



Decision and Reasons for Decision

Citation:	<i>Ford and Longreach Regional Council</i> [2021] QICmr 11 (10 March 2021)
Application Number:	315498
Applicant:	Ford
Respondent:	Longreach Regional Council
Decision Date:	10 March 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - BUDGETARY INFORMATION FOR LOCAL GOVERNMENTS - information concerning a local government rates and utilities discussion paper - whether information brought into existence in course of local government's budgetary processes - whether exempt information to which access may be refused - sections 47(3)(a) and 48 and schedule 3, section 4B of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Longreach Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access 'the MEAD PERRY Group Report as presented to the LRC Budget Report 2019-2020' (**Mead Perry Report**).
2. Council located one document² and decided³ to refuse access in full on the basis the document was brought into existence in the course of a local government's budgetary processes and is therefore exempt information.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision.⁵
4. For the reasons given below, I affirm Council's decision to refuse access to the Mead Perry Report on the basis that it comprises exempt information under section 47(3)(a), section 48 and schedule 3, section 4B of the RTI Act.

¹ By access application received on 4 June 2020.

² A document titled 'General Rates & Utilities Discussion Paper' which will be referred to as 'the Mead Perry Report' in this decision.

³ On 17 June 2020.

⁴ As per section 47(3)(a) and 48 and schedule 3, section 4B of the RTI Act.

⁵ On 14 July 2020.

Reviewable decision

5. The decision under review is Council's decision dated 17 June 2020 refusing access to the Mead Perry Report on the basis that it is comprised of exempt information under schedule 3, section 4B of the RTI Act.

Evidence considered

6. Significant procedural steps relating to the external review are set out in the Appendix.
7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁶ 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 *Information Privacy Act 2009* (Qld) and RTI Act.⁷ I have acted in this way in making this decision.⁸ I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹⁰

Information in issue

9. The information in issue in this review is the Mead Perry Report.

Issue for determination

10. The issue for determination is whether access may be refused to the Mead Perry Report because it is exempt information under section 47(3)(a), section 48 and schedule 3, section 4B of the RTI Act.

Relevant law

11. The RTI Act provides for a right of access to information held by Queensland government agencies. However, this right has limitations, including grounds for refusing access to information.¹¹ Relevantly, access may be refused to information to the extent it comprises '*exempt information*'.¹² Schedule 3, section 4B of the RTI Act provides that:

4B Budgetary information for local governments

- (1) *Information brought into existence in the course of a local government's budgetary processes is exempt information for 10 years after the date it was brought into existence.*
- (2) *Subsection (1) does not apply to information officially published by decision of the local government.*

⁶ Section 21 of the HR Act.

⁷ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁸ In accordance with section 58(1) of the HR Act.

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

¹¹ Section 47 of the RTI Act.

¹² Sections 47(3)(a) and 48 of the RTI Act.

12. The phrase '*budgetary processes*' is not defined in the RTI Act, and, therefore, a decision maker must consider the ordinary meaning of the words. In ascertaining the meaning of the phrase, however, I must also have regard to the RTI Act's express intention that grounds for refusing access to information be interpreted narrowly.¹³
13. With this obligation in mind, for information to qualify for exemption under schedule 3, section 4B of the RTI Act, it must comprise information brought into existence in connection with, or as a part of,¹⁴ Council's processes under chapter 4 of the *Local Government Act 2009* (Qld) (**LG Act**), and chapter 5 of the *Local Government Regulation 2009* (Qld) (**LG Regulation**). These processes include preparing an annual budget, as well as other financial planning and accountability documents (such as its financial statements).
14. Reading the exemption in this manner not only accords with the natural meaning of the words '*budgetary processes*' – the statutory duties and functions noted above involving systematic series of actions¹⁵ relating to the estimation of a local government's income and expenditure, and planning for allotment of that local government's funds¹⁶ – but with Parliament's mandate that grounds for refusing access under the RTI Act be read narrowly.¹⁷
15. Under the second limb of section 4B of schedule 3, information will not be exempt where it is officially published by decision of the local government.¹⁸

