



Decision and Reasons for Decision

Citation:	<i>Y87 and Redland City Council [2020] QICmr 24 (29 April 2020)</i>
Application Number:	315117
Applicant:	Y87
Respondent:	Redland City Council
Decision Date:	29 April 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - animal control complaint - dog attack - accountability and transparency - personal information and privacy - procedural fairness - prejudice local law enforcement - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 47(3)(b) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to Redland City Council (**Council**)¹ under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to evidence listed in a Council letter to the applicant about the applicant's dog under the *Animal Management (Cats and Dogs) Act 2008 (Qld)* (**Animal Management Act**).²
2. Council located 59 pages in response to the application and decided to grant full access to 38 pages, part access to 16 pages and refuse access to 5 pages.³
3. The applicant applied to Council for an internal review of the decision. On internal review, Council affirmed its decision.
4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the decision.

¹ Access application dated 4 September 2019.

² Letter from Council to applicant dated 21 August 2019.

³ Council decision letter dated 30 October 2019. The letter states that Council gave access to 21 pages in full and 38 pages in part. However, on external review it has been established that the numbers in the decision notice were incorrect, and the above reflects the correct pages the applicant was given or refused access to.

5. For the reasons below, I affirm Council's decision to refuse access to the relevant information under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

Background

6. The decision under review is Council's internal review decision dated 20 December 2019.
7. 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 also disclosed in these reasons (including in footnotes).

Information in issue

8. The information in issue comprises 16 pages in part and 5 pages in full. Much of this information is the personal information⁴ of the victim of the dog attack, such as:
 - the victim's name, address, date of birth, telephone number and email address
 - the victim's statements about the attack
 - a doctor's report about the injury the victim sustained in the attack⁵
 - photographs of the victim's injury; and
 - records of the victim's interactions with Council about the attack.

Relevant law

9. Under the RTI Act, access may be refused to information if its disclosure would, on balance, be contrary to the public interest.⁶ 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.⁷ 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.
10. Various factors may be relevant to deciding where the balance of the public interest lies and a decision-maker is required to take specific steps in making this determination.⁸
11. I have also had regard to the *Human Rights Act 2019* (Qld),⁹ particularly the right to seek and receive information.¹⁰ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

⁴ 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 Schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**).

⁵ The information in issue includes the personal information of the doctor who treated the victim's injury.

⁶ Section 47(3)(b) of the RTI Act.

⁷ Chris Wheeler, '*The Public Interest: We Know It's Important, But Do We Know What It Means*' (2006) 48 AIAL Forum 12, 14.

⁸ Section 49(3) of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

⁹ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

¹⁰ Section 21 of the HR Act.

¹¹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

Applicant's submissions

12. I have considered the applicant's submissions made in their external review application dated 15 January 2020 and submissions dated 29 March 2020. I understand the applicant considers that vital information relating to Council's decision about their dog – the photographic evidence of the alleged bite and the doctor's report – is being withheld. The applicant contends that they do not understand how they can accept Council's decision without viewing the evidence.

Findings

13. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision. 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. I have carefully considered these factors, the RTI Act's pro-disclosure bias and Parliament's requirement that grounds for refusing access to information be interpreted narrowly in reaching this decision.

Factors favouring disclosure

14. In considering the relevant public interest factors, I note that some of the information in issue is exclusively personal information of third parties, comprising their name, address, date of birth, telephone number and email address. I consider that the factors favouring disclosure that I have identified and discussed below have very limited, if any, application to this subset of the information in issue.
15. On the other hand, a large part of the information in issue comprises the records of the third party's interactions with Council, some of which was relied on by Council to make its decision in relation to the applicant's dog. This information includes the victim's statements about the attack, the doctor's report about the injuries sustained by the victim in the attack and photographs of the injuries. This is the information of key interest to the applicant.
16. I am satisfied that disclosure of this category of information in issue would promote open discussion of how Council deals with dangerous dog classifications generally and this classification in particular, and thereby enhance its accountability and transparency.¹² I am also satisfied that disclosure would further reveal the reason for Council's decision and the background and contextual information that informed the decision.¹³ These are all public interest factors that favour disclosure of much of the information in issue to the applicant.
17. While I am satisfied that the above factors apply in the circumstances of this case, the weight that each factor carries is significantly reduced by the extent of the information already released to the applicant. The released information informs the applicant as to how the incident occurred, the injury the victim suffered, the reasons for Council's decision and the background and contextual information that informed the decision. For this reason, I am satisfied that each factor favouring disclosure in relation to Council's accountability and transparency only carries low weight in the circumstances.¹⁴
18. The applicant submits that they have not been provided with evidence of the alleged dog bite.¹⁵ However, having considered the released information, I do not agree with this submission. The released information contains a detailed description of the incident, a top-down diagram showing where the attack occurred, a description of the nature and extent

¹² Schedule 4, part 2, item 1 and item 3 of the RTI Act.

