



Decision and Reasons for Decision

Citation:	<i>ODNA Group Pty Ltd and Brisbane City Council [2020] QICmr 47 (13 August 2020)</i>
Application Number:	315090
Applicant:	ODNA Group Pty Ltd ACN 161 056 677
Respondent:	Brisbane City Council
Decision Date:	13 August 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application to transfer an advertising sign licence - local council disclosed names of companies involved but not individual representatives - allegation that applicant's interests were misrepresented in the transfer application - administration of justice - personal information and privacy - would disclosure, on balance, be contrary to the public interest - whether access can be refused under section 47(3)(b) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to Brisbane City Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to information relating to the request, approval and transfer of an advertising sign permit, at a specified location in Brisbane.¹ In its application, the applicant advised Council that a competing company had installed an advertising sign at the same location and a branch of Council was investigating permit compliance.
2. Council located 264 pages and granted the applicant access to the majority of the information, including the names of two other companies involved in the application to transfer the advertising sign permit. Council redacted information from the released documents² on the basis that disclosure would, on balance, be contrary to the public interest, citing the public interest in safeguarding the personal information of other individuals and minimising prejudice to commercial and business affairs of an entity.³

¹ Application dated 27 August 2019.

² In 62 pages described as *Various DART Documents*.

³ Council issued its decision on 7 November 2019. However, as Council did not ask the applicant for an extension of time to the processing period (the RTI Act ordinarily requires decisions to be made within 25 business days), Council is taken to have made a deemed decision under section 46 of the RTI Act. This is of no practical consequence in terms of the external review, as the external review application was later accepted by the Office of the Information Commissioner (**OIC**). However, it does mean that the internal review process conducted by Council was not valid.

3. The applicant sought internal review submitting that *'a representative acting on behalf of ODNA Group transferred the permit ... without the prior knowledge of ODNA Group's Director ... we require their details to be reinstated'*.⁴ Council purported to affirm its original decision.⁵
4. The applicant applied to OIC for external review submitting that its interests and position had been misrepresented in the application to transfer the advertising sign permit, resulting in the permit being transferred to another entity. The applicant submitted that it believed one of its own employees was involved in the transfer application and had acted without authority. During the review, the applicant limited the scope of its request to information appearing in documents relevant to the alleged unauthorised permit transfer.⁶
5. Accordingly, and for the reasons set out below, I find that disclosure of the information remaining in issue would, on balance, be contrary to the public interest under section 49 of the RTI Act, and that therefore, access to it may be refused under section 47(3)(b) of the RTI Act.

Background and evidence

6. In October 2017, Council granted the applicant a permit for an advertising sign outside a specified property, entitling the applicant to construct a double-sided digital billboard, subject to various conditions.⁷ In October 2018, the property owner (**Company A**) advised another entity (**Company B**) that the applicant *'had decided not to proceed with the project'* thereby enabling Company B to proceed with the project.⁸ Company A then proceeded to lodge, with Council, the application to transfer the existing advertising sign licence from the applicant to Company B, declaring that Company A was the authorised representative of the current licensee, ie the applicant.
7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including in the footnotes and the Appendix).
8. In making this decision, I have had regard to the *Human Rights Act 2019 (Qld) (HR Act)* to the extent that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with⁹ and have acted compatibly with this human right, in accordance with section 58(1) of the HR Act.
9. Significant procedural steps relating to this review are set out in the Appendix.

Reviewable decision

10. As explained at footnote 3 above, Council made a deemed decision refusing access to the requested information. Accordingly, that is the decision under external review.

⁴ Internal review application dated 14 November 2019 (purported).

⁵ Internal review decision dated 11 December 2019 (purported).

⁶ Thereby excluding information located by Council relating to the original (and uncontentious) permit application and approval process that assigned the relevant licence to the applicant.

⁷ Confirmed by the content of the documents released to the applicant by Council. Decision Notice dated 30 October 2017 at Page 2 of the released documents.

⁸ This content was released at page 50 of the *Various DART Documents*.

⁹ Section 25(a) of the HR Act. Ordinarily, the Information Commissioner would have regard to the human right to seek and receive information in section 21 of the HR Act. However, it does not apply in this case as the applicant is a corporation. Section 11(2) of the HR Act provides that only individuals have human rights.

Information in issue

11. The information remaining in issue¹⁰ comprises:

- names of the individuals appearing in the Application for Advertising Sign Approvals (**Permit Transfer Application**) within the sections titled “*New Licensee*” and “*Name of licensee’s authorised representative*”¹¹; and
- names of individuals appearing in a letter sent by Company A to Company B dated 11 October 2018, advising that the applicant was not proceeding with construction of the advertising sign (**Letter**).

(collectively, **Third Party Details**).

Issue for determination

12. The only issue requiring determination in this review is whether access to the Third Party Details may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest, under section 49 of the RTI Act.