Findings

16. I have assessed the Mead Perry Report, along with the applicant's external review application and submissions, Council's decision letter, the relevant Council minutes and the relevant provisions of the RTI Act. During the review, Council also provided the Information Commissioner with evidence of the purpose of the Mead Perry Report.¹⁹
17. Having considered all of the above material, I am satisfied that the Mead Perry Report was brought into existence and obtained by Council as part of the 2019/20 budget preparations.²⁰ Mead Perry's proposal to Council expressly acknowledged that its review was to be undertaken '*as part of the 2019/20 budget preparations*'.²¹ The report was then cited in the Special Budget Meeting on 29 July 2019,²² in the context of the long term financial forecast, which is a part of the budget and must be included in the budget under regulation 169(2)(a) of the LG Regulation.
18. The applicant submitted that Council has not implemented the findings in the Mead Perry Report and contended that the Mead Perry Report was '*clearly not used in the LRC budgetary process*' and that it '*appears to have been ignored*'.²³ However, for the exemption to apply, the information must only be '*brought into existence*' in the course

¹³ Section 47(2)(a) of the RTI Act.

¹⁴ Paraphrasing Murphy J in *Window v The Phosphate Co-Operative Co of Australia Ltd* [1983] 2 VR 287, 297 (considering the meaning of the phrase '*in the course of*', as discussed and applied in *Glass Media Pty Ltd and Department of the Premier and Cabinet; Screen Queensland Pty Ltd (Third Party); The Walt Disney Company (Australia) Pty Ltd (Fourth Party)* [2016] QICmr 30 (18 August 2016), at note 32.

¹⁵ Paraphrasing the dictionary definition of '*process*': *Macquarie Dictionary Online*: <https://www.macquariedictionary.com.au/>.

¹⁶ Paraphrasing the dictionary definition of '*budget*': as above.

¹⁷ *Australian Broadcasting Corporation and Townsville City Council; Adani Mining Pty Ltd (Third Party) & Ors* [2019] QICmr 7 (12 March 2019) at [19].

¹⁸ Schedule 3, section 4B(2) of the RTI Act.

¹⁹ From the time the Mead Perry Report was commissioned.

²⁰ As outlined in a letter and proposal from Mead Perry to Council on 11 February 2019.

²¹ Mead Perry's Project Proposal dated 11 February 2019.

²² Longreach Regional Council, *Special Budget Meeting Confirmed Minutes* (29 July 2019), page 5.

²³ As noted in '*Reason 2*' and '*Reason 5*' attached to the applicant's external review application.

of a local government's budgetary processes. How Council subsequently acted on the report (or otherwise) is not a matter I am able to consider in relation to the exemption.

19. The applicant has further submitted that (with reference to the explanatory memoranda and second reading speech of the legislation), the provision does not apply to Longreach Regional Council, and rather, only applies to Brisbane City Council.²⁴ Having considered the provision, I am satisfied – based on the ordinary meaning of the words – that the exemption applies to all local governments in Queensland. Further, the second reading speech clearly indicates that although the exemption was first suggested in response to a request by the Lord Mayor of Brisbane City Council, it was intended to apply to all local governments:²⁵

*Following a request from the Lord Mayor, Brisbane City Council will be exempted from requirements under the Right to Information Act 2009 for documents created in the course of local government budget deliberations. During the budget process, council considers a range of options and possible projects as they work towards reaching a balance between income—with its impacts on ratepayers—and expenditure, capital works programs and employment generation. Though this issue was brought to my attention by the Lord Mayor in relation to Brisbane's budgetary processes, **the provision under RTI will apply to all local governments in Queensland**. This provision is endorsed by the Local Government Association of Queensland.*

[emphasis added]

20. As noted at paragraph 15 above, the exemption does not apply to information officially published by decision of the local government. I acknowledge the applicant's submission that the Mead Perry Report was *cited* in the Special Budget Meeting papers.²⁶ However, the report itself was not published. As such, I do not consider the exception in schedule 3, section 4B(2) of the RTI Act applies.
21. Based on the information above, I am satisfied the Mead Perry Report, in its entirety,²⁷ was a document created '*in the course of a local government's budgetary processes*', as it was created as part of the preparation of the budget for the financial year. On this basis, I find that it is exempt information for a period of ten years after the date it was brought into existence.
22. The applicant has raised other reasons for refusal, specifically noting that the Mead Perry Report may be '*commercial-in-confidence*' or offer commercial advantage to a prospective tenderer for Council contracts.²⁸ It is not necessary for me to consider alternative reasons for refusal given my finding above that the report in issue is exempt.

