



## Decision and Reasons for Decision

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| <b>Citation:</b>           | <i>Star News Group Pty Ltd and Southern Downs Regional Council</i> [2019] QICmr 39 (12 September 2019)   |
| <b>Application Number:</b> | 314211   |
| <b>Applicant:</b>          | Star News Group Pty Ltd ACN 005 848 108  |
| <b>Respondent:</b>         | Southern Downs Regional Council  |
| <b>Decision Date:</b>      | 12 September 2019  |
| <b>Catchwords:</b>         | <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATION - EXEMPT CLASS OF DOCUMENTS</b> - information concerning workforce surveys - whether application expressed to relate to all documents containing information of a stated kind or subject matter - whether all documents to which application relates appear to comprise exempt information - whether agency may refuse to deal with application - section 40 and schedule 3, section 8 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION</b> - information concerning workforce surveys - accountability and transparency - informed debate on important issues - prejudice to future supply of information to Council - prejudice to management function - whether 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)</p> |

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Southern Downs Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents generally relating to surveys conducted of Council's employees.<sup>2</sup>
2. Council decided<sup>3</sup> to refuse to deal with the application<sup>3</sup> under section 40 of the RTI Act, on the ground it appeared to Council that all of the requested documents comprised exempt information.

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<sup>1</sup> The access application is dated 27 July 2018 and was made by the applicant's regional media outlet, the Southern Free Times.

<sup>2</sup> The application specifically sought access to completed surveys, reports to Council on the survey process and outcomes, documents relating to a labour force strategy and documents relating to the communication of the survey outcomes by Council management to Council staff.

<sup>3</sup> On 24 August 2018.

3. The applicant applied for internal review of that decision. On internal review, Council affirmed<sup>4</sup> that section 40 of the RTI Act applied to the application and also decided that disclosure of requested documents would likely cause a public interest harm.
4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of Council's internal review decision.<sup>5</sup>
5. During the review, the applicant agreed to narrow the scope of the application to '*any report on the survey process and outcomes to Council management (Labour Force Strategy Report) and documents relating to the communication of the outcomes of the survey process by Council management to Council staff*' (**narrowed application**). Council located two documents responding to the narrowed application. The applicant also did not contest my view that access may be refused<sup>6</sup> to certain personal and business affairs information within those documents.<sup>7</sup>
6. Council maintains that section 40 of the RTI Act applies to the narrowed application and objects to disclosure of the remaining information in the two documents.
7. For the reasons set out below, I set aside Council's decision and find that disclosure of the information remaining in issue would not, on balance, be contrary to the public interest.

## Background

8. The decision under review is Council's internal review decision dated 24 September 2018.
9. Significant procedural steps relating to the external review are set out in the Appendix.
10. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and the Appendix).

## Information in issue

11. The information remaining in issue (**Information in Issue**) comprises two documents, excluding portions of personal and business affairs information which the applicant has agreed not to pursue. While I am constrained in level of detail I can provide about the Information in Issue,<sup>8</sup> it appears in a report authored by a consultant retained by Council to undertake a review (**Report**) and in a document created by Council which was used to present the review outcomes to Council staff (**Presentation**).

## Issues for determination

12. In the decision under review, Council stated that it had obtained the disclosure views of Council staff and the '*overwhelming response*' was that the information was provided to Council's consultant in confidence and it should not be disclosed. However, Council confirmed to that it did not conduct individual third party consultation to obtain these

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<sup>4</sup> On 24 September 2018.

<sup>5</sup> External review application dated 5 October 2018.

<sup>6</sup> Under sections 47(3)(b) and 49 of the RTI Act, as set out in OIC's letter to the applicant dated 6 June 2019.

<sup>7</sup> As a result, this information does not form part of the information being considered in these reasons for decision.

<sup>8</sup> Under section 108(3) of the RTI Act, the Information Commissioner must not, in a decision, or in reasons for a decision, include information that is claimed to be exempt information or contrary to the public interest information. For this reason, I am unable to provide a more detailed description of these documents in my reasons for decision.

disclosure views because it considered such consultation impractical.<sup>9</sup> The Information in Issue does not identify Council employees who participated in the review and does not attribute any information to specific Council employees—that is, it does not identify particular information which was provided by individual Council employees to Council’s consultants. In these circumstances, I did not consult with any third parties on external review as I did not consider it necessary. I have instead addressed Council’s submission that its employees considered the information they provided to Council’s consultant would be kept confidential and not disclosed outside of Council.

13. As noted in paragraph 3 above, Council made the following determinations in the decision under review:

*... I have decided that the documents being sought are exempt documents under Schedule 3 of the Act. Further to this decision and acknowledging that Council has the right under the Act to still deal with the application, I further decide that, following a Public Interest Test, the release of the requested documentation would likely cause a Public Interest Harm.*

14. Council submissions during the external review confirm that it seeks to refuse to deal with the narrowed application under section 40 of the RTI Act **and** to refuse access to the Information in Issue on the basis disclosure would, on balance, be contrary to the public interest. For this reason, the issues to be determined in this review are whether:
- Council is entitled to refuse to deal with the application under section 40 of the RTI Act; and
  - disclosure of the Information in Issue would, on balance, be contrary to the public interest.

## Relevant law

15. The RTI Act is to be administered with a pro-disclosure bias.<sup>10</sup> An individual has a right to access documents of an agency under the RTI Act,<sup>11</sup> however, this right of access is subject to certain limitations, including grounds for refusal of access.<sup>12</sup>
16. If an access application is made to an agency under the RTI Act, the agency is required to deal with the application unless this would, on balance, be contrary to the public interest.<sup>13</sup> One of the few circumstances where it is not in the public interest to deal with an access application is set out in section 40 of the RTI Act, which provides:

### **40 Exempt information**

(1) *This section applies if—*

- (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*
- (b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*

(2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

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<sup>9</sup> On 11 October 2018, Council provided information to OIC which confirmed that the referenced consultation was conducted via Council’s CEO sending an email to all Council employees identifying the information sought by the applicant and seeking feedback ‘to inform the decision making process around the request’ made by the applicant. By letter dated 18 September 2018, Council also described this process to the applicant as ‘an anonymous and confidential process that allowed staff to provide feedback on whether the information should be released’.

<sup>10</sup> Section 44 of the RTI Act.

<sup>11</sup> Section 23 of the RTI Act.

<sup>12</sup> Grounds for refusal of access are set out in section 47 of the RTI Act.

<sup>13</sup> Section 39(1) of the RTI Act.

17. Exempt information is defined<sup>14</sup> as meaning the information that is exempt information under schedule 3 of the RTI Act.<sup>15</sup> Relevantly, information will qualify as exempt information if its disclosure would found an action for breach of confidence (**Breach of Confidence Exemption**).<sup>16</sup>
18. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>17</sup> The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and explains that a decision maker must take the following steps in deciding the public interest:
- identify any irrelevant factors and disregard them
  - identify any relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and decide whether disclosure would, on balance, be contrary to the public interest.<sup>18</sup>
19. In this external review, Council has the onus of establishing that its decision refusing to deal with the application, or refusing access to information, was justified.<sup>19</sup>

### Findings – refusal to deal

***Is the narrowed application expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter?***

20. Yes, for the reasons that follow.
21. The narrowed application is framed as a request for a report and an internal Council communication related to a workforce survey process and its outcomes. I am satisfied that the narrowed application is designed to capture documents that contain information of a stated kind or relate to a stated subject matter (that is, information reporting on, or communicating about, workplace survey processes and outcomes). Accordingly, I find that the first limb of section 40 of the RTI Act is satisfied.

***Do all the documents to which the application relates appear to be comprised of exempt information?***

22. No, for the reasons that follow.
23. As noted in paragraph 11, the Report and Presentation were located as relevant to the narrowed application. Council submits<sup>20</sup> that these documents *contain* exempt information and section 40 of the RTI Act does not require the documents, in their 'entirety', to be exempt information.

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<sup>14</sup> In section 48(4) and schedule 5 of the RTI Act.

<sup>15</sup> Schedule 3 sets out the types of information which will comprise exempt information.

<sup>16</sup> Schedule 3, section 8(1) of the RTI Act. I note that schedule 3, section 8(2) contains an exception to the Breach of Confidence Exemption, however, that exception does not arise in the circumstances of this matter and therefore, is not addressed in these reasons for decision.

<sup>17</sup> Section 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 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.

<sup>18</sup> As set out in section 49 of the RTI Act.

<sup>19</sup> Under section 87(1) of the RTI Act. In *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 (**SJM**) at [72]-[75], Daubney J gave consideration to the identical agency onus under the *Information Privacy Act 2009* (Qld) (**IP Act**).

<sup>20</sup> Submissions dated 3 June 2019.

24. When interpreting a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.<sup>21</sup> The primary object of the RTI Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.<sup>22</sup> Section 39(2) of the RTI Act also confirms that sections 40, 41 and 43 state the only circumstances in which the Parliament considers it would, on balance, be contrary to the public interest to deal with an access application.
25. Consistent with a plain reading of section 40 and the purpose of the RTI Act, for the second limb of section 40 of the RTI Act to be met, I must be satisfied that the Report and Presentation *comprise* exempt information.
26. Council submits that the Breach of Confidence Exemption applies to the Information in Issue because disclosure '*would prove to be very much a breach of confidence*'.<sup>23</sup>
27. Information will comprise exempt information under the Breach of Confidence Exemption where its disclosure would give rise to a cause of action for breach of a contractual obligation of confidence or an equitable obligation of confidence.<sup>24</sup>
28. Council contends that staff who participated in the review staff '*received multiple undertakings that this process was confidential in nature*',<sup>25</sup> however, Council did not provide any details about those undertakings. I have carefully considered the consultant's terms of engagement, which Council provided during the review. Those terms specifically confirmed that the consultant would deliver a report, but not the consultant's records of its interviews and meetings with Council's employees. While the engagement included an obligation for the *consultant* not to disclose certain information to any third party, it contained no similar confidentiality obligation binding Council and did not reference any confidentiality undertakings given in favour of the review participants by either the consultant or Council. There is also nothing within the Information in Issue itself which identifies, or refers to, any confidentiality undertakings given to Council employees in respect of the review process.
29. On this basis, I am not satisfied that disclosure of the Information in Issue would give rise to a cause of action for breach of a contractual obligation of confidence.
30. There are four elements to a claim for breach of confidence in equity:<sup>26</sup>
  - (a) the information in question must be identified with specificity
  - (b) it must have the necessary quality of confidence
  - (c) it must have been received in circumstances importing an obligation of confidence; and
  - (d) there must be an actual or threatened misuse of the information.
31. In this case, and for the reasons outlined below, I do not consider that elements (b), (c) and (d) are met in relation to the Information in Issue and therefore, I am not satisfied that disclosure of the Information in Issue would give rise to an equitable action for breach of confidence.

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<sup>21</sup> Section 14A(1) of the *Acts Interpretation Act 1954* (Qld).

<sup>22</sup> Section 3(1) of the RTI Act. Section 3(2) requires that the Act must be applied and interpreted to further the primary object.

<sup>23</sup> Submissions dated 3 June 2019.

<sup>24</sup> *Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66 (**Ramsay**), per Daubney J at [66].

<sup>25</sup> Submissions dated 19 June 2019.

<sup>26</sup> Per Daubney J in *Ramsay* at [94].

### Element (b) – quality of confidence

32. Information which is available in the public domain will no longer have the necessary quality of confidence. The Information in Issue includes information about Council's organisational structure and operations. While Council acknowledges<sup>27</sup> that information of this nature is available in various documents on Council's website, it continues to maintain that information of this type within the Information in Issue is subject to an obligation of confidence.
33. As I have previously noted, under the terms of the consultant's engagement, the consultant's records of interviews or meetings with Council employees during the review process were not provided to Council. Further, the Information in Issue does not identify any individual Council employees who participated in the review and does not attribute any information to specific Council employees.
34. In these circumstances, I am not satisfied that all of the Information in Issue possesses the necessary quality of confidence to satisfy element (b).

### Element (c) – circumstances of the communication

35. To establish element (c), I must be satisfied that the information was communicated and received on the basis of a mutual understanding of confidence which existed at the time of the communication. The Information Commissioner has previously indicated that the relevant circumstances to consider in determining element (c) include, but are not limited to, the:
  - nature of the relationship between the parties
  - nature and sensitivity of the information
  - purpose/s for which the information was communicated
  - nature and extent of any detriment to the interests of the information-supplier that would follow from an unauthorised disclosure of the information; and
  - circumstances relating to the communication.<sup>28</sup>
36. Council submits<sup>29</sup> that:
  - staff do not want the Report disclosed outside of Council disclosure
  - *'there had been an ongoing assurance of confidence in the process'*; and
  - *'information that was collected to produce the report and ultimately the presentation was collected on the basis that the information would remain confidential'*.
37. The Report was delivered to Council in accordance with the consultant's terms of engagement, which do not obligate either Council or the consultant to keep the Report confidential, nor do they impose any restrictions upon Council's use or dissemination of the Report. I also note that neither the Report nor the Presentation are, on their face, marked as being confidential. Council correctly submits<sup>30</sup> that *'the lack of such a marking does not of itself remove any such confidence obligation'*. However, the fact that neither document was identified as confidential, at the time of its communication, is relevant when considering the circumstances of the communication. Apart from general confidentiality submissions, Council has not provided any evidence to me which indicates that the Report was provided to Council in circumstances which required it to be kept

<sup>27</sup> Submissions dated 3 June 2019.

<sup>28</sup> *B and Brisbane North Regional Health Authority* [1994] QICmr 1 (**B and BNRHA**), a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld) at [84].

<sup>29</sup> Submissions dated 3 June 2019.

<sup>30</sup> Submissions dated 3 June 2019

confidential or that the Presentation was communicated to Council's staff on the basis that its contents would be kept confidential by both Council and its staff.<sup>31</sup>

38. On the information before me, I am not satisfied that the Information in Issue was communicated on the basis of a mutual understanding of confidence.

#### **Requirement (d)**

39. Council has not placed any information before me which reasonably indicates that disclosure of the Information in Issue under the RTI Act constitutes an actual or threatened misuse of the Information in Issue. Accordingly, I am not satisfied that this element is met.

#### **Conclusion**

40. Noting that Council bears the onus in this review, I am not satisfied that all the information to which the narrowed application relates comprises exempt information under the Breach of Confidence Exemption. Accordingly, I find that the second limb of section 40 of the RTI Act has not been satisfied and therefore, Council is not entitled to refuse to deal with the narrowed application on that basis.

#### **Findings – contrary to the public interest information**

##### ***Irrelevant factors***

41. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.<sup>32</sup>

##### ***Factors favouring disclosure***

42. In the decision under review, Council decided that only two factors favouring disclosure of the requested information applied to the Information in Issue, namely where disclosure could reasonably be expected to:
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;<sup>33</sup> and
  - allow or assist enquiry possible deficiencies in the conduct or administration of an agency or official.<sup>34</sup>
43. I agree these factors are relevant, however, I consider that a number of additional public interest factors apply to the Information in Issue, on the basis disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance Council's accountability<sup>35</sup>
  - ensure effective oversight of Council funds;<sup>36</sup> and
  - reveal the reasons for a government decision and any background or contextual information that informed the decision.<sup>37</sup>

<sup>31</sup> As noted by Daubney J in *SJN* at [74]-[75], broad brush and general submissions by a participant who bears the onus of establishing information comprises exempt information will not be sufficient to discharge that onus.

<sup>32</sup> Set out in schedule 4, part 1 of the RTI Act.

<sup>33</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>34</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>35</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>36</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>37</sup> Schedule 4, part 2, item 11 of the RTI Act.

44. Council is a public body set up to provide services to the local community and receives funding from ratepayers. As such, it is reasonable to expect that Council conducts itself in an open, accountable and transparent way.
45. While the Information in Issue confirms that Council informed its staff about the review outcomes and the actions it had decided to take to address matters identified in the review, Council is also accountable to its local community for the actions that it has taken and whether, or not, Council's actions have been successful in dealing with the organisational issues identified in the review. Council submits<sup>38</sup> that the minutes of its meeting on 27 February 2019<sup>39</sup> confirm that Council resolved to adopt a changed organisational structure and these minutes '*clearly demonstrate Council's openness*'. However, this matter was considered in a closed Council section of the meeting on 27 February 2019 and Council has disclosed limited details about why the restructure was required, what the restructure entails and how it would impact, if at all, the delivery of services to the community. In these circumstances, I consider it is reasonable to expect that there is community interest surrounding the review and Council's subsequent resolution to implement structural changes to its organisation.
46. Given the nature of the Information in Issue, I am satisfied its disclosure could reasonably be expected to enhance Council's accountability and transparency by demonstrating that Council:
- sought expert advice to improve its organisational capacity and capability to discharge its community service obligations; and
  - involved its staff in the review process and informed them of the review outcomes.
47. Council argues<sup>40</sup> that disclosure would not promote open discussion of public affairs, because it does not include all the details Council considers are required for discussions in a public forum, however, Council characterised the Report as being background and contextual information which would reveal '*a consideration in the decision making process*'. I consider that disclosure of this information will provide the community with an opportunity to scrutinise details of the actions Council decided to take following the review it initiated in 2018. Further, taking into account the lack of information available to the community about the structural changes that Council has resolved to implement, I also consider that disclosure of the Information in Issue may provide relevant background and contextual information to those changes.
48. Council also contends<sup>41</sup> that, given the contents of the Information in Issue, disclosure would not provide effective oversight of Council's expenditure.<sup>42</sup> However, a review in the nature of that which was conducted by Council's consultant, required significant resources, both in terms of staff participation and consultant costs. On this basis, I consider disclosure of the Information in Issue could reasonably be expected to ensure effective oversight of expenditure of public funds.
49. In the circumstances, and given Council's confirmation that the Information in Issue includes information considered in Council's decision making processes, I am satisfied that the public interest factors listed in paragraphs 42 and 43 deserve significant weight in favour of disclosure.

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<sup>38</sup> Submissions dated 3 and 19 June 2019.

<sup>39</sup> These minutes can be accessed via Council's website at:

<[https://southerndowns.infocouncil.biz/Open/2019/02/CO\\_27022019\\_MIN\\_421.PDF](https://southerndowns.infocouncil.biz/Open/2019/02/CO_27022019_MIN_421.PDF)>. Accessed on 9 September 2019.

<sup>40</sup> Submissions dated 3 and 19 June 2019.

<sup>41</sup> Submissions dated 3 and 19 June 2019.

<sup>42</sup> I am unable to provide further details of Council's submissions in this regard—section 108(3) of the RTI Act.



### **Factors favouring nondisclosure**

50. A factor favouring nondisclosure will arise if disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>43</sup> The RTI Act also recognises that disclosing personal information<sup>44</sup> of a person could reasonably be expected to cause a public interest harm.<sup>45</sup>
51. The identities of staff who participated in the review process are not apparent, and cannot be reasonably ascertained, from the Information in Issue.<sup>46</sup> On this basis, I do not consider that the nondisclosure factors relating to personal information and privacy apply.

