



Decision and Reasons for Decision

Citation:	<i>Alsop and Redland City Council</i> [2017] QICmr 27 (2 August 2017)
Application Number:	313085
Applicant:	Alsop
Respondent:	Redland City Council
Decision Date:	2 August 2017
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information of complainant - whether access may be refused on the basis disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENTS - applicant submits agency has failed to locate all records - whether there are reasonable grounds to be satisfied further documents do not exist - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Redland City Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for documents relating to complaints about dogs at his property. Council located 10 pages and decided to grant access to seven pages and refuse access to one page and parts of two pages. Access to this information was refused on the basis that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
2. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision to refuse access to this information and also raised concerns about the sufficiency of Council's searches for documents. Council agreed to release additional information to the applicant during the external review.
3. For the reasons set out below, I affirm Council's decision to refuse access to the small amount of remaining information under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest. I also find that the additional information which the applicant believes exists is nonexistent and access may be refused under section 47(3)(e) of the RTI Act.

Background

4. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

5. The decision under review is Council's decision dated 3 November 2016.

Evidence considered

6. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

Issues for determination

7. A number of issues were informally resolved during the external review.¹ The remaining issues for determination are whether access to:
 - a small amount of information may be refused on the basis that its disclosure is, on balance, contrary to the public interest; and
 - the additional information the applicant believes exists may be refused on the basis that it is nonexistent.

Contrary to public interest information

8. The information in issue (**Information in Issue**) is a very small amount of information which appears on pages 1, 5 and 6 and relates to allegations about the applicant's dogs which were made to Council.

Relevant law

9. The RTI Act confers a right to access documents of an agency, subject to limitations, including grounds for refusal of access.² Under the RTI Act, access to information may be refused where disclosure would, on balance, be contrary to the public interest.³
10. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest⁴ and explains the steps that a decision-maker must take in deciding the public interest as follows:⁵
 - 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.

¹ Council initially located ten pages in response to the application and decided to refuse access to one page (page 5), partially release two pages (pages 1 and 6) and release seven pages in full (pages 2-4 and 7-10). On external review, Council agreed to release further information from page 5. The applicant also notified OIC that he did not seek access to the name, address and phone number of the complainant, a signature on page 5 or a street number on page 1. As a result, OIC did not consider this information on external review. The applicant accepted OIC's preliminary view on a number of sufficiency of search issues and these issues are not considered in this decision.

² Section 23(1)(a) of the RTI Act. Grounds for refusal of access are set out in section 47 of the RTI Act.

³ Section 47(3)(b) of the RTI Act.

⁴ Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest. This list is not exhaustive and therefore, other factors may also be relevant in a particular case.

⁵ Section 49(3) of the RTI Act.

Findings

11. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making this decision.

Accountability and transparency of Council

12. There is a public interest in disclosing information which could reasonably be expected to:⁶

- promote open discussion of public affairs and enhance the Government's accountability;⁷ or
- reveal the reason for a government decision and any background or contextual information that informed the decision.⁸

13. Council notified the applicant of the substance of the allegations and gave the applicant the opportunity to address them. The information which Council released to the applicant in response to the access application provides a more detailed account of the allegations and further information about how Council handled the complaint. The Information in Issue forms part of the complaint made to Council about the applicant's dogs and is very limited in nature. It does not reveal any information about how Council handled the complaint. As a result, I consider that disclosing the Information in Issue to the applicant would promote these factors only marginally and I afford them both low weight in the circumstances.

Advance fair treatment or contribute to the administration of justice

14. The applicant submits that he should have access to all of the particulars of the allegations made by the complainant because he may be prosecuted by Council for keeping three dogs. I have therefore considered whether disclosing the Information in Issue could reasonably be expected to advance his fair treatment or contribute to the administration of justice, including procedural fairness.⁹

15. I do not consider that the notions of fair treatment and procedural fairness entitle the applicant to *all* information about the investigation including the information provided by the complainant. In this case it is relevant that the applicant has already been provided with the substance of the allegations and an opportunity to respond. Taking this into account, along with the very limited nature of the Information in Issue, I consider that its release could not reasonably be expected to advance the applicant's fair treatment or contribute to the administration of justice and that these public interest factors have been served by the information which has been disclosed to the applicant to date. Accordingly, these factors do not apply in the circumstances.