Other issues raised by the applicant

23. The applicant has asserted that the above analysis is very literal²⁹ and requested that '*extrinsic factors*'³⁰ to the RTI Act, under section 14B of the *Acts Interpretation Act 1954* (Qld) be considered in the external review.³¹ I do not agree with this assertion. I am

²⁴ Email received on 25 October 2020 and submissions dated 19 January 2021. The latter includes a number of submissions concerning the now repealed schedule 3, section 4A of the RTI Act, which is not in issue in this review and did only apply in relation to Brisbane City Council. Further submissions reference the debate in Parliament concerning the provision. Whilst I note these submissions, I must apply the law as it currently stands.

²⁵ Queensland, *Parliamentary Debates*, 15 April 2010, 1463 (D Boyle, Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships).

²⁶ As noted in '*Reason 1*' attached to the applicant's external review application.

²⁷ Noting that in '*Reason 3*' attached to the applicant's external review application, the applicant appears to contend that the report could be released with redactions.

²⁸ As noted in '*Reason 4*' and '*Reason 5*' attached to the applicant's external review application.

²⁹ As per the email received on 25 October 2020 from the applicant's agent.

³⁰ Namely, '*the Minister's statement in Parliament, the debate in Parliament and the explanatory notes to the Bills*'.

³¹ In the submission received on 19 January 2021.

required to consider the ordinary meaning of the words when interpreting legislation. The consideration of extrinsic material to assist with interpretation of a legislative provision is only relevant where the provision is ambiguous or obscure.³² Given the circumstances of this case, it is my view that the exemption is clearly made out and I do not consider the relevant exempt information provisions to be ambiguous or obscure.

24. Many of the applicant's submissions focus on the need for transparency, public interest and accountability.³³ For example, the applicant stated in her submissions:³⁴

The purpose of the RTI Act is very clear. The intent is to release information where there is a public interest and no harm would occur...

Even the sections of the RTI Act outlining reasons for refusing release and exempt documents reiterate the clear intent of the RTI Act to release documents and allowing the release of exempt documents.

25. The categories of exempt information set out in schedule 3 of the RTI Act represent the information which Parliament has already decided, would, on balance, be contrary to the public interest to disclose. As such, once the requirements of an exemption have been established, the RTI Act does not allow for the analysis of potentially applicable public interest factors, regardless of compelling they may be.

26. Similarly, in relation to the pro-disclosure bias as set out in section 44(1) of the RTI Act, this provides that:

*It is the Parliament's intention that if an access application is made to an agency or Minister for a document, the agency or Minister should decide to give access to the document **unless giving access would, on balance, be contrary to the public interest.***

[emphasis added]

27. It is not correct to rely on the pro-disclosure bias or the intent of the Act to 'read down' or deny the application of an exemption.³⁵ This issue was considered by the Court of Appeal in the recent decision of *Commissioner of the Police Service v Shelton & Anor*,³⁶ where Holmes CJ noted (in relation to an analogous provision concerning the intent and pro-disclosure bias as set out in the *Information Privacy Act 2009* (Qld)):³⁷

...The intent evident from that object is reaffirmed in the pro-disclosure bias expressed in s 58 of the Act. It is significant that those provisions also manifest the legislative intent to carve out public interest exceptions, one of which is that relevant here: for exempt information. And the intention of a pro-disclosure bias expressed in s 58(4) relates to the exercise of a choice, notwithstanding an entitlement to refuse to deal with an application, to do so anyway. It does not bear directly on whether the entitlement exists in the first instance, and the mechanics of how that is determined.

28. While an agency such as the Council may exercise its discretion to release information found to be exempt,³⁸ the Information Commissioner has no discretion to release information that satisfies the requirements for exemption.³⁹ I cannot decide that the

³² As per section 14B(1)(a) of the *Acts Interpretation Act 1954* (Qld).