### **Flow of information**

52. Under the RTI Act, the public interest will also favour nondisclosure if:
- disclosure of information could reasonably be expected to prejudice an agency's ability to obtain confidential information (**Confidential Prejudice Factor**);<sup>47</sup> and
  - the information is of a confidential nature that was communicated in confidence and disclosure could reasonably be expected to prejudice the future supply of information of this type (**Confidential Harm Factor**).<sup>48</sup>
53. In the decision under review, Council determined that the provision of information from staff to management was '*critical in the ongoing operations of Council*' and because staff who participated in the review process were advised that the '*communications were in confidence, breaching this trust would likely cause irreparable damage to the relationship and put in jeopardy the supply of similar openness into the future*'. On this basis, Council determined these factors applied and deserved high weight. I note that this determination was made in respect of the wider range of information responding to the original application scope.
54. On external review, Council submits<sup>49</sup> that staff received multiple undertakings that the review process was confidential in nature, they participated in the review process on the basis that information they provided would be kept confidential and this was reinforced by feedback Council obtained from its employees about the access application.
55. As I have previously noted, some information in the Information in Issue is factual information about Council's organisational structure and operations, which is not confidential in nature, and Council has not provided any evidence to support the claimed confidentiality undertaking owed to review participants.
56. The Information in Issue does not attribute any particular information provided during the review process to any specific individuals. On this basis, I am not satisfied that disclosure of the Information in Issue would disclose confidential information provided by review participants, as Council has asserted.

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<sup>43</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>44</sup> 'Personal information' is defined in section 12 of the IP Act 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*'.

<sup>45</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>46</sup> Any instances of individual names, or information which could identify particular individuals, has been excluded on the basis of the applicant's agreement not to pursue access to it.

<sup>47</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>48</sup> Schedule 4, part 4, section 8 of the RTI Act.

<sup>49</sup> Submissions dated 3 and 19 June 2019.

57. However, even if some of the Information in Issue could be characterised as confidential information, for these factors favouring nondisclosure to apply, I must also be satisfied that disclosure could reasonably be expected to prejudice Council's ability to obtain confidential information or the future supply of this type of information.
58. Apart from Council's general assertions referenced in paragraph 54, Council has not detailed the nature of the claimed adverse impacts and how those impacts would arise from disclosing the Information in Issue.
59. Taking into account that the Information in Issue does not attribute any particular information provided during the review process to any specific individuals, I am not satisfied that disclosure of the Information in Issue would significantly impact either the ability of Council to obtain confidential information or the future supply of information in future workforce reviews. On this basis, I afford these factors favouring nondisclosure moderate weight.

### Management function

60. The RTI Act also recognises:
  - that a factor favouring disclosure will also arise where disclosure of information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency (**management prejudice factor**);<sup>50</sup> and
  - disclosing information could reasonably be expected to cause a public interest harm where disclosure could (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; (b) prejudice achieving the objects of a test, examination or audit conducted by an agency; (c) have a substantial adverse effect on the management or assessment by an agency of the agency's staff; or (d) have a substantial adverse effect on the conduct of industrial relations by an agency (**management harm factor**).<sup>51</sup>
61. In the decision under review, Council afforded these factors favouring nondisclosure high weight because disclosure of the requested information would '*severely damage the relationship between management and staff*' and a '*[l]oss of trust between staff and management and would likely lead to future requests to open communications between both parties to be extremely hard to achieve*', resulting in staff being less likely to provide honest feedback in the future. Again, I note that this determination was made in respect of the wider range of information responding to the original application scope, whereas this review is in relation to more limited information. Council chose not to provide revised submissions to particularise how it considers disclosure of information falling within the narrowed scope could still lead to such prejudice.
62. On the material before me, there is nothing which reasonably suggests that disclosing the Information in Issue could be expected to cause any prejudice to the effectiveness or objects of a Council test, examination or assessment. Accordingly, I do not consider that these aspects of the management harm factor apply.
63. Council submits<sup>52</sup> that if the Information in Issue is disclosed '*the consequential loss of trust from staff in the organisation would significantly impact on the management function as without the staff trust all aspects of service delivery would be adversely impacted*'. As the party bearing the onus in this review, Council is required to detail the nature of these

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<sup>50</sup> Schedule 4, part 3, item 19 of the RTI Act.

<sup>51</sup> Schedule 4, part 4, section 3 of the RTI Act.