Personal information of the applicant

16. There is a public interest in individuals accessing their personal information that is held by government agencies.¹⁰ Section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**)¹¹ defines personal information as *'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether*

⁶ The words *'could reasonably be expected'* are to be given their ordinary meaning and the relevant expectation must be reasonably based and not irrational, absurd or ridiculous: see *Attorney-General's Department v Cockroft* (1986) 10 FCR 180 at [190]. Previous decisions of the Information Commissioner have established that a mere possibility is not sufficient to show that a particular consequence could reasonably be expected: see *Murphy and Treasury Department* (1995) 2 QAR 744 at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

⁷ Schedule 4, part 2, item 1 of the RTI Act.

⁸ Schedule 4, part 2, item 11 of the RTI Act.

⁹ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

¹⁰ Schedule 4, part 2, item 7 of the RTI Act.

¹¹ See also schedule 6 of the RTI Act.

recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

17. The following questions are relevant in determining whether information is a particular individual’s personal information:¹²
 - Can an individual be identified from the information?; and
 - Is the information sought about that individual?
18. If the answer to both of these questions is yes, the information will comprise the applicant’s personal information and this factor favouring disclosure will be relevant.
19. The applicant relevantly submits that both of these requirements are met as:¹³
 - Council records and the land register would identify him as the owner of the property where the dogs are located and therefore he can be identified from the information
 - the information is linked to him and reveals information about him as the property owner (namely that he has allegedly allowed three dogs to be on the property and did not prevent them from barking)
 - Council records show the dogs are registered to him and, as registered owner, he is legally responsible for them, and is the person who will be approached by Council if a complaint is made about the dogs; and
 - alternatively, if the dogs are not considered to be inanimate objects over which he has control, then he should be granted access to the dogs’ personal information as he is legally responsible for them.

Can the applicant be identified from the information?

20. Yes, for the following reasons.
21. In some instances, an individual’s identity is clear on the face of the documents, for example, an individual’s name or photograph or a detailed description of a particular individual. Where a document does not contain information that obviously identifies an individual, an individual may be reasonably identifiable through additional information. The following factors will influence whether an individual’s identity can be reasonably ascertained:¹⁴
 - how available the additional information is
 - how difficult it is to obtain
 - how many steps are required to identify the individual
 - how certain the identification will be
 - whether it will identify one specific individual or a group of people; and
 - whether the individual receiving the information can use it to identify the individual.
22. I am not satisfied that the applicant can be identified from the Information in Issue in itself. However, I do consider the applicant can be identified from the documents which contain the Information in Issue and this first requirement is therefore satisfied. Page 1 identifies the applicant by name and the applicant’s residential address appears on pages 1, 5 and 6. A search of Council’s databases would reveal that the applicant owns the property. Some of the other documents located in response to the access application

¹² *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [19] (***Mahoney***).

¹³ Submissions to OIC dated 22 November 2016 and 29 May 2017.

¹⁴ *Mahoney* at [21] and *Tomkins and Rockhampton Regional Council* [2016] QICmr 2 (22 January 2016) (***Tomkins***) at [16].

also confirm the applicant's residential address. I am satisfied that the applicant is reasonably identifiable through this additional information.

Is the information sought about the applicant?

23. No, for the following reasons.
24. Whether information is 'about' an individual is a contextual question, independent from considering whether the information identifies an individual. The word 'about' is not defined in the IP Act or the RTI Act and it is therefore necessary to consider the word's ordinary meaning, which includes '*of; concerning; in regard to ... connected with*'.¹⁵ Accordingly, in considering whether information is 'about' an individual, it is necessary to consider whether the information reveals anything about the individual.¹⁶
25. As explained above, the documents located by Council relate to complaints made about the dogs on the applicant's property. Council has granted the applicant access to these documents with the exception of a very small amount of remaining information – the Information in Issue.
26. I have carefully considered whether there is a sufficient link or connection between the applicant and the Information in Issue to conclude that the Information in Issue is about the applicant.¹⁷ The fact that the applicant is the registered owner of the dogs, owns the property where the dogs are located and is responsible for dealing with the complaint about the dogs, does not in itself make the Information in Issue about the applicant. I am unable to reveal the content of the Information in Issue in these reasons¹⁸ however I am satisfied that there is not a sufficient link or connection between the applicant and the Information in Issue does not reveal anything about the applicant. Rather, the content of the Information in Issue is about the complainant and the dogs.¹⁹
27. For these reasons, I am not satisfied that the Information in Issue comprises the applicant's personal information and this factor favouring disclosure does not apply. However, even if the Information in Issue did comprise the applicant's personal information, this would only be one relevant factor favouring disclosure and, in the circumstances, I do not consider it would carry sufficient weight to override the nondisclosure factors addressed below.