Relevant law

13. The RTI Act provides for a right of access to information held by Queensland government agencies. However, this right is subject to certain limitations, including grounds for refusing access to information. One ground is where disclosure would, on balance, be contrary to the public interest.¹² In deciding where the balance of the public interest lies, the RTI Act requires a decision maker to identify factors for and against disclosure, disregard irrelevant factors and decide, on balance, whether disclosure would be contrary to the public interest.¹³

14. In balancing the public interest, a decision maker is prohibited from taking into account irrelevant factors.¹⁴

Findings

15. In making this decision, I have not taken into account any irrelevant factors.

Factors favouring disclosure

16. The applicant submits that neither Company A nor any employee and/or representative of Company A was authorised to complete the Permit Transfer Application on its behalf.¹⁵

17. The applicant’s submission about its interests being misrepresented on the Permit Transfer Application raises public interest factors relating to the administration of justice.¹⁶ The Information Commissioner has previously decided that these factor/s will be established¹⁷ where the applicant can demonstrate **all** of the following requirements:

¹⁰ Confirmed by the applicant in an email to OIC dated 8 May 2020.

¹¹ Appearing in pages 45-47 and 49 of the *Various DART Documents*, including a signature of the individual representing Company A. The applicant has excluded the mobile telephone number from further consideration.

¹² Section 47(3)(b) of the RTI Act.

¹³ Section 49(3) of the RTI Act.

¹⁴ Including those at schedule 4, part 1 of the RTI Act.

¹⁵ Applicant’s submission dated 10 July 2020 at paragraph 3.

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

¹⁷ Noting that once established, the factors must then be afforded weight according to the particular circumstances of the case and balanced against any factors favouring nondisclosure.

- a) they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - b) they have a reasonable basis for seeking to pursue the remedy; and
 - c) disclosing the information would assist them to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.¹⁸
18. If an applicant can pursue, or evaluate the availability or merit of pursuing, the remedy, without the refused information, the third criterion will not be met. For example, an applicant may already possess sufficient information for those purposes.¹⁹
19. Here, I accept that the applicant has suffered a loss in terms of the advertising sign licence being transferred, seemingly without its authority. If the applicant had maintained the licence and constructed the billboard, it could have then contracted with advertisers and generated income from that advertising. The circumstances of this case indicate that some form of civil remedy would be available to the applicant in relation to its allegations of fraud/misrepresentation. Also, there appears to be a reasonable basis for the applicant seeking to pursue a remedy as there is no evidence before me that the applicant authorised Company A to transfer the licence to Company B on its behalf. Also, the applicant strenuously submits that it did not give authority and its position is supported by it taking steps (including making an RTI Act application to Council) to uncover evidence about the transfer.
20. The applicant argues that the name of the individual representing Company A is 'essential' for it to commence proceedings and submits as follows:
- the individual who completed the Permit Transfer Application '*acted improperly and/or fraudulently by providing false and misleading information, either with or without the actual or apparent knowledge of Company A*'²⁰
 - the individual's information is pertinent to determine liability for the apparent improper transfer of the permit²¹
 - the information is relevant to '*identify whether or not there was some malfeasance*' by Company A in improperly asserting an authority to act on behalf of the applicant²²
 - to establish liability on the part of Company A, the applicant must establish whether the company had actual or apparent knowledge of the employee's action; without the information, the applicant is unable to establish whether the individual is genuinely connected to Company A for the purpose of commencing proceedings.²³
21. As noted above, Council disclosed the names and contact details of Company A and Company B as they appear in the Permit Transfer Application and the Letter. Therefore, the applicant is already aware of the commercial entities involved if they wish to commence proceedings against either/both of those parties.²⁴ Hypothetically, if those companies were to defend any action brought by the applicant, it would be a matter for them to consider whether circumstances necessitated joining the relevant individuals as co-defendants. While the applicant disagrees with this proposition, there is no evidence

¹⁸ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] affirmed in *10S3KF and the Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

¹⁹ *Kalman and Queensland Police Service* [2016] QICmr 17 (13 May 2016) at [27].

²⁰ Applicant's submission dated 10 July 2020 at paragraph 3.

²¹ Applicant's submission dated 10 July 2020 at paragraph 5.

²² Applicant's submission dated 10 July 2020 at paragraph 5.

²³ Applicant's submission dated 10 July 2020 at paragraph 6.

²⁴ I also note that rule 229(1)(b) of the *Uniform Civil Procedure Rules* (Qld) which allows, with the Court's leave, a person to deliver interrogatories to a person who is not a party, to help decide whether a person would be an appropriate party to a proposed proceeding.

before me to suggest that the individuals named in the Permit Transfer Application were not authorised to represent those companies as agents/employees.