¹³ Schedule 4, part 2, item 11 of the RTI Act.

¹⁴ Specifically those factors listed in Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁵ Applicant's application for external review.

of the victim's injury and a diagram of a body marked to show where the injury was sustained. The disclosure of this information has significantly advanced the accountability and transparency factors favouring disclosure and has revealed the reasons for Council's decision.

19. The applicant considers '*that vital information relating to [their] case is being withheld*'.¹⁶ This submission raises the following public interest factors favouring disclosure:

- disclosure could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies;¹⁷ and
- disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.¹⁸

20. Fair treatment of individuals in accordance with the law includes affording an individual procedural fairness. Procedural fairness has two requirements—an unbiased decision-maker and a fair hearing—and must be afforded to a person who is the subject of a decision adverse to their interests.¹⁹ The fair hearing aspect of procedural fairness requires that before a decision is made that will deprive a person of a right, interest or legitimate expectation, the person is entitled to know the case against them and have the opportunity to address it.²⁰ The person must be provided with adequate information about material that is credible, relevant and significant to the proposed adverse decision so that the person has the opportunity to make effective representations to the decision-maker.²¹

21. The medical report and photographs of the victim's injury were not disclosed to the applicant, but they were relied on by Council as evidence to make its decision.²² I accept that they are adverse to the applicant's position,²³ and in these circumstances consider that both the above factors apply. Again, however, I consider that these factors only carry low weight due to the volume of information released to the applicant. The applicant has been provided with a description of the attack, details about injury sustained and a description of the evidence available to Council. The applicant might understand the decision better if they could view the report and photographs. However, nondisclosure of the report and photographs has not deprived the applicant of the opportunity of knowing and addressing the case against their dog.

22. Finally, because the victim's statement and a small part of the records of the victim's interactions with Council detail the conduct of the applicant, that part of the information in issue is the applicant's personal information.²⁴ I am satisfied that there is a strong public interest favouring the disclosure of the applicant's own personal information and I have given this factor significant weight, with respect to those parts of the information in issue that comprise the applicant's personal information.

23. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the information in issue. Taking into consideration the nature of the information in issue, I cannot see how its disclosure could, for example, contribute to a debate on important issues or matters of serious interest,²⁵ ensure the effective oversight of expenditure of

¹⁶ Applicant's application for external review dated 15 January 2020.

¹⁷ Schedule 4, part 2, item 10 of the RTI Act.

¹⁸ Schedule 4, part 2, item 16 of the RTI Act. There is no evidence before me that indicates that disclosure could contribute to the administration of justice for a person pursuant to Schedule 4, part 2, item 17 of the RTI Act.

¹⁹ *Williams and Queensland Police Service* [2017] QICmr 28 (4 August 2017) (*Williams*) at [53].

²⁰ *Williams* at [53] citing *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J.

²¹ *Williams* at [53] citing *Kioa* at 629 per Brennan J.

²² They are both listed in the 'EVIDENCE' section of Council's letter to the applicant dated 21 August 2019.

²³ Applicant's submission dated 29 March 2020.

²⁴ Schedule 4, part 2, item 7 of the RTI Act.

²⁵ Schedule 4, part 2, item 2 of the RTI Act.

public funds,²⁶ or contribute to the enforcement of the criminal law.²⁷ I also do not consider that there are any public interest considerations raised with respect to the accuracy of information or the conduct of Council officers.²⁸

Factors favouring nondisclosure

24. I consider that the following three factors favour nondisclosure:

- disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose the personal information of a person²⁹
- disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;³⁰ and
- disclosure could reasonably be expected to prejudice the flow of information to a law enforcement or regulatory agency.³¹

25. The concept of privacy is not defined in the IP Act or RTI Act, but it can be viewed as the right of an individual to preserve their personal sphere free from interference from others.³² The information in issue comprises the personal information of the victim and their treating doctor. I am therefore satisfied that its disclosure can reasonably be expected to cause a public interest harm. An individual's dealings and communications with a government agency attract a level of privacy because they form part of an individual's private sphere. I am satisfied that an individual's dealings with Council to raise animal control concerns following injuries that they have suffered attracts a significant level of privacy.³³ Further, I am satisfied that the medical records and photographs of the third party's injuries are also extremely personal in nature. I therefore find that disclosure of such information would be an unwarranted intrusion into the personal sphere of the relevant third parties and cause significant prejudice to their privacy. Accordingly, I afford these factors significant weight.

