



Decision and Reasons for Decision

Citation:	<i>H57 and Mareeba Shire Council [2025] QICmr 67 (9 October 2025)</i>
Application Number:	318528
Applicant:	H57
Respondent:	Mareeba Shire Council
Decision Date:	9 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - complaint information about the applicant's property - personal information and privacy - accountability - prejudice flow of information - whether disclosure would on balance be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and 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 Mareeba Shire Council (**Council**) under the *Information Privacy Act 2009* (Qld)¹ (**IP Act**) for documents regarding a report made to Council about the applicant's property.²
2. Council located 61 pages and decided to grant access to 47 pages and refuse access to 11 pages and parts of three pages.³
3. The applicant applied for internal review of this decision. On internal review, Council again decided to refuse access to the above information.⁴
4. On 25 March 2025, the applicant applied to the Information Commissioner for external review.
5. For the reasons set out below, I affirm Council's decision and find that access to this information may be refused as disclosure would, on balance, be contrary to the public interest.

Reviewable decision

6. The decision under review is Council's internal review decision dated 6 March 2025.

¹ On 16 December 2024.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). References to the IP Act and RTI Act in this decision are to the legislation as in force prior to 1 July 2025. This is in accordance with chapter 8, part 3 of the IP Act and chapter 7, part 9 of the RTI Act, comprising transitional provisions requiring that access applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted.

³ Decision dated 21 January 2025.

⁴ Internal review decision dated 6 March 2025.

Evidence considered

7. In reaching my decision in this matter, I have taken into account the evidence, submissions, legislation and other material as set out in these reasons (including footnotes).⁵ I have also had regard to the *Human Rights Act 2019 (Qld)* (**HR Act**), particularly the right to seek and receive information,⁶ and in doing so, I have acted in accordance with section 58(1) of the HR Act.

Information in issue

8. The information in issue comprises 11 pages and three part-pages. I am limited in the level of detail I can give about this information.⁷ However, it can broadly be described as identifying information of other individual/s (such as names and contact details), information provided by other individual/s to Council, and correspondence between those individual/s and Council (**Complaint Information**).
9. The applicant is *'not interested in the disclosure of the identity of the complainant and/or any information related'* and asserts that they know *'without a shadow of a doubt...who exactly the complainant is'*.⁸ Nothing in this decision should be taken to confirm or deny the applicant's assumption about the complainant/s identity.

Issue for determination

10. The issue for determination is whether disclosure of the Complaint Information would, on balance, be contrary to the public interest under section 49 of the RTI Act.

Relevant law

11. Under the IP Act, a person has a right to be given access to government-held documents containing their personal information.⁹ This right is subject to certain limitations, including grounds on which access to a document may be refused.¹⁰ Access to a document may be refused where its disclosure would, on balance, be contrary to the public interest.¹¹
12. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹² and explains the steps that a decision maker must take¹³ in deciding the public interest as follows:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and

⁵ Including the applicant's external review application dated 25 March 2025, and submissions dated 16 July 2025, 3 August 2025 and 1 September 2025.

⁶ Section 21(2) of the HR Act.

⁷ Section 121 of the IP Act.

⁸ Submission dated 16 July 2025.

⁹ Section 40 of the IP Act.

¹⁰ Section 67 of the IP Act. An agency may refuse access to a document in the same way and to the same extent access could be refused under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.

¹¹ Sections 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 wellbeing of citizens generally. This means that, ordinarily, 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.

¹² Schedule 4 of the RTI Act. This list is not exhaustive and therefore, other factors may also be relevant in a particular case. The public interest balancing test is to be applied with a pro-disclosure bias (Section 44(4) of the RTI Act).

¹³ Section 49(3) of the RTI Act.

- decide whether disclosing the information would, on balance, be contrary to the public interest.

Findings

13. No irrelevant factors arise in the circumstances of this case, and I have taken none into account.

Factors favouring disclosure

Applicant's personal Information

14. The Complaint Information contains a small amount of the applicant's personal information, giving rise to a factor favouring disclosure to which I attribute high weight.¹⁴
15. However, the applicant's personal information appears intertwined with the personal information of others (such as within the complainant's/s' statements to Council).¹⁵ As a result, the applicant's personal information cannot be released without also releasing the personal information of other individual/s, giving rise to a public interest harm and a further factor favouring nondisclosure that I will discuss below.