22. I do however, recognise that disclosing the Third Party Details would enable the applicant to communicate directly with the individuals involved in the Permit Transfer Application. This may assist the applicant to start communicating with the relevant entities with a view to gaining information about the basis for Company A's representation that the applicant no longer wanted to proceed with the advertising sign project. However, for the reasons given in paragraph 21 above and due to the information that is already in the applicant's possession, I consider the weight to be afforded to the administration of justice factors is low.²⁵
23. I am also satisfied that there is some weight to be afforded to the public interest in enhancing the accountability of Council in relation to its processes involved in transferring advertising sign licences.²⁶ However, the level of information that was disclosed by Council both in the Permit Transfer Application and other located documents, has significantly discharged this factor and given the limited nature of the Third Party Details, I afford this factor low weight. The applicant has also sought to argue that disclosure of the Third Party Details would reveal background/contextual information that informed Council's decision.²⁷ However, as noted above, the Third Party Details are limited to the names of other individuals and as such, do not comprise evidence considered by Council in its decision-making process on the Permit Transfer Application so as to reveal background/contextual information. Therefore, I afford this factor²⁸ minimal weight.
24. The applicant has also argued that the public interest favours disclosure of the Third Party Details as they would reveal information that is incorrect or misleading.²⁹ The applicant's submission that it did not consent to Company A completing the Permit Transfer Application as their authorised representative is persuasive. As discussed above at paragraph 19, the applicant has taken steps to investigate how the permit was transferred without its authority. Accordingly, to the extent that the Third Party Details record the Company A individual as the current licensee's authorised representative, I find that disclosure could reasonably be expected to reveal that the information was incorrect and/or misleading. I only afford this factor low weight due to the limited nature of the Third Party Details.
25. Given the applicant's concerns about fraudulent misrepresentation³⁰, I have considered whether disclosure of the Third Party Details could reasonably be expected to contribute to enforcement of the criminal law.³¹ However, I find that the evidence before me does not establish a reasonable expectation³² for this factor to apply. As stated above, in the circumstances of this case, the remedy available to the applicant appears to be in the nature of a civil claim. Similarly, in considering the applicant's submission that disclosure may reveal negligence on behalf of Council³³, I find there is no evidence before me to

²⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act.

²⁶ Schedule 4, part 2, item 1 of the RTI Act

²⁷ Applicant's submission dated 10 July 2020 at paragraph 19.

²⁸ Schedule 4, part 2, item 11 of the RTI Act.

²⁹ Schedule 4, part 2, item 12 of the RTI Act.

³⁰ Applicant's submission dated 10 July 2020 at paragraphs 4 and 13.

³¹ Schedule 4, part 2, item 18 of the RTI Act.

³² When assessing whether an outcome could reasonably be expected, I must distinguish 'between what is merely possible ... and expectations that are reasonably based' and for which 'real and substantial grounds exist': *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154]-[160]. Other jurisdictions have similarly interpreted the phrase 'as distinct from something that is irrational, absurd or ridiculous': See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at [190].

³³ Applicant's submission dated 10 July 2020 at paragraph 17(b).

establish this factor.³⁴ However, in terms of assisting inquiry into possible deficiencies in agency conduct, establishing that public interest factor³⁵ requires a lower threshold. Therefore, I consider it does apply to the extent that disclosure could assist inquiry into Council's processes relating to the transfer of advertising sign permits. However, I afford it low weight given the limited nature and minimal probative value of the Third Party Details, ie disclosure would not reveal anything about Council's actions/processes directly.

26. The applicant also submits that the Third Party Details comprise its personal information, thereby raising a further factor favouring disclosure.³⁶ I am satisfied that this factor does not apply as the applicant is a corporate entity which cannot have personal information.³⁷
27. In support of disclosure, the applicant also pointed to section 177 of the RTI Act.³⁸ That provision is concerned with persons providing information to OIC that they know is false or misleading, not with the content of a released document. I am not satisfied that the requisite evidence is present to enliven this offence provision.
28. For completeness, I have considered all factors listed in schedule 4, part 2 of the RTI Act, and I can identify no other public interest considerations favouring the disclosure of the Third Party Details.³⁹

Factors favouring nondisclosure

29. The RTI Act recognises that there is a public interest in protecting the right to privacy of other individuals and safeguarding the personal information of other individuals.⁴⁰ I am satisfied the Third Party Details comprise the personal information⁴¹ of other individuals as disclosure would reveal their names and a signature. As the individuals work in the private sector, I consider it is relevant to consider whether their right to privacy would be prejudiced through disclosure.
30. In arguing against nondisclosure, the applicant points to the declaration section of the Permit Transfer Application completed by the representative of Company A, which relevantly provides *'I understand the information provided in and with this application may be disclosed publicly under the Right to Information Act 2009'*.⁴² *The applicant argues that 'signed declaration nullifies any argument that the individual's personal information should be kept private'*.⁴³
31. The concept of *'privacy'* is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to keep their *'personal sphere'* free from interference from others.⁴⁴ The Third Party Details identify other individuals in connection with their place of work (in the private sector) and therefore, I consider that disclosure would interfere with those individuals' personal spheres. However, as they have provided their names in an application to a local authority for a commercial purpose, I consider the

³⁴ Schedule 4, part 2, item 6 of the RTI Act.

