



Decision and Reasons for Decision

Application Number: 310674

Applicant: Richards

Respondent: Gold Coast City Council

Decision Date: 28 March 2012

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – applicant sought access to all documents held by the respondent in relation to himself – whether disclosure of the information could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation – sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant has had extensive contact with Gold Coast City Council (**Council**) over a number of years relating generally to his dogs and Council's establishment and implementation of the local law concerning dangerous dogs. The applicant sought access under the *Right to Information Act 2009* (Qld) (**RTI Act**) to all documents about him.¹
2. Council located a large number of documents about the applicant, primarily relating to his dealings with Council staff and elected officials. Council disclosed some of this information to the applicant but refused access to the remainder on the basis that it either comprised exempt information or its disclosure would, on balance, be contrary to the public interest.² One of the grounds for Council refusing access to some of this information was that its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
3. I find that the applicant has engaged in serious acts of harassment and intimidation of Council staff and elected representatives in the past. Based on this previous pattern of conduct, the poor state of the relationship between the applicant and Council and the fact that the subject matter elicits a strong response from the applicant, I am satisfied that disclosing any of the information in issue in this review (**Information in Issue**) could reasonably be expected to result in Council staff or elected officials being subjected to a serious act of harassment or intimidation. I am satisfied that Council was entitled to refuse access to the Information in Issue as it comprises exempt information.

Background

4. Significant procedural steps relating to the application and external review application are set out in the appendix to this decision.

Reviewable decision

5. The decision under review is the decision Council was taken to have made affirming a deemed decision to refuse access to the Information in Issue.³

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Issue for determination

7. Having reviewed the correspondence relating to the application and the Information in Issue, I consider that the issue to be determined in this external review is whether

¹ Specifically, his application requests '*all documents etc in relation to myself held by Council in any capacity or form with anyone else or other agency (Qld Gov, NSW Gov, Local Govs)*'.

² As explained in the appendix, Council was deemed to have refused access to the Information in Issue. However, Council's letter to the applicant dated 9 June 2011 sets out Council's views regarding the application of the RTI Act to the Information in Issue.

³ The background to this issue is set out in the appendix.

disclosing the Information in Issue to the applicant could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.

Information in Issue

8. The applicant has had extensive contact with Council staff over a number of years relating generally to his dogs and Council's establishment and implementation of the local law concerning dangerous dogs. The Information in Issue comprises a range of information about the applicant including records of his dealings with Council staff and elected officials in relation to these and other issues.

Relevant law

9. A person has a right to be given access to documents of an agency under the RTI Act. However, this right is subject to other provisions of the RTI Act, including the grounds on which access can be refused.
10. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.⁴ Schedule 3 of the RTI Act specifies the types of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, information is exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.⁵
11. In *Sheridan and South Burnett Regional Council (and Others)* (**Sheridan**)⁶ I decided that when considering whether disclosure of information could reasonably be expected to result in a person being subjected to a serious act or harassment or intimidation:
- the decision maker does not have to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice⁷
 - the expectation must arise as a result of disclosure, rather than independently or from any other circumstances⁸
 - though a source of harassment or intimidation must be in contemplation, it need not be the applicant;⁹ and
 - the question of whether disclosing the information in issue could reasonably be expected to result in a serious act of harassment or intimidation must be considered objectively, in light of all relevant information.¹⁰

Findings

12. I am satisfied that disclosing any of the Information in Issue to the applicant in this case could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation for the reasons that follow.

⁴ Section 47(3)(a) of the RTI Act.

⁵ Schedule 3, section 10(1)(d) of the RTI Act. This provision is subject to the exception contained in schedule 3, section 10(2). I am satisfied that none of the exceptions apply in this matter.

⁶ (Unreported, Queensland Information Commissioner, 9 April 2009). The decision in *Sheridan* concerned section 42(1)(ca) of the now repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**). 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 findings in *Sheridan* are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

⁷ At paragraph 192.

