



## Decision and Reasons for Decision

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Citation:	<i>Queensland Newspapers Pty Ltd and Ipswich City Council; Third Party</i> [2015] QICmr 12 (12 May 2015)
Application Number:	312126
Applicant:	Queensland Newspapers Pty Ltd
Respondent:	Ipswich City Council
Third Party:	Third Party
Decision Date:	12 May 2015
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - applicant seeks information about travel by Council's Mayor to London - photographs depicting individuals other than the applicant - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under sections 47(3)(b) and 49 and schedule 4, part 3, item 3 and part 4, item 6(1) of the <i>Right to Information Act 2009</i> (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to Ipswich City Council (**Council**) seeking access under the *Right to Information Act 2009* (Qld) (**RTI Act**) to documents created between 1 January 2008 and 10 June 2014 relating to travel by Council's Mayor to London.
2. Council located 73 pages and decided to refuse access to two pages, comprising photographs (**Photographs**),<sup>1</sup> and parts of 14 pages<sup>2</sup> on the basis that disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to the Photographs.<sup>3</sup>
4. OIC notified a third party of the likely release of the information under the RTI Act and invited them to provide submissions supporting their case if they objected to disclosure of the Photographs. The third party objected to disclosure of the Photographs and

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<sup>1</sup> Comprising pages 58 and 60 of the information located by Council.

<sup>2</sup> Comprising pages 1, 2, 6, 10, 49, 51, 53, 55, 57, 59, 61, 63, 65 and 67.

<sup>3</sup> The applicant did not seek review of Council's decision to refuse access to the information contained within the 14 part pages.

contended that disclosure of the Photographs would, on balance, be contrary to the public interest.

5. For the reasons set out below, I affirm Council's decision to refuse access to the Photographs.

### **Background**

6. The applicant applied to Council for access to documents held by Council about travel to London by the Mayor in September 2012. The Mayor and other Councillors travelled in their capacity as councillors and as directors of Ipswich City Properties Pty Ltd (**Ipswich City Properties**). The Photographs, which were taken whilst the Mayor and Councillors were in London, fall within the scope of the access application as they were emailed between two of the Councillors using their Council email accounts.
7. Significant procedural steps relating to the application and external review are set out in the Appendix.

### **Reviewable decision**

8. The decision under review is Council's decision dated 5 August 2014.

### **Material considered**

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

### **Information in issue**

10. The information in issue in this review is comprised of the Photographs.

### **Relevant law**

11. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>4</sup> However, this right of access is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.<sup>5</sup>
12. Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.
13. 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.
14. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>6</sup> and explains the steps that a decision-maker must take<sup>7</sup> in deciding the public interest as follows:

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<sup>4</sup> Section 23 of the RTI Act.

<sup>5</sup> Set out in section 47 of the RTI Act.

<sup>6</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

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

## Submissions

15. The third party submits<sup>8</sup> that *'the Photographs were taken during [the third party's] spare time as personal mementoes [sic] of the trip'*. In addition, Council submits:<sup>9</sup>
- the Photographs do not reflect the third party acting in an official or work related capacity
  - the third party has a right to privacy
  - when information does not relate to a public sector representative or employee's official duties, their status as such does not automatically diminish or significantly reduce their right to privacy or protection of personal information; and
  - public sector policies, including those of Council, expressly authorise their representatives and employees to use public sector ICT related infrastructure or devices for limited personal use.
16. The applicant submits<sup>10</sup> that due to a lack of publicly available information about Ipswich City Properties, which it submitted is wholly owned by Council ratepayers, there is a strong public interest in the Photographs being disclosed as this will assist in enhancing Council's accountability, enable ratepayers to scrutinise the spending of public funds and to cross-reference with other available information about the trip. Further, the applicant contends that the privacy attaching to the Photographs is reduced as the Photographs were emailed between Councillor's using Council email addresses, the third party would have consented to the Photographs being taken and the nature of the Photographs does not necessarily mean that the third party was not, in some way, still acting in an official capacity as a representative of Ipswich City Properties.

