



Decision and Reasons for Decision

Citation:	<i>Arthur and Council of the City of Gold Coast [2017] QICmr 25 (13 July 2017)</i>
Application Number:	313279
Applicant:	Arthur
Respondent:	Council of the City of Gold Coast
Decision Date:	13 July 2017
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – identity of complainant/s in relation to applicant’s property – accountability – reasons or background for government decision – personal information and protection of an individual’s right to privacy – whether disclosure would, on balance, be contrary to the public interest – section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) – section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Council of the City of Gold Coast (**Council**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information about a complaint made about structures on the applicant’s property not having been approved by Council.¹
2. Council located one page in response to the access application and decided to refuse access to the personal information of the complainant/s appearing on the page on the basis that it was exempt from disclosure under section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 10(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council’s refusal of access decision.²
4. For the reasons set out below, I vary Council’s decision. I find that disclosure would, on balance, be contrary to the public interest and therefore, access to the information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹ Access application dated 1 February 2017.

² External review application received 5 April 2017.

Background

5. The Appendix to these reasons for decision sets out the significant procedural steps taken during the external review.

Reviewable decision

6. The decision under review is Council's decision dated 21 March 2017.

Issue for determination

7. The issue for determination is whether Council was entitled to refuse access to part of one page comprising the personal information of the complainant/s (**Information in Issue**).³

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes).

Relevant law

9. Under the IP Act a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information. However, this right is subject to limitations,⁴ including grounds on which access may be refused.⁵ One ground for refusing access is where disclosure would, on balance, be contrary to the public interest.⁶
10. 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.
11. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁷ and explains the steps that a decision-maker must take, as follows:⁸
 - 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 disclosure of the information in issue would, on balance, be contrary to the public interest.

³ During the external review, Council accepted OIC's view that the Information in Issue was contrary to the public interest to disclose under the IP and RTI Acts.

⁴ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

⁵ As set out in section 47 of the RTI Act.

⁶ Sections 47(3)(b) and 49 of the RTI Act.

⁷ Schedule 4 of the RTI Act – a non-exhaustive itemisation of potentially relevant public interest considerations.

⁸ Section 49(3) of the RTI Act.

Analysis

Irrelevant factors

12. I have taken no irrelevant factors into account in making my decision in this review.

Factors favouring disclosure and nondisclosure

13. The applicant contends that the complainant is a local resident, who also works for Council.⁹ The applicant submits that a complaint about structures on his property was made after he spoke to this resident about the state of the resident's yard. The applicant submits that if his suspicions were confirmed he could proceed with a complaint to Council about its employee.

14. The applicant's submissions raise factors favouring disclosure of the Information in Issue where disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability¹⁰
- reveal the reasons for a government decision and any background or contextual information that informed the decision;¹¹ and
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.¹²

15. In the circumstances, I am unable to identify any other relevant factors favouring disclosure which may justify the release of the Information in Issue to the applicant.

16. Council submits that the Information in Issue reveals the identity of a person or persons who provided information to Council and that the information was provided to Council on the basis that their identity not be disclosed.¹³

17. I have reviewed the Information in Issue and it does comprise the identity and contact details of a person/s who provided information to Council that informed a subsequent investigation into whether building work was performed in compliance with the *Sustainable Planning Act 2009* (Qld) (**SPA**). I consider these circumstances raise factors favouring nondisclosure of the Information in Issue where disclosure could reasonably be expected to:

- prejudice the protection of an individual's right to privacy¹⁴
- cause a public interest harm if disclosure would disclose personal information of a person¹⁵
- prejudice security, law enforcement or public safety;¹⁶ and
- prejudice the flow of information to the police or another law enforcement or regulatory agency.¹⁷

⁹ Oral submissions to OIC on 24 April 2017 and 5 May 2017.

¹⁰ Schedule 4, part 2, item 1 of the RTI Act.

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

¹² Schedule 4, part 2, item 5 of the RTI Act.

¹³ Council's decision at page 1.