⁸ At paragraph 191.

⁹ At paragraph 202.

¹⁰ At paragraph 201.

Is the expected harassment and/or intimidation serious in nature?

13. I have previously indicated that:¹¹

- 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; and
- a serious act of intimidation is an action that induces fear or forces a person into some action by inducing fear or apprehension and that causes concern or apprehension or has undesired consequences.

14. During the review, Council advised the Office of the Information Commissioner (**OIC**) that:

... Mr Richards has on numerous occasions been advised in writing to cease his telephone contact with officers and Councillors of the Gold Coast City Council, but even to date, continues to ignore this advice. This is in spite of being charged with using a telephone device to harass or menace two of our Councillors only last year.

It is this blatant disregard of Council's repeated requests, as well as the extensively documented history of Mr Richards' verbal abuse of Council officers and Councillors, that has led to the claim to exempt documents pursuant to s.10(1)(d). This Council holds a genuine concern for the welfare of its staff and as such, in June 2010, introduced its Occupational Violence Prevention and Management Policy.

15. A review of the Information in Issue confirms Council's submissions as set out above and also indicates that:

- the applicant has contacted Council staff and elected representatives persistently outside of work hours on their private mobile numbers and home telephone numbers (though they had not provided these numbers to the applicant)
- the applicant has made both implicit and explicit threats of violence against Council staff and elected representatives, as well as against their family members
- in this context, the applicant has indicated he knows the location of the private residences of particular individuals
- a significant amount of the applicant's communication with Council staff and elected representatives ranges from being abusive and rude to threatening and/or harassing; and
- the applicant's actions have resulted in Council implementing security plans to protect specific persons.

16. Based on this information, I am satisfied that the applicant's telephone contact with Council staff and elected representatives constitute serious acts of harassment as:

- they are actions that attack, disturb or torment other persons; and
- they caused concern and/or apprehension amongst those targeted, especially through the applicant's exploitation of the private details of Council staff and elected representatives, and through the implicit and explicit threats.

¹¹ *Sheridan* at paragraphs 199 & 200.

17. I am also satisfied that the applicant's telephone contact with Council staff and elected representatives are serious acts of intimidation as:

- they are actions that induce fear in a number of the persons targeted; and
- on occasion, those acts caused significant levels of concern and apprehension, and led to the need for Council to implement security plans.

Is the expectation reasonably based and does it arise from disclosing the Information in Issue?

18. Yes, for the reasons that follow.

19. In *Sheridan* I considered the phrase *could reasonably be expected to* in the context of an equivalent provision under the now repealed FOI Act and said that depending on the circumstances of the particular review, a range of factors may be relevant in determining whether an expectation of serious harassment and/or intimidation is reasonable. These factors may include, but are not limited to:¹²

- past conduct or a pattern of previous conduct
- the nature of the relevant information in issue
- the nature of the relationship between the parties and/or relevant third parties; and
- relevant contextual and/or cultural factors.

20. I consider the past occurrences of serious acts of harassment and intimidation provide a reasonable basis for Council staff and elected representatives to expect to be subjected to further serious acts of harassment or intimidation. The nature of the Information in Issue and the poor state of the relationship between the applicant and Council further reinforce this.

21. It is also necessary to consider whether disclosing the particular Information in Issue could reasonably be expected to result in the anticipated conduct.¹³ In this review, the Information in Issue encompasses a wide range of documents which relate to the applicant's dealings with Council staff and elected representatives and Council's responses to the applicant. The context of many of these communications relates to the applicant's concerns over the establishment and implementation of the local law concerning dangerous dogs. It is apparent that:

- this is a subject which elicits a strong response from the applicant
- the applicant has been in dispute with Council for many years; and
- the applicant's conduct in this regard has detrimentally impacted Council staff and elected representatives.