Accountability and transparency of Council

16. Disclosure of the Complaint Information would enhance Council's transparency and accountability in relation to the complaint process.¹⁶ Additionally, disclosure would give the applicant a more fulsome understanding of the information relied on by Council when assessing and deciding the complaint against them.¹⁷
17. However, the applicant has been advised of the specific nature of the complaint and provided the opportunity to respond in the course of Council's investigation. Due to the steps taken by Council to inform the applicant about the complaint process (including through the release of information), the weight afforded to the factors which seek to improve Council's transparency and accountability in decision-making processes is reduced. Accordingly, I afford low weight to these factors favouring disclosure.

Advance fair treatment

18. The applicant asserts that it would be fair to see '*all evidence presented/provided against [them]*'.¹⁸
19. A factor favouring disclosure will apply when the release of information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies.¹⁹
20. Council provided the applicant with key information about the complaint during the investigation. Council were satisfied with the applicant's response to the complaint and decided that no further action was necessary. Nevertheless, I recognise that disclosure of the Complaint Information would provide the applicant with a complete understanding

¹⁴ Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the IP Act defines 'personal information' as follows: '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'.

¹⁵ Matthews and Gold Coast City Council (Unreported, Queensland Information Commissioner, 23 June 2011) at [23].

¹⁶ Schedule 4, part 2, items 1 and 3 of the RTI Act.

¹⁷ Schedule 4, part 2, item 11 of the RTI Act.

¹⁸ Submission dated 16 July 2025.

¹⁹ Schedule 4, part 2, item 10 of the RTI Act.

of the information provided to Council about their property, which may assist dealings with Council about the applicant's property.

21. However, owing to the nature of the Complaint Information (that is mostly correspondence between Council and the complainant/s), the information released to the applicant and that Council determined to take no further action in relation to the complaint, I afford this factor low weight.

Other factors favouring disclosure

22. Aside from the above factors, the applicant also submits that disclosure of the Complaint Information could reasonably be expected to:
 - contribute to the administration of justice for a person, including procedural fairness²⁰
 - reveal that the information is incorrect, misleading, gratuitous or unfairly subjective²¹
 - contribute to the maintenance of peace and order;²² and
 - contribute to the enforcement of the criminal law.²³
23. I do not accept that any of the above factors are enlivened in this case for the reasons set out below.
24. When assessing whether the release of the Complaint Information would contribute to the administration of justice for a person, I must consider whether:
 - the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the requested information held by Council would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.²⁴
25. Contrary to the applicant's assertions, there is nothing before me indicating that a legally recognised wrong was perpetrated against the applicant and that the evaluation or pursuit of a remedy might be facilitated by disclosure of the Complaint Information. In this respect, the applicant has access to information concerning Council's handling of the complaint and the investigative outcome. I do not consider that the Complaint Information is required to enable the applicant to pursue a legal remedy or evaluate whether a remedy (legal or otherwise) is available or worth pursuing.
26. The applicant contends that without the Complaint Information, they '*may not be able to find justice in Court*'.²⁵ However, I do not consider that the Complaint Information is required to enable the applicant to escalate their concerns through alternate avenues, particularly in circumstances where the applicant has explained that they do not seek identifying information of the complainant/s. I also note that, if the applicant does commence any legal action, it is reasonable to expect that relevant court disclosure processes will be available to enable the production of documents. Given the information which has been disclosed by Council and the limited nature of the Complaint Information, I do not consider this factor relating to the administration of justice for a person applies.

²⁰ Schedule 4, part 2, items 16 and 17 of the RTI Act.

²¹ Schedule 4, part 2, item 12 of the RTI Act.

²² Schedule 4, part 2, item 15 of the RTI Act.

²³ Schedule 4, part 2, item 18 of the RTI Act.

²⁴ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in 10S3KF and *Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

²⁵ Submission dated 16 July 2025.