³⁵ Schedule 4, part 2, item 5 of the RTI Act.

³⁶ Applicant's submission dated 10 July 2020 at paragraph 18.

³⁷ Personal information is defined in section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**) as *'information ... about an individual...'* (emphasis added). Schedule 1 of the *Acts Interpretation Act 1954* (Qld) defines *'individual'* as a natural person.

³⁸ Applicant's submission dated 10 July 2020 at paragraph 13.

³⁹ In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of the information in issue.

⁴⁰ Schedule 4, part 3, item 3; part 4, section 6(1) of the RTI Act.

⁴¹ Schedule 5 of the RTI Act (definition of 'Personal Information'); section 12 of the IP Act.

⁴² Page 47 of the *Various DART Documents*.

⁴³ Applicant's submission dated 10 July 2020 at paragraph 22.

⁴⁴ Paraphrasing the Australian Law Reform Commission's definition of the concept in Australian Law Reform Commission, *For your information: Australian Privacy Law and Practice* (Report No 108, May 2008) vol 1, 148 [1.56].

intrusion into their private sphere does not fall at the highest end of the spectrum. In the circumstances, including consideration of the declaration signed by the Company A representative, I afford this factor moderate weight.

32. In terms of the level of public interest harm⁴⁵ that could reasonably be expected to arise from disclosure, I have taken into account that disclosure would allow those individuals, who work in the private sector, to be contacted and questioned in relation to work they have undertaken in their employment. Given the serious nature of the (unsubstantiated) allegations raised by the applicant, I consider this would lead to a significant level of harm. However, I reduce the weight of this factor to moderate to take into account that the Company A representative was on notice, by virtue of the signed declaration, that the information in the Permit Transfer Application may be disclosed under the RTI Act.

Balancing the public interest factors

33. I accept that the applicant has suffered loss in terms of the advertising sign permit being transferred to another entity, and that disclosure would provide the applicant with the identities of the particular individuals named in the Permit Transfer Application in order to directly communicate with them about the matter. However, given the information already available to the applicant (ie names and contact details of the commercial entities involved), I do not consider the administration of justice factors can be attributed anything beyond low weight.
34. There are also a number of other factors favouring disclosure in terms of assisting inquiry into possible deficiencies in the Permit Transfer Application process, revealing incorrect/misleading information, enhancing Council's accountability and revealing background/contextual information. However, due to the limited nature of the Third Party Details (ie names of individuals and a signature) I afford these factors low weight.
35. On the other hand, I am satisfied that the public interest in protecting the other individuals' personal spheres from interference and minimising harm by safeguarding the personal information of private individuals held by government agencies, both carry moderate weight which outweighs the collective weight of the factors favouring disclosure. Therefore, I find that access to the Third Party Details may be refused under section 47(3)(b) of the RTI Act.

DECISION

36. I vary Council's deemed decision and find that access to the Third Party Details may be refused under section 47(3)(b) of the RTI Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Katie Shepherd
Assistant Information Commissioner

Date: 13 August 2020

⁴⁵ Schedule 4, part 4, section 6 of the RTI Act provides that disclosure of personal information of another person could reasonably be expected to cause a public interest harm. That is, where this factor applies, harm is already established. The question for the decision maker in affording weight to that factor is what level of harm would arise in the particular circumstances of the case.

APPENDIX**Significant procedural steps**

Date	Event
23 December 2019	OIC received the applicant's external review application.
2 January 2020	OIC acknowledged receipt of the external review application. OIC requested documents from Council in order to conduct a preliminary assessment.
6 January 2020	OIC received the requested documents from Council, including information about processing and timeframes.
20 January 2020	OIC advised the applicant and Council that the external review application had been accepted. OIC asked Council to provide a copy of the documents located in response to the access application.
21 January 2020	Council provided OIC with a copy of the relevant documents.
5 and 7 May 2020	OIC obtained background information and submissions from the applicant, by telephone.
8 May 2020	The applicant emailed OIC confirming the specific pages containing the information it was seeking to access.
8 June 2020	OIC provided the applicant with an update on the status of the review.
18 June 2020	OIC wrote to the applicant to convey a preliminary view that disclosure of the information in issue would, on balance, be contrary to the public interest.
10 July 2020	The applicant provided written submissions to OIC contesting the preliminary view.
10 August 2020	OIC provided Council with an update on the status of the review. Council confirmed to OIC that no extensions to the processing period were requested.