³³ As noted in 'Reason 6' attached to the applicant's external review application.

³⁴ Received on 19 January 2021.

³⁵ As the applicant contends in her submissions, including in 'Reason 7' attached to her external review application.

³⁶ [2020] QCA 96.

³⁷ At paragraph [39].

³⁸ Under section 48(3) of the RTI Act.

³⁹ I note the applicant's submission that section 105(1)(b) of the RTI Act applies. However, given my findings above, I consider that section 105(2) of the RTI Act is of greater relevance. That is, I do not have the power to direct that access be given to an exempt document. Refer also to the comments of the Honourable Member Cullinane in *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149 at [13].

applicant is entitled to exempt information based on public interest arguments, the pro-disclosure bias or with reference to the purpose of the RTI Act. I do not have power to direct that access to the document is to be given where I am satisfied that the document comprises exempt information.

29. Finally, the applicant has raised concerns about Council's general approach to requests for information, and has submitted that the approach of Council is not consistent with a principal of pro-active disclosure.⁴⁰ While I have considered these submissions, my jurisdiction on external review is not to conduct a general inquiry into Council's information access regime. Rather, my role is to conduct a merits review of a particular 'reviewable decision', and after conducting a review, I may affirm, vary or set aside⁴¹ the decision.⁴² I also acknowledge that certain concerns raised by the applicant relate to the way in which the Council reached its decision in this matter, for example:⁴³

As further evidence of this disinclination to provide access, the decision maker states in the refusal letter that 'The processing of your Application did not involve formal consultation with any third parties'. This means the Mead Perry group as author of the report was not consulted nor were any other businesses that may have commercial-in-confidence information in the report. It is my belief that the decision maker had formed the view, before the RTI request was lodged, that no access to the report would be provided.

30. This submission does not accurately reflect the requirement for consultation set out in the RTI Act. The requirement is that an agency may only give access to a document after it has consulted with any third party that may be concerned by disclosure.⁴⁴ In this case, as the Mead Perry Report can be considered exempt information and access could therefore be refused, Council was not required to consult with Mead Perry or any other third party. While it is open for Council to make any enquiries it finds appropriate in reaching its decision on access, I do not consider that it failed to take any steps that are expressly required by the RTI Act.

DECISION

31. For the reasons set out above, I affirm Council's decision⁴⁵ to refuse access to the Mead Perry Report on the basis that it comprises exempt information under section 47(3)(a) and section 48 and schedule 3, section 4B of the RTI Act.

Shiv Martin
Assistant Information Commissioner

10 March 2021

⁴⁰ As noted in 'Reason 8' and 'Reason 9' attached to the applicant's external review application.

⁴¹ And make a decision in substitution for the decision.

⁴² Section 110 of the RTI Act.

⁴³ In 'Reason 9' attached to her external review application.

⁴⁴ Section 37 of the RTI Act.

⁴⁵ As a delegate of the Information Commissioner, under section 145 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
14 July 2020	OIC received the application for external review.
17 July 2020	OIC notified Council and the applicant that the application for external review had been received, and requested procedural documents from Council.
22 July 2020	OIC received the requested documents from Council.
24 August 2020	OIC notified the parties that the application for external review had been accepted and requested further information from Council. OIC noted that the application was not made within the 20 business day timeframe, but allowed a longer period under section 88(1)(d) of the RTI Act.
28 August 2020	OIC received a copy of the information in issue from Council.
30 September 2020	OIC provided the applicant with an update for the review and explained the impact to timeframes due to measures implemented in response to COVID-19.
7 October 2020	OIC requested submissions from Council.
8 October 2020	OIC received submissions from Council.
9 October 2020	OIC conveyed a preliminary view to the parties.
24 October 2020	The applicant confirmed by email that she would proceed with the external review.
25 October 2020	The applicant's representative requested an extension of time to make submissions.
27 October 2020	OIC requested, and the applicant provided, authority for the representative to act on her behalf.
18 December 2020	OIC conveyed a detailed preliminary view to the applicant.
18 January 2021	The applicant (via her representative) sought additional time to provide a submission.
19 January 2021	OIC granted the short extension requested, and the applicant (via her representative) provided further submissions to OIC.