## Findings

17. No irrelevant factors arise in the circumstances of this review. I will now consider the relevant factors for and against disclosure of the Photographs.

## Accountability and transparency

18. The RTI Act recognises factors in favour of disclosure where disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>11</sup>
  - contribute to positive and informed debate on important issues or matters of serious interest;<sup>12</sup> and
  - ensure effective oversight of expenditure of public funds.<sup>13</sup>

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<sup>7</sup> Section 49(3) of the RTI Act.

<sup>8</sup> Submission dated 5 February 2015.

<sup>9</sup> Submission dated 3 February 2015.

<sup>10</sup> Email to OIC requesting an external review dated 7 August 2014 and submission dated 12 March 2015.

<sup>11</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>12</sup> Schedule 4, part 2, item 2 of the RTI Act.

19. I note the applicant's arguments that disclosure of the Photographs would enable community members to be satisfied that Council is being accountable and transparent about the trip to London, enable them to engage in positive and informed debate about that trip, and ensure that ratepayer's funds are being expended appropriately by Council.
20. I have carefully considered the Photographs and it is evident on their face that they are unlikely to facilitate the type of public oversight, debate and enlightenment envisaged by the applicant. This is because:
- the background of both photographs (streetscape and a park setting respectively) indicates that they were taken outdoors during the day time;
  - the people in the photographs appear to be everyday citizens, dressed smartly (though not in business attire); and
  - unlike other photographs taken of the third party with International business figures during the trip (which have been released or published by Council), the people in the Photographs do not seem likely to be persons that the third party would have met with in their official or work related capacity.
21. I note the third party's submission, and that of Council, that the Photographs were mementos taken during the third party's personal spare time during the trip.
22. It is evident from the material before me and media articles produced about the trip to London that the third party acted in their capacity as a Director of Ipswich City Properties as well as in their capacity as a representative of Council.<sup>14</sup>
23. I note<sup>15</sup> that Ipswich City Properties is a separate legal entity to Council which operates separately and independently from Council.<sup>16</sup> However, the issue of whether the third party was acting as a representative of Council or a director of Ipswich City Properties is moot as I accept the third party's submission that the Photographs were taken as mementos in the third party's personal spare time. I consider the third party's submission is credible, as there is nothing on the face of the Photographs that would suggest otherwise, nor in any other material before me.
24. As to the issue of the Photographs being located on Council's network. I note Council's ICT policy and Councillor and Employee Codes of Conduct allow limited personal use of Council ICT infrastructure by employees and the transmission of the Photographs appear to fall within that permissible use.
25. I note that there were only two photographs which Council and the third party submit were taken during personal spare time, rather than a larger number, and they only appear to be in Council's possession by virtue of them being emailed between Council email addresses. Which is permitted under Council policy.
26. Thus, in light of the nature of the images captured in the Photographs and the fact that they were taken as personal mementos during the third party's personal spare time, I consider that the degree to which disclosure of the Photographs could further the public interest factors of accountability and transparency of Council, informed public debate or effective oversight of the expenditure of public funds is limited.

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<sup>13</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>14</sup> For example, see <http://www.qt.com.au/news/pisasale-roadshow-rollsacross-the-globe/1561532/>.

<sup>15</sup> As set out in a submission on behalf of Council received on 4 March 2015.

<sup>16</sup> However, I make no finding about the public entity status of Ipswich City Properties for the purpose of the RTI Act.

27. I am satisfied that the Photographs convey very little information that could enhance the accountability of Council, enable public debate, or allow assessment of Council's expenditure of rates. Given this position, I afford these factors favouring disclosure low weight.