22. I am satisfied that if the Information in Issue is disclosed, the applicant may once again become aggrieved with Council and re-commence his abusive, threatening and intimidating behaviour towards Council staff and elected representatives. I also note that the applicant has in the past repeatedly targeted persons against whom he holds particular (though not necessarily justified) grievances. I am satisfied that this provides a reasonable basis for concluding that the applicant's pattern of behaviour is likely to continue if he gains access to the Information in Issue.

¹² *Sheridan* at paragraph 193.

¹³ *Sheridan* at paragraph 307.

23. The applicant elected not to provide submissions in response to the preliminary views conveyed to him in the course of this external review. Though he has said the *'complaints about me were frivolous, vexatious and totally unwarranted as they proved fruitless, they are old, out of date and there [are no] pending investigations or legal matters in relation to myself.'* I understand that this submission relates to Council's view that disclosure of the Information in Issue could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
24. I do not accept the applicant's contention that Council's concerns are frivolous or vexatious. I note that in May 2010 the applicant pleaded guilty in the Southport Magistrates Court to using a carriage service to menace, harass or cause offence to two elected representatives of Council.
25. I have taken into account that the applicant has resided interstate for a number of years. However, I note that the applicant's harassing phone calls continued long after he relocated from the Gold Coast. The applicant's relocation does not, therefore, reduce the likelihood of his committing an act of serious harassment or intimidation as a result of gaining access to the Information in Issue.
26. For the reasons set out above, I find that there is a reasonably based expectation that disclosing the Information in Issue to the applicant would result in a person being subjected to a serious act of harassment or intimidation.¹⁴ I am therefore satisfied that Council is entitled to refuse access to the Information in Issue because it comprises exempt information.

DECISION

27. For the reasons set out above, I affirm the decision refusing access to the Information in Issue

Julie Kinross
Information Commissioner

Date: 28 March 2012

¹⁴ Sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the RTI Act.

APPENDIX
Significant procedural steps

Date	Event
23 February 2011	Council received the access application under the RTI Act.
30 March 2011	Council did not issue a decision within the required timeframe and was taken to have refused access to the requested information.
28 April 2011	OIC received the applicant's external review application in relation to the deemed decision.
29 April 2011	Council applied to OIC for further time to process the access application.
5 May 2011	OIC decided to allow Council until 26 May 2011 to deal with the access application.
26 May 2011	Council did not issue a decision within the required timeframe and was taken to have affirmed the deemed decision.
9 June 2011	Despite having affirmed the deemed decision, Council purported to continue to process the access application and issued a decision to the applicant. Council granted the applicant access to a range of information and refused access to the remainder of the information under the RTI Act.
17 June 2011	OIC received the applicant's external review application.
20 June 2011	OIC asked Council for a copy of relevant procedural documents.
21 June 2011	OIC received the requested documents from Council.
24 June 2011	OIC notified the applicant and Council that the external review application had been accepted. OIC asked Council to provide a copy of the Information in Issue and other procedural documents.
14 July 2011	OIC received a copy of the Information in Issue and relevant procedural documents from Council.
21 December 2011	OIC conveyed a preliminary view to the applicant on some of the Information in Issue and invited the applicant to provide submissions supporting his case by 13 January 2012 if he did not accept the preliminary view.
18 January 2012	The applicant advised OIC that he did not accept the preliminary view.
9 February 2012	OIC conveyed a further preliminary view to the applicant on all of the Information in Issue and invited the applicant to provide submissions supporting his case by 9 March 2012 if he did not accept the preliminary view.
24 February 2012	The applicant notified OIC that he did not accept the preliminary view and asked for a number of documents including Council's Occupational Violence Prevention and Management Policy and minutes of the Council meetings which recommended and endorsed this policy.
2 March 2012	OIC sent the applicant a copy of the policy and minutes and noted that these documents were available on Council's website.
12 March 2012	The applicant notified OIC that he did not intend to provide further submissions in response to the preliminary view.