



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>T74 and Brisbane City Council [2021] QICmr 54 (21 October 2021)</i></b>
<b>Application Number:</b>	<b>316068</b>
<b>Applicant:</b>	<b>T74</b>
<b>Respondent:</b>	<b>Brisbane City Council</b>
<b>Decision Date:</b>	<b>21 October 2021</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - EFFECT ON AGENCY'S FUNCTIONS - request for all documents about applicant for specified time period - whether the work involved in dealing with application would, if carried out, substantially and unreasonably divert resources of agency from their use by agency in performing its functions - sections 60 and 61 of the <i>Information Privacy Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> for access under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to all documents about him held by Brisbane City Council (**Council**) between 1 January 2014 and 31 December 2014. The applicant identified eight areas of Council that he considered would likely hold documents about him, but requested 'a *general broad search of Council*' be conducted. He also requested access to all emails concerning him.
2. Council advised the applicant<sup>2</sup> that, after considering his application, it proposed to refuse to deal with it on the grounds that processing it would result in an unreasonable and substantial diversion of Council's resources. As required under the IP Act, Council gave the applicant an opportunity to consult with it about the scope of the application so as to remove the grounds for refusal.
3. Following consultation, the applicant reduced the timeframe for his application to 1 January 2014 to 1 August 2014, inclusive.<sup>3</sup>

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<sup>1</sup> On 31 December 2020.

<sup>2</sup> Letter dated 4 February 2021.

<sup>3</sup> On 18 February 2021.

4. After considering the reduced timeframe, Council maintained its view that processing the application would result in a substantial and unreasonable diversion of Council's resources and decided to refuse to deal with the application.<sup>4</sup>
5. The applicant applied to Council for internal review of its decision.<sup>5</sup> Council affirmed the decision on internal review.<sup>6</sup>
6. The applicant then applied<sup>7</sup> to the Office of the Information Commissioner (**OIC**) for external review of Council's decision to refuse to deal with his access application.
7. For the reasons set out below, I affirm Council's decision.

### Reviewable decision

8. The decision under review is Council's internal review decision dated 14 April 2021.

### Background

9. This external review relates to one in a series of access applications that the applicant has made to Council under the IP Act seeking access to all documents held by Council about him across various timeframes.<sup>8</sup> The applicant was employed by Council between 2013 and 2020.
10. On external review, the applicant has complained about a range of issues concerning Council. OIC has advised the applicant on numerous occasions that OIC's jurisdiction under the IP Act is limited to a review of Council's decision made under the IP Act. OIC does not have jurisdiction to deal with the applicant's complaints about Council's interactions with him.

### Evidence considered

11. Significant procedural steps relating to the external review are set out in the Appendix.
12. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.<sup>9</sup>
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>10</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>11</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>12</sup> '*it is perfectly compatible with the scope of*

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<sup>4</sup> Decision dated 22 February 2021.

<sup>5</sup> On 18 March 2021.

<sup>6</sup> Decision dated 14 April 2021.

<sup>7</sup> On 12 May 2021.

<sup>8</sup> As of 18 May 2021, Council has disclosed more than 3,200 pages to the applicant across five separate IP Act access applications of which OIC is aware (as they are either finalised or current external reviews with OIC).

<sup>9</sup> Including the external review application and emails received on 11 January 2021, 14 June 2021, 20 June 2021, 21 July 2021, and 23 July 2021.

<sup>10</sup> Section 21 of the HR Act.

<sup>11</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>12</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

*that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*<sup>13</sup>

### Issue for determination

14. The issue for determination is whether Council was entitled to refuse to deal with the applicant's access application under section 60 of the IP Act.

### Relevant law

15. An individual has a right to be given access to documents of an agency to the extent that they contain the individual's personal information.<sup>14</sup> An agency is required to deal with an access application unless doing so would, on balance, be contrary to the public interest.<sup>15</sup> The only circumstances in which dealing with an access application will not be in the public interest are set out in sections 59, 60 and 62 of the IP Act.
16. Relevantly, section 60(1)(a) of the IP Act permits an agency to refuse to deal with an access application if the agency considers that the work involved in dealing with the application would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.
17. Section 61 of the IP Act sets out the prerequisites before an agency can refuse to deal with an access application. I am satisfied that Council complied with those prerequisites. On external review, Council continued to suggest how the application could be made in a form that would remove the objection under section 60 of the IP Act.
18. The phrase '*substantially and unreasonably*' is not defined in either the IP Act, the RTI Act or the *Acts Interpretation Act 1954* (Qld) (**AIA**). It is therefore appropriate to consider the ordinary meaning of these words.<sup>16</sup> The dictionary definitions<sup>17</sup> of those terms relevantly provide:
- '*substantial*' means '*of ample or considerable amount, quantity, size, etc*'
  - '*unreasonable*' means '*exceeding the bounds of reason; immoderate; exorbitant*'.
19. In deciding whether dealing with an application would substantially and unreasonably divert an agency's resources from the performance of its functions, the IP Act requires that a decision-maker:
- must not have regard to any reasons the applicant gives for applying for access, or the agency's belief about what are the applicant's reasons for applying for access;<sup>18</sup> and
  - must have regard to the resources involved in:
    - identifying, locating and collating documents
    - deciding whether to give, refuse or defer access to documents, including the resources that would have to be used in examining documents and editing documents
    - conducting any third party consultations
    - making copies, or edited copies of documents; and

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<sup>13</sup> XYZ at [573].