27. While the applicant considers that it would be fair to see all evidence presented to Council against them, this is not required to afford the applicant procedural fairness. Rather, procedural fairness requires a decision maker to act fairly when deciding a matter that will impact a person's rights or interests.²⁶ This means the person subject to a decision must be provided with adequate information to effectively respond to the case against them. The released information shows that the applicant was notified of the complaints against their property, provided an opportunity to respond and informed of the outcome of the investigation. In these circumstances, I am not satisfied that procedural fairness requires the applicant to receive the Complaint Information and I do not consider that this factor applies.
28. There is also nothing within the Complaint Information that I consider disclosure would reveal to be incorrect, misleading, gratuitous or unfairly subjective.²⁷ Some of the Complaint Information is purely factual, which presents as accurate and correct. Due to the nature of statements of private individual/s made to a regulatory agency, some of the information is, of course, inherently subjective – that does not mean that it is unfairly so. Rather, it is the complainant/s account or interpretation of matters. As such, this factor does not arise for balancing.
29. The applicant is also concerned about harassment or potential criminal conduct by other individuals. The applicant contends that full access to the Complaint Information would assist them to have '*irrefutable factual proof*' to pursue these concerns. As such, I have considered whether disclosure of the Complaint Information could reasonably be expected to contribute to the enforcement of the criminal law.²⁸ The applicant argued:²⁹
- ... in cases of suspected criminal activity, the need to disclose information for law enforcement purposes often outweighs the individual's privacy rights. I believe this to be the case in this matter and that access ALL information provided by the complainant, therefore should not be denied.*
30. I do not accept that this argument applies in the circumstances but rather, relates to personal information being disclosed to a law enforcement agency by another government entity. The Queensland Police Service, as the relevant criminal law enforcement agency, would be able to obtain further information from Council directly should it be required for investigating an alleged offence.³⁰
31. Apart from the applicant's assertions, there is no information before me, either within the Complaint Information or otherwise that indicates breaches of the criminal law. The applicant contends that OIC would be unable to identify if there were evidence of criminal conduct within the Complaint Information. However, having independently assessed the contents of the Complaint Information, from an objective viewpoint, I am satisfied that it does not demonstrate breaches of the criminal law. As such, I am not persuaded that the disclosure of the Complaint Information would contribute to the enforcement of the criminal law.

²⁶ The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 582 per Mason J).

²⁷ While not raised by the applicant, for completeness, I do not consider that disclosure of the Complaint Information would reveal that it was out of date or irrelevant.

²⁸ Schedule 4, part 2, item 18 of the RTI Act.

²⁹ Submission received 16 July 2025.

³⁰ Further, by the applicant's own submission dated 16 July 2025, they have raised their concerns about who they consider the complainant/s to be with the Queensland Police Service.

32. The applicant has stated that they:³¹

... do not have any desire to ruin anyone's life, as long as there are other options available to protect myself & pacify the situation at hand – The very reason why I am seeking access to ALL evidence presented by the complainant ...one [named person] realises I am serious about taking the matter further, if / when(ever) needed.

33. This statement indicates that the applicant may consider that disclosure of Complaint Information could reasonably be expected to contribute to the maintenance of peace and order. I acknowledge the applicant's desire to 'pacify' the situation. However, I do not consider that disclosure of the Complaint Information will contribute to peace and order due to the confined nature of the information relating to Council's engagement with other individual/s in the complaint process. I also note that generally, the role to maintain peace and order is a function of a law enforcement entity, not an individual citizen. For these reasons, I do not consider this public interest factor applies.

Factors favouring nondisclosure

Personal information and privacy

34. As detailed above, much of the Complaint Information does not contain the applicant's personal information and is, instead, the personal information of others.³² On this point, the applicant submitted that this:³³

... seems to be quite illogical to me, as 10 (!!!) pages of mainly information on the complainant...should not normally constitute the subject matter / focus of a complaint to the Council. [sic]

35. While I acknowledge the applicant's assertions about what they expect a document might contain, I have had the opportunity to view the documents in their entirety. I am satisfied that the Complaint Information is either comprised of:

- intertwined personal information of both the complainant/s and applicant; or
- identifying information of the complainant/s including complainant'/s' perspectives and experiences, alongside communication from Council to the complainant/s.