Personal information and privacy of the complainant

28. I have considered whether disclosing the Information in Issue could reasonably be expected to prejudice the protection of the complainant's privacy or cause a public interest harm through disclosing the complainant's personal information.²⁰
29. The applicant submits that the Information in Issue does not comprise the personal information of the complainant because it is his personal information and comprises a complaint about something that is alleged to have happened on his property. He also considers that its disclosure would prejudice his privacy and not the privacy of the complainant.²¹ For the reasons addressed above, the Information in Issue does not comprise the applicant's personal information and I do not accept the applicant's submissions on these issues.

¹⁵ Macquarie Dictionary Online <https://www.macquariedictionary.com.au/>.

¹⁶ *Mahoney* at [23] to [27] and *Tomkins* at [17].

¹⁷ *Mahoney* at [26].

¹⁸ Section 108(3) of the RTI Act.

¹⁹ I note the applicant's submission that he should be granted access to the dogs' personal information as he is legally responsible for them. The definition of 'personal information' as set out above, makes it clear that only an individual can have 'personal information'. A dog cannot have 'personal information' under the IP Act or RTI Act and this submission is misconceived.

²⁰ Schedule 4, part 3, item 3 and part 4, item 6 of the RTI Act.

²¹ Submissions to OIC dated 22 November 2016.

30. As explained above, the Information in Issue is about the complainant and I am satisfied that the complainant's identity is clear on the face of the documents. In my view, the Information in Issue is identifying information, that is, revealing it to the applicant would identify the complainant. Therefore, I am satisfied that the Information in Issue comprises the complainant's personal information and these nondisclosure factors are relevant.
31. The concept of 'privacy' is not defined in the IP Act or RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others.²² When an individual provides information to Council related to a complaint, this comprises a private action falling within an individual's 'personal sphere'.²³ Therefore, I consider disclosing the Information in Issue could reasonably be expected to prejudice the complainant's right to privacy.
32. As the Information in Issue appears in the context of a complaint, and would identify the complainant, I consider it is sensitive in nature. In my view, Council would not ordinarily reveal the identity of a complainant to the person who is the subject of the complaint unless it was necessary for, or relevant to, the handling of the investigation. This accords with Council's complaints handling process which provides that Council will endeavour to keep information about the complaint confidential and will only disclose necessary and relevant personal information to officers and other parties to assist Council to assess and resolve the complaint.²⁴ I do not consider disclosing the Information in Issue to the applicant in this review would be necessary or relevant in dealing with the complaint. In this case, I am satisfied that disclosing the complainant's personal information would be a significant intrusion into the complainant's privacy and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I attribute these factors favoring nondisclosure significant weight.

Prejudice the flow of information to Council

33. If disclosing information could reasonably be expected to prejudice the flow of information to a regulatory agency a public interest factor favouring nondisclosure arises.²⁵
34. Council relies on members of the public to provide information which enables it to administer and enforce relevant laws, in this case the *Animal Management (Cats and Dogs) Act 2008* (Qld) and *Local Law No. 2 (Animal Management) 2015*. I am satisfied that routinely disclosing information identifying a complainant would tend to discourage individuals from coming forward with information and cooperating with Council as they may consider that their personal information could be released to other individuals, including to the person who is the subject of the complaint. This, in turn, could reasonably be expected to negatively impact Council's ability to obtain this information in future. I consider that this factor carries significant weight in the circumstances.

Balancing the relevant public interest factors

35. I acknowledge the pro-disclosure bias in deciding access to documents under the RTI Act.²⁶ In addition to this, and for the reasons addressed above, I have identified only two other factors favouring disclosure of the Information in Issue which relate to promoting Council's transparency and accountability. I afford both of these factors low weight

²² *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) (**Matthews**) at [22] 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 11 August 2008, at paragraph 1.56.

²³ *Matthews* at [23] and *Underwood and Department of Housing and Public Works (No. 1)* [2016] QICmr 11 (17 March 2016) at [68].

²⁴ <https://www.redland.qld.gov.au/forms/form/201/en/complaints>

²⁵ Schedule 4, part 3, item 13 of the RTI Act.

²⁶ Section 44 of the RTI Act.

because the Information in Issue is very limited in nature and does not reveal anything about how Council handled the complaint.