<sup>52</sup> Submissions dated 3 and 19 June 2019.

claimed impacts and how they could reasonably be expected to arise from disclosing the Information in Issue. A mere assertion that disclosure will result in these adverse impacts is insufficient.<sup>53</sup>

64. I accept that Council employees may have expressed a concern about disclosure of information responding to the original scope of the application, however, the Information in Issue does not attribute any particular information provided during the review process to any specific individuals. In these circumstances, while disclosure of the Information in Issue may have some impact on Council's employment relationships, on the material before me, I am not satisfied that any such impacts would be significant or that they would, in turn, adversely impact Council's service delivery. On this basis, while I consider these factors may apply to the Information in Issue, they deserve only low weight.

#### **Other factors favouring nondisclosure**

65. Having carefully considered all factors listed in schedule 4, parts 3 and 4 of the RTI Act, I can identify no other public interest considerations telling in favour of nondisclosure of the Information in Issue.<sup>54</sup> Taking into consideration the nature of this information, I cannot see how disclosing the Information in Issue could, for example, impede the administration of justice, generally or for a person,<sup>55</sup> or prejudice a deliberative process of government.<sup>56</sup>
66. I also note that Council bears the onus in this review of establishing that disclosing the Information in Issue would, as it contends, be contrary to the public interest.

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

67. For the reasons set out above, it is my view that the factors favouring disclosure of the Information in Issue are deserving of significant weight. Disclosure of this information would serve to demonstrate Council's accountability and transparency and would provide the public with an opportunity to assess the extent of the review commissioned by Council and the actions that Council decided to take to address matters identified in the review. It may also provide background and contextual information to the Council's 2019 decision to adopt an organisational restructure, which arose from an agenda item considered in a closed section of Council's meeting.
68. The Information in Issue does not attribute feedback to specific individuals. In these circumstances, I am satisfied that disclosure of the Information in Issue is not likely to impact Council's future ability to obtain confidential information in any significant way and, on this basis, I afford moderate weight to the nondisclosure factors relating to confidential information. I also afford low weight to the factors concerning prejudice and harm to Council's management functions.
69. On balance, I find that the factors favouring disclosure outweigh the factors favouring nondisclosure. Accordingly, I find that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.

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<sup>53</sup> *Queensland Newspapers Pty Ltd and Queensland Police Service; Third Parties* [2014] QICmr 27 (12 June 2014) at [111]. Refer also to *SJN* at [74]-[75] where Daubney J found that the identical onus in the IP Act has not been discharged where the agency did not link its concerns about 'a range of potential deleterious outcomes' to the particular information sought by the particular applicant in that case.

<sup>54</sup> In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the numerous public interest factors that favour the disclosure of the Information in Issue.

<sup>55</sup> Schedule 4, part 3, items 8 and 9 of the RTI Act.

<sup>56</sup> Schedule 4, part 3, item 20 and schedule 4, part 4, section 4 of the RTI Act.

## **DECISION**

70. I set aside Council's decision and find that access to the Information in Issue may be granted, as its disclosure would not, on balance, be contrary to the public interest.
71. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 12 September 2019**

## APPENDIX

### Significant procedural steps

| Date             | Event   |
|------------------|---|
| 10 October 2018  | OIC received the application for external review  |
| 12 November 2018 | OIC notified the applicant and Council that it had accepted the external review application and asked Council to provide information.             |
| 22 November 2018 | OIC received the requested information from Council.  |
| 19 December 2018 | OIC wrote to the applicant to confirm the scope of the narrowed application. OIC asked Council to provide information.                            |
| 2 January 2019   | OIC received requested information from Council.  |
| 11 April 2019    | OIC received further information from Council.  |
| 9 May 2019       | OIC conveyed a preliminary view to Council and invited Council to provide submissions if it did not accept the preliminary view.                  |
| 3 June 2019      | OIC received Council's submissions.   |
| 6 June 2019      | OIC conveyed a preliminary view to the applicant and Council and invited them to provide submissions if they did not accept the preliminary view. |
| 12 June 2019     | OIC spoke with the applicant and confirmed that the applicant accepted OIC's preliminary view.  |
| 19 June 2019     | OIC received Council's further submissions.   |