### **Personal information and privacy**

28. The RTI Act recognises factors in favour of nondisclosure where disclosure could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;<sup>17</sup> and
  - cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>18</sup>
29. As explained above, I am satisfied that the Photographs are mementos taken during personal spare time, were taken during the day-time and are not of the type that would necessitate disclosure in the public interest.
30. While the RTI Act<sup>19</sup> precludes me from offering more information regarding the two Photographs, I confirm that their content is sufficient to satisfy me that neither Photograph was taken while the third party was acting in their official or work related capacity. I acknowledge that a public sector representative will have some (relatively brief) 'personal spare time' during a work-related trip and, on the information before me, accept that the Photographs were taken as personal mementos during the third party's personal spare time during the trip in question.
31. Further, although the Photographs appear within the information located by Council as attachments to emails sent from one Council email address to another, I am satisfied that they do not comprise 'routine personal work information'<sup>20</sup> of either the sender or the recipient. In this regard, as previously noted, minor, limited personal/private use of Council's networks and devices is permitted for employees.<sup>21</sup>
32. The applicant has submitted that *'should the photographs be so innocuous, one must consider why the subject of such a photograph would be concerned about their potential release.'*<sup>22</sup> In my view, the third party's desire to maintain the privacy in mementos of personal time during an overseas trip should not be construed as undue concern about release. The third party is entitled to seek to maintain privacy over personal non-work related information.
33. In these circumstances, I am satisfied the prejudice to the privacy of the third party and others that would occur if the Photographs were disclosed would be significant. Also, the nature of the information and circumstances of the case do not, on the information before me, reduce or mitigate the public interest harm that would result from disclosure. Accordingly, I afford the factors favouring nondisclosure significant weight in this review.

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<sup>17</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>18</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>19</sup> Section 108 of the RTI Act.

<sup>20</sup> That is, related to the routine day to day work duties and responsibilities.

<sup>21</sup> In accordance with Council's ICT Policy and Councillor and Employee Codes of Conduct.

<sup>22</sup> Submission to OIC dated 12 March 2015.

### ***Balancing the public interest***

34. I have identified the public interest factors in favour of disclosure as; enhancing Council's accountability and transparency, facilitating informed public debate and ensuring effective oversight of the expenditure of public funds. However, I afford low weight to these factors in the circumstances of this review. On the other hand, I consider that there is significant public interest in protecting the personal information and privacy of the third party and other individuals depicted within the Photographs. Balancing these factors against one another, I am satisfied that the public interest in protecting personal information and privacy outweighs the factors favouring disclosure.
35. Accordingly, I find that access to the Photographs is refused on the basis that disclosure of the Photographs would, on balance, be contrary to the public interest.

### **DECISION**

36. I affirm Council's decision to refuse access to the Photographs under sections 47(3)(b) and 49 of the RTI Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

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**Assistant Information Commissioner Corby**

**Date: 12 May 2015**

## APPENDIX

### Significant procedural steps

Date	Event
20 June 2014	Council received the access application dated 10 June 2014.
5 August 2014	Council issued its decision on the access application.
7 August 2014	The applicant applied to OIC for external review.
19 August 2014	OIC advised the applicant and Council that the external review had been accepted and asked Council to provide information relevant to the review.
16 September 2014	OIC received the requested information from Council, including a copy of the Photographs.
17 September 2014	OIC and Council discussed the basis for refusing access to the Photographs.
18 September 2014	OIC conveyed its preliminary view to Council that the Photographs could be disclosed and asked Council to consult with a third party.
24 October 2014	Council advised OIC that the third party objected to disclosure of the Photographs.
6 January 2015	OIC wrote to the third party and: <ul style="list-style-type: none"> <li>• notified them of the likely disclosure of the Photographs</li> <li>• conveyed a preliminary view; and</li> <li>• invited them to participate in the review and to provide submissions supporting their case if they object to disclosure of the Photographs.</li> </ul>
3 February 2015	Council objected to disclosure of the Photographs and provided a submission.
5 February 2015	The third party objected to disclosure of the Photographs and provided a submission.
27 February 2015	OIC conveyed its preliminary view to the applicant that disclosure of the Photographs would, on balance, be contrary to the public interest, and invited the applicant to provide submissions in support of their case if they did not accept the preliminary view.
4 March 2015	Council provided OIC with a submission.
12 March 2015	The applicant advised OIC that they did not accept the preliminary view and provided submissions supporting their case.
20 April 2015	OIC requested Council to provide to OIC a copy of its ICT Policy.
28 April 2015	Council provided OIC with copies of relevant policies, including its ICT Policy.