26. I also note that the applicant may be entitled to seek access to the personal information of the third party, including their photographs, through other Court or Tribunal processes concerning Council's management of the applicant's dog.³⁴ Firstly, I understand that at this point in time such disclosure has not occurred.³⁵ In any event, I am satisfied that the potential for the disclosure of the information in issue through other legal processes does not reduce the weight I have attributed to the privacy and personal information factors. While disclosure through court and Tribunal processes may have limits on how personal information can be used, there are no specific limits on the use and further disclosure of information released under the RTI Act.³⁶

27. Finally, there is a recognised public interest in ensuring Council's local law enforcement functions are not prejudiced through disclosure of information provided by individuals involved in a complaint process.³⁷ Council, which is a regulatory authority for the purposes

²⁶ Schedule 4, part 2, item 4 of the RTI Act.

²⁷ Schedule 4, part 2, item 18 of the RTI Act.

²⁸ That is, I have considered the factors set out in schedule 4, part 2, items 5, 6 and 12 and do not consider that they apply.

²⁹ Schedule 4, part 4, section 6(1) of the RTI Act.

³⁰ Schedule 4, part 3, item 3 of the RTI Act.

³¹ Schedule 4, part 3, item 13 of the RTI Act.

³² *Matthews and Gold Coast City Council* (unreported, Queensland Information Commissioner, 23 June 2011) at [22] 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 11 August 2008, at paragraph 1.56. The report is available at https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf.

³³ See *06KLXE and Hinchinbrook Shire Council* [2019] QICmr 22 (20 June 2019) (*06KLXE*) at [27].

³⁴ This was raised in a phone conversation between Council and OIC on 28 April 2020. I confirm that this was not raised by the applicant in their submissions on external review.

³⁵ As confirmed in a phone discussion with Council on 29 April 2020.

³⁶ *Cronin and Crime and Corruption Commission* [2017] QICmr 13 (6 April 2017) at [38].

³⁷ Schedule 4, part 3, item 13 of the RTI Act. See also *06KLXE* at [29] which is a decision concerning a dog attack. The Information Commissioner has also previously recognised that there is strong public interest in protecting the free flow of information to

of dealing with animal attacks,³⁸ relies on members of the public to provide information that allows it to enforce local laws in relation to animal management. Routine disclosure of information provided by complainants, witnesses and medical professionals would result in a risk of discouraging those individuals from coming forward with information and cooperating with Council if they are concerned that their sensitive personal information would be disclosed to third parties. This in turn could reasonably be expected to negatively impact Council's ability to obtain information in future incidents in relation to animal management concerns. In the circumstances of this case, and given the nature of the particular information in issue, I afford this factor significant weight also in favour of nondisclosure.

Balancing the relevant factors

28. Having considered the abovementioned public interest factors, I find that disclosure of some of the information in issue could reasonably be expected to promote the public interest in enhancing Council's accountability and transparency and affording procedural fairness to the applicant. I have afforded each of these public interest considerations³⁹ favouring disclosure low weight in circumstances where the applicant has already received significant relevant information from Council. I have only attributed significant weight to the public interest factor favouring disclosure of the applicant's own personal information with respect to limited parts of the information in issue.⁴⁰
29. On the other hand, given the nature of the information in issue, I am satisfied that the public interest factors intended to protect third party personal information and privacy, and the effectiveness of Council law enforcement processes, carry significant weight in favour of nondisclosure.
30. I am satisfied that Council has released information to inform the applicant of its investigation and decision making processes, and explain the case against the applicant's dog to the extent that it could without comprising the privacy of third parties or the effectiveness of its future investigation and enforcement processes. On balance, I am satisfied that the factors favouring nondisclosure carry higher weight than those favouring disclosure and I therefore consider that disclosure of the information in issue would, on balance, be contrary to the public interest.⁴¹

DECISION

31. For the reasons set out above, I affirm Council's decision to refuse access to the information in issue under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
32. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner

Date: 29 April 2020

regulatory authorities: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015) at [29]; *Gregory and Queensland Police Service* [2014] QICmr 48 (12 November 2014) at [25]; and *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) at [40].

³⁸ Section 104(2) of the Animal Management Act.

³⁹ Being the public interest factors listed in schedule 4, part 2, items 1, 3, 10, 11 and 16.

⁴⁰ This is because most of the information in issue does not comprise the personal information of the applicant. Schedule 4, part 2, item 7.

⁴¹ Section 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
15 January 2020	Applicant applied for external review.
16 January 2020	OIC requested preliminary documents from Council.
28 January 2020	OIC received the requested preliminary documents from Council.
12 March 2020	OIC conveyed a written preliminary view to the applicant.
29 March 2020	OIC received a written submission from the applicant.