36. I have considered whether release of the Complaint Information could reasonably be expected to prejudice the protection of the complainant'/s' privacy³⁴ or cause public interest harm through disclosure of their personal information.³⁵ I consider the provision of information to regulatory agencies, such as Council, is a private action within an individual's personal sphere.³⁶ Given the context that this information appears in – that is – a complaint made by private individual/s to Council as a regulatory body, I consider the public interest harm anticipated from disclosure of this information is significant, and that release would be a significant intrusion into the complainant'/s' privacy. While I acknowledge the applicant does not seek the identity of the complainant/s, release of the Complaint Information would reveal this. As such, I afford each of these factors substantial weight.

³¹ Submission dated 16 July 2025. This submission has been altered to remove identifying information of other individuals.

³² See footnote 14 for the definition of 'personal information'. I am satisfied the Complaint Information falls within this definition.

³³ Submission dated 16 July 2025.

³⁴ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (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 paragraph 1.56).

³⁵ Schedule 4, part 4, section 6 of the RTI Act.

³⁶ See *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [27].

Prejudice the flow of information to Council

37. Where disclosing information could reasonably be expected to prejudice the flow of information to a regulatory agency, or prejudice an agency's ability to obtain confidential information, public interest factors favouring nondisclosure arise, as well as a public interest harm factor.³⁷
38. Council relies on members of the public to provide information and raise concerns to enable it to administer and enforce local government laws. I am satisfied that routinely disclosing Complaint Information of this kind could reasonably be expected to discourage people from coming forward with information. As a result of individuals not providing a full and frank account, this could be expected to prejudice Council's ability to obtain such information in future, including information which it usually treats as confidential, and in turn, affect Council's ability to discharge regulatory functions.
39. I acknowledge the applicant's concern about the veracity of the complaints.³⁸ I recognise that a person who is the subject of a complaint may experience a sense of unfairness or injustice in not knowing the complete account of the concerns raised against them.
40. However, the Information Commissioner has previously found that these circumstances must be tolerated, where informants genuinely, but mistakenly, believe that an issue requires investigation by a relevant authority.³⁹ Due to the strong public interest in protecting the free flow of information to a regulatory agency, even where this may result in an agency investigating unsubstantiated allegations, I consider that the factors designed to protect the flow of information to Council, including confidential information, carry substantial weight.

Balancing relevant public interest factors

41. I acknowledge the importance of ensuring that regulatory agencies conduct investigations in a transparent and accountable way. I also recognise that to a limited extent, the Complaint Information may assist the applicant in any dealings with Council about the property. However, I am satisfied in the circumstances of this case, that these factors should be afforded low weight.
42. While some of the Complaint Information is the applicant's personal information, it is intertwined in such a way with that of the complainant/s, that it is not possible to separate from the personal information of others. For this reason, disclosure of the applicant's information would disclose the personal information of individual/s other than the applicant, prejudice the complainant/s' right to privacy, causing a public interest harm and impacting the flow of information to a regulatory body.
43. Having identified and carefully considered the public interest factors for and against disclosure, I consider that the public interest in protecting the personal information and right to privacy of others and Council's ability to obtain information for its regulatory function, on balance, outweigh the factors favouring disclosure.

³⁷ Schedule 4, part 3, items 13 and 16 of the RTI Act, and schedule 4, part 4, section 8 of the RTI Act.

³⁸ Submissions dated 25 March 2025, 16 July 2025 and 3 August 2025.

³⁹ P6Y4SX and Department of Police (Unreported, Queensland Information Commissioner, 31 January 2012) at [35] – [40].

DECISION

44. For the reasons set out above, I affirm Council's decision⁴⁰ and find that access may be refused to the Complaint Information as disclosure would, on balance, be contrary to the public interest.⁴¹
45. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.



Brianna Luhrs
Manager, Right to Information

Date: 9 October 2025

⁴⁰ Under section 123(1)(a) of the IP Act.

⁴¹ Under sections 67 of the IP Act and 47(3)(b) and 49 of the RTI Act.