<sup>14</sup> Section 40 of the IP Act.

<sup>15</sup> Section 58 of the IP Act.

<sup>16</sup> Section 14B of the AIA.

<sup>17</sup> Macquarie Dictionary Online [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au) (accessed 12.10.21).

<sup>18</sup> Section 60(3) of the IP Act.

- notifying any final decision on the application.<sup>19</sup>
20. While each agency's and each application's circumstances will vary, general factors that are relevant when deciding whether the diversion of resources or interference with normal operational functions is unreasonable include:
- the size of the agency<sup>20</sup>
  - the ordinary allocation of RTI resources
  - the other functions of the agency;<sup>21</sup> and
  - whether and to what extent processing the application will take longer than the legislated processing period of 25 business days.
21. In determining whether the work involved in dealing with an application is unreasonable, it is not necessary to show that the extent of the unreasonableness is overwhelming. Rather, it is necessary to weigh up the considerations for and against, and form a balanced judgement of reasonableness, based on objective evidence.<sup>22</sup> Factors that have been taken into account in considering this question include:<sup>23</sup>
- whether the terms of the request offer a sufficiently precise description to permit the agency, as a practical matter, to locate the documents sought
  - the public interest in disclosure of the documents
  - whether the request is a reasonably manageable one, giving due, but not conclusive, regard to the size of the agency and the extent of its resources usually available for dealing with access applications
  - the agency's estimate of the number of documents affected by the request, and by extension the number of pages and the amount of officer time
  - the reasonableness or otherwise of the agency's initial assessment and whether the applicant has taken a cooperative approach in re-scoping the application
  - the timelines binding on the agency
  - the degree of certainty that can be attached to the estimate that is made as to the documents affected and hours to be consumed; and in that regard, importantly whether there is a real possibility that processing time may exceed to some degree the estimate first made; and
  - whether the applicant is a repeat applicant to that agency, and the extent to which the present application may have been adequately met by previous applications.

### Submissions of Council

22. In its internal review decision, Council advised that, having made search requests to the various areas of Council and the individual officers identified by the applicant, it estimated that it held approximately 5000 responsive pages:

*In considering your internal review request, I also took into account whether there was capacity within the team to deal with your request as:*

- *the delegated authority for internal review decisions pursuant to s.94(2) of the IP Act sits with only a few people as a certain level of seniority is required;*

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<sup>19</sup> Section 60(2) of the IP Act.

<sup>20</sup> *Middleton and Building Services Authority* (Unreported, Queensland Information Commissioner, 24 December 2010) at [34]-[37].

<sup>21</sup> *60CDYY and Department of Education and Training* [2017] QICmr 52A (7 November 2017) at [18].

<sup>22</sup> *ROM212 and Queensland Fire and Emergency Services* [2016] QICmr 35 (9 September 2016) at [42] and *F60XCX and Department of the Premier and Cabinet* [2016] QICmr 41 (13 October 2016) at [90], adopting *Smeaton v Victorian WorkCover Authority (General)* [2012] VCAT 1550 (**Smeaton**) at [30].

<sup>23</sup> *Smeaton* at [39].

- *internal review decisions form only one component of the significant breadth of work Council is required to undertake; and*
- *there are other significant projects that are required to be undertaken presently.*

...

*After considering the above factors and the volume of material located after search, I have formed the view that the work involved in dealing with your internal review application with its reduced timeframe, would, if carried out, substantially and unreasonably divert the resources of Council for its use by Council in the performance of its functions.*

23. On external review, OIC requested that Council provide a more detailed submission in support of its decision to refuse to deal with the applicant's application, including providing details of the searches and inquiries that Council had undertaken to arrive at the estimate of 5000 responsive pages.<sup>24</sup>
24. Council provided a submission on 27 July 2021 that listed the searches that had been undertaken; the search terms used; and the time taken to run each of the searches. Council advised that an *eDiscovery (SourceOne)*<sup>25</sup> search of Council's email records alone, using variations of the applicant's name, as well as his Council email address, had located over 2000 responsive emails. Council detailed the work involved in opening, reviewing, making a decision about, and editing these emails:

*There are 2100 unsorted emails (with attachments where applicable) resulting from the eDiscovery search for [the applicant's name].....some of these emails entirely concern [the applicant], however in many cases his is but one name appearing somewhere amongst a much larger staff list – either Council wide, Division-wide, Branch or Section-wide. To provide you with an idea of the type of documents located by this search, I opened the first 30 entries appearing in the folder where they are stored where I was able to open the attachment where there was one ... It would be impossible to accurately categorise all of these 2100 emails without opening and perusing the contents of each one, which would be a very time and resource consuming exercise.*

...

*Based on just the sample of 30 emails listed above, and my experience in dealing with previous IP applications by [the applicant], emails are often multi-paged email threads, and many emails have attachments. I consider that 5000 pages would be a very conservative estimate of the number of pages containing [the applicant's] personal information. Due to a significant number of attachments being staff lists where [the applicant's] is just one name out of many others, the occurrence/s of [the applicant's] name in each spreadsