, while I consider these factors may apply to the Information in Issue, they deserve only low weight.

Flow of information

46. Under the RTI Act, the public interest will also favour nondisclosure if:
 - disclosure of information could reasonably be expected to prejudice an agency's ability to obtain confidential information (**Confidential Prejudice Factor**);⁵³ and
 - the information is of a confidential nature and was communicated in confidence and disclosure could reasonably be expected to prejudice the future supply of information of this type (**Confidential Harm Factor**).⁵⁴

⁵⁰ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

⁵¹ Submissions dated 25 March 2019.

⁵² *Queensland Newspapers Pty Ltd and Queensland Police Service; Third Parties* [2014] QICmr 27 (12 June 2014) at [111]. Refer also to *SJN* at [74]-[75] where Daubney J found that the identical onus in the IP Act has not been discharged where the agency did not link its concerns about '*a range of potential deleterious outcomes*' to the particular information sought by the particular applicant in that case.

⁵³ Schedule 4, part 3, item 16 of the RTI Act.

⁵⁴ Schedule 4, part 4, item 8 of the RTI Act.

47. Council submits⁵⁵ that:
- '[w]hen undertaking any form of review where open and honest communication from participants is critical to the validity of the outcomes of the review, maintaining the confidence of all participants to the process is vital if the prospect of future review outcomes are to sustain any hope of legitimacy'
 - participants to the water and sewage review were advised that '*their contributions would be held in confidence by Council*'; and
 - public release of information about the review '*would see Council's ... credibility questioned along with a significant impact to [Council's] capacity to obtain information in confidence in the future*'.
48. The Information in Issue includes information about Council's water and sewerage infrastructure and its legislative obligations as a Water Service Provider—I consider that such information cannot be characterised as information of a confidential nature. Council has not provided any evidence to support the claimed obligation of confidence it owed to review interviewees. In this regard, Council directed me to consult one of the third parties in relation to confidentiality undertakings made by that third party.⁵⁶ When consulted directly on external review, that third party did not provide any submissions or evidence to support Council's concerns in this regard.⁵⁷
49. I also note that the Information in Issue does not attribute any particular information provided during the review process to any specific review participant nor does it identify which parts of the review findings are based upon specific participant feedback. On this basis, I am not satisfied that disclosure of the Information in Issue would disclose confidential information provided by review participants, as Council has asserted.
50. However, even if the Information in Issue, or some of it, could be characterised as confidential information, for these factors favouring nondisclosure to apply, I must also be satisfied that its disclosure could reasonably be expected to prejudice Council's ability to obtain confidential information or the future supply of this type of information.
51. Council has not detailed the nature of the claimed '*significant impact*' to its capacity to obtain confidential information in the future or how that impact would arise from disclosing the Information in Issue. Taking into consideration that the information obtained for the Council initiated organisational review was not attributed to specific review participants within the Information in Issue, I am not satisfied that disclosure of the Information in Issue would significantly impact the ability of Council to obtain information from participants in future organisational reviews. On this basis, I afford these factors favouring nondisclosure low weight.

Personal information and privacy

52. A factor favouring nondisclosure will arise if disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁵⁸ The RTI Act also recognises that disclosing personal information⁵⁹ of a person could reasonably be expected to cause a public interest harm.⁶⁰

⁵⁵ Submissions dated 25 March 2019.

⁵⁶ Submissions dated 7 May 2019.

⁵⁷ As noted in paragraph 14, the third party instead contended that disclosing some limited personal information within the Report would, on balance, be contrary to the public interest.

⁵⁸ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁹ 'Personal information' is defined in section 12 of the IP Act 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*'.

⁶⁰ Schedule 4, part 4, item 6(1) of the RTI Act.

53. Council submits⁶¹ that the Report includes information which, '*in a regional local government context*', may clearly identify individuals and statements attributable to those persons and disclosing that information could reasonably be expected to prejudice the protection of their right to privacy.
54. A small amount of personal information, such the names of Council's Executive Management Team⁶² and the work titles of review participants, appears in the Information in Issue, however, I am satisfied that the Information in Issue does not attribute any particular information provided during the review process to any specific review participant.
55. I note that information relating to the day-to-day work duties and responsibilities of a Council officer may generally be disclosed under the RTI Act, despite it falling within the definition of personal information.⁶³ As the personal information within the Information in Issue appears in the context a Council initiated organisational review, I am satisfied that this particular personal information is related to the day-to-day work activities of Council officers. It is reasonable to expect that *any* organisational review initiated by Council would involve members of the Executive Management Team, members of the business unit, which was the subject of the review and other individuals who directly interacted with that business unit. On this basis, I am satisfied that disclosure of the work titles of participants to the water and sewerage services review would only identify that individuals in these positions participated in the review process and this would not disclose the content of any information such individuals provided to the review.
56. In the event that the position title of each officer would lead to them being identified individually, as Council submits,⁶⁴ I consider that the only information about them that is revealed is that they participated in an organisational review of their work unit. Given the nature of the personal information within the Information in Issue, I am satisfied that very little harm would result from its disclosure and therefore, I attribute only low weight to the factor favouring nondisclosure in respect of that personal information.
57. In terms of the privacy prejudice factor, the concept of '*privacy*' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere free from interference by others*'.⁶⁵
58. Disclosing the Information in Issue will identify, by work title, individuals who participated in Council's water and sewerage review. As noted above, it is reasonable to expect that individuals in those positions would participate in such a review. On this basis, I consider disclosure of this personal information would not be a significant intrusion into the privacy of those individuals and I afford low weight to the privacy factor favouring nondisclosure.

Other factors favouring nondisclosure

59. Having carefully considered all factors listed in schedule 4, parts 3 and 4 of the RTI Act, I can identify no other public interest considerations telling in favour of nondisclosure of

⁶¹ Submissions dated 25 March 2019.

⁶² The members of Council's Executive Management Team are identified by their names and titles on Council's website.

⁶³ Agency documents can also contain personal information of officers, which is not *routine* work information: *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60].

⁶⁴ Council submissions dated 7 May 2019.

⁶⁵ Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice', *Australian Law Reform Commission Report No. 108*, released 12 August 2008, at [1.56]. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

the Information in Issue.⁶⁶ Taking into consideration the nature of this information and the passage of time since the water and sewerage review was conducted and considered by Council, I cannot see how disclosing the Information in Issue could, for example, impede the administration of justice, generally or for a person,⁶⁷ prejudice the management function or conduct of industrial relations by an agency⁶⁸ or prejudice a deliberative process of government.⁶⁹

60. I also note that Council bears the onus in this review of establishing that disclosing the Information in Issue would, as it contends, be contrary to the public interest.

Conclusion

61. For the reasons set out above, I am satisfied that disclosing the Information in Issue could reasonably be expected to enhance Council's accountability and transparency by demonstrating how Council addressed the water and sewerage review recommendations, including any identified deficiencies in Council's services, and provide background information to Council's resolution to restructure and commercialise its water and sewerage services. I am also satisfied that disclosure would promote open discussion of public affairs and contribute to positive and informed debate on matters of serious public interest. In the circumstances of the case, I afford each of these factors significant weight in favour of disclosure.
62. While the Information in Issue was considered in closed meetings of Council, almost three years have passed since Council resolved to restructure and commercialise its water and sewerage services and, in that time, Council has implemented the restructure. On this basis, I afford low weight to the factor favouring disclosure concerning the LG Act disclosure prohibitions. I am also satisfied that disclosure of the Information in Issue is not likely to impact Council's future ability to obtain confidential information in any significant way. I similarly afford low weight to the prejudice and harm that could reasonably be expected to arise from disclosure of the business and personal information within the Information in Issue.
63. On balance, I find that the factors favouring disclosure outweigh the factors favouring nondisclosure in this case. Accordingly, I find that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.

DECISION

64. I vary Council's decision and find that access to the Information in Issue may be granted, as its disclosure would not, on balance, be contrary to the public interest.
65. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Shiv Martin
Assistant Information Commissioner
Date: 28 August 2019

⁶⁶ In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the numerous public interest factors that favour the disclosure of the Information in Issue.

⁶⁷ Schedule 4, part 3, items 8 and 9 of the RTI Act.

⁶⁸ Schedule 4, part 3, item 17 and schedule 4, part 4, item 3(c) and (d) of the RTI Act.

⁶⁹ Schedule 4, part 3, item 20 and schedule 4, part 4, section 4 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
12 September 2018	OIC received the application for external review.
2 October 2018	OIC notified the applicant and Council that it had accepted the external review application and asked Council to provide information.
4 October 2018	OIC received the requested information from Council.
15 November 2018	OIC wrote to the applicant about documents falling within the scope of the application.
28 February 2019	OIC asked Council to provide further information. OIC also received Council's submissions.
1 March 2019	OIC conveyed a preliminary view to Council and asked Council to obtain the disclosure views of a third party in respect of one document.
7 March 2019	OIC received requested information from Council.
20 March 2019	OIC received the disclosure views of the third party.
25 March 2019	OIC received Council's submissions.
17 April 2019	OIC conveyed a preliminary view to each of the applicant and Council and invited them to provide submissions if they did not accept the preliminary view. OIC also conveyed a preliminary view to two third parties about one document and invited them to provide submissions if they did not accept the preliminary view. OIC also asked the third parties to indicate whether they wished to participate in the review.
18 April 2019	OIC received submissions from a third party.
23 April 2019	OIC received submissions from the other third party.
7 May 2019	OIC received Council's further submissions.
23 May 2019	OIC conveyed a further preliminary view to Council and invited Council to make final submissions if it did not accept the preliminary view.
30 May 2019	OIC received further submissions from Council.
4 June 2019	OIC wrote to Council and the applicant to confirm a decision would be issued to finalise the review.
18 June 2019	OIC received Council's confirmation that it required the issue of a decision.