¹⁴ Schedule 4, part 3, item 3 of the RTI Act.

¹⁵ Schedule 4, part 4, section 6 of the RTI Act.

¹⁶ Schedule 4, part 3, item 7 of the RTI Act.

¹⁷ Schedule 4, part 3, item 13 of the RTI Act.

Balancing the public interest

18. The Information in Issue comprises the personal information of other individuals, being their name, address, telephone number and email address.¹⁸ Though this information appears in a complaint about the applicant's property, it is not about the applicant and is solely about the other individual/s. I consider its disclosure could reasonably be expected to prejudice the protection of the right to privacy¹⁹ of the other individual/s and cause a public interest harm by disclosing their personal information.²⁰ Accordingly, I afford these two factors favouring nondisclosure significant weight.
19. The Information in Issue was provided to Council via Council's '*Report a problem*' online form which allows individuals to report on building and planning issues.²¹ Council relies on individuals providing this type of information to assist it with enforcing compliance with the SPA. If complainant details were to be disclosed, it is reasonable to expect that individuals would be less likely to report issues to Council thereby prejudicing the flow of information to Council about compliance with the SPA which would in turn prejudice Council's ability to enforce laws.²² Accordingly, I afford these two factors favouring nondisclosure significant weight.
20. The actual complaint document about the applicant's property and Council's decision in response to the complaint have been disclosed to the applicant by Council.²³ I consider that this addresses the factors favouring disclosure relating to transparency and accountability of Council.²⁴ It also addresses the provision of background or contextual information which informed Council's decision relating to the complaint.²⁵ While disclosing the identity of the complainant/s could advance these factors further, it would only be minimal. On that basis, I afford these factors favouring disclosure minimal weight.
21. I do not accept the applicant's submission that without knowledge of the complainant/s identity he is unable to make his own complaint to Council based on the current assumptions he holds about the local resident and Council employee. The applicant is able to make a complaint based on his suspicions, and Council can then make its own enquiries. For this reason, I do not consider disclosure would allow or assist inquiry into possible deficiencies in official conduct and, accordingly, this disclosure factor does not apply.²⁶
22. I afford significant weight to each of the public interest factors in favour of nondisclosure of the Information in Issue as I am satisfied that disclosure would reasonably be expected to prejudice the protection of another individual's right to privacy, cause a public interest harm by disclosing their personal information and prejudice the flow of information to Council and Council's ability to enforce laws.
23. For the reasons set out above, I am satisfied that the factors favouring nondisclosure in this case significantly outweigh the factors favouring disclosure. I therefore find that disclosure of the Information in Issue would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.

¹⁸ Section 12 of the IP Act defines personal information as '*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*'.

¹⁹ Schedule 4, part 3, items 3 and 13 of the RTI Act.

²⁰ Schedule 4, part 4, section 6 of the RTI Act.

²¹ Accessible at <https://www.goldcoast.qld.gov.au/contact-council/report-a-problem.aspx?c=2&sc=48>.

²² Schedule 4, part 3, item 7 of the RTI Act.

²³ Conveyed to the applicant by Council in correspondence dated 13 December 2016, 21 December 2016 and 22 February 2017.

²⁴ Schedule 4, part 2, item 1 of the RTI Act.

²⁵ Schedule 4, part 2, item 11 of the RTI Act.

²⁶ Schedule 4, part 2, item 5 of the RTI Act.

DECISION

24. I vary the decision under review. I find that access to the Information in Issue may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
25. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

L Lynch
Assistant Information Commissioner

Date: 13 July 2017

APPENDIX

Significant procedural steps

Date	Event
5 April 2017	OIC received the applicant's application for external review.
11 April 2017	OIC received information relevant to the application from Council.
20 April 2017	OIC accepted the external review and conveyed a preliminary view to the applicant, inviting the applicant to provide submissions by 5 May 2017.
24 April 2017	OIC received oral submissions from the applicant.
5 May 2017	OIC received further oral submissions from the applicant.
6 July 2017	Council accepted OIC's preliminary view.