36. On the other hand, I have identified three factors favouring nondisclosure of the Information in Issue, each of which carries significant weight. In this case, I recognise the strong public interest in protecting the complainant's privacy and avoiding a public interest harm through disclosing the complainant's personal information. I also attribute significant weight to protecting the flow of information to Council in relation to its regulatory functions.
37. Accordingly, I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest and access may be refused under section 47(3)(b) of the RTI Act.

Nonexistent documents

Relevant law

38. Access to a document may be refused if it is nonexistent or unlocatable.²⁷ A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.²⁸ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.²⁹
39. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:³⁰
 - the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
 - the agency's practices and procedures (including, but not limited to, its information management approaches); and
 - other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.
40. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
41. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.³¹ Such steps may include inquiries and searches of all relevant locations identified after consideration of the key factors listed above.

²⁷ Sections 47(3)(e) and 52(1) of the RTI Act.

²⁸ Section 52(1)(a) of the RTI Act.

²⁹ Section 52(1)(b) of the RTI Act.

³⁰ *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

³¹ As set out in *PDE* at [49].

Findings

42. The applicant refers to page 6 of the located documents which records the actions taken by the relevant Council officer in relation to the complaint. One of the entries on this page relevantly provides: '*Called complainant from CRAM529002 to see if barking ceased as dogs reduced or if barking just reduced.*' The applicant believes that Council has failed to locate a file note, or other record, of this contact with the complainant.
43. OIC asked Council to advise whether any records of this phone call to the complainant exist. Council made further enquiries with the officer who made this note and the officer relevantly explained that:³²
- she recalls calling the complainant with the intention of determining if the noise had reduced or if the number of dogs had been reduced
 - as there was no explanatory note recorded to state what the complainant had advised the officer, the officer claims there would have been no answer; and
 - the officer cannot recall why she did not provide more of a conclusive response in her notes to reflect the outcome, such as 'left message' or 'no answer' which would be normal practice for the officer.
44. Council also advised OIC that there were no other records kept following on from phone calls (such as hardcopy files) and all notes were entered into the electronic database itself.³³
45. The applicant appears to accept that the requested document does not exist but submits that:³⁴
- OIC should have asked further questions about why the officer did not follow up with the complainant
 - the explanation offered by the officer as to why she did not make any further records is only a guess and has been accepted by OIC; and
 - asking more questions of Council on the issue may improve Council's future record keeping practices.
46. I have carefully considered the submissions provided by the applicant and Council on this issue together with the located documents. As noted above, the relevant question for me to determine is whether there are reasonable grounds to be satisfied the requested information does not exist. Council made relevant enquiries with the officer who dealt with the complaint. While I acknowledge that the applicant may be dissatisfied with the explanation provided by the officer about why there are no more details about the call outcome and no record of a subsequent call to the complainant, these are not issues which I can investigate on external review.
47. In the circumstances, I accept the officer's explanation that no further records exist about the phone call to the complainant. In any event, I consider that if such information was recorded, it would have been located on Council's electronic database which Council has searched.
48. Given the Council officer's response and Council's explanation about its record keeping practices in relation to this type of information, I am satisfied that no additional documents relating to this issue exist because they were not created. Therefore, I find that access to the requested information may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act.

³² Email to OIC on 7 April 2017.

³³ Telephone call with OIC on 22 February 2017 and email to OIC on 7 April 2017.

³⁴ Email to OIC on 29 May 2017.

DECISION

49. For the reasons set out above, I affirm Council's decision to refuse access to the Information in Issue under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest. I also find that the additional information which the applicant believes exists is nonexistent and access may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act.
50. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Tara Mainwaring
Acting Assistant Information Commissioner

Date: 2 August 2017

APPENDIX

Significant procedural steps

Date	Event
22 November 2016	OIC received the external review application.
23 November 2016	OIC asked Council to provide relevant procedural documents.
29 November 2016	Council provided OIC with the requested documents.
6 December 2016	OIC notified the applicant and Council that the external review application had been accepted and asked Council to provide a copy of the located documents.
13 December 2016	OIC received the requested documents from Council.
16 February 2017	OIC asked Council to consider partially releasing page 5 to the applicant.
22 February 2017	OIC received submissions from Council by telephone.
16 March 2017	Council agreed to release additional information to the applicant.
4 April 2017	OIC asked Council to provide further information relating to the applicant's sufficiency of search issues.
7 April 2017	OIC received written submissions from Council and Council notified OIC that it had released the additional information to the applicant.
17 May 2017	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case.
29 May 2017	The applicant provided written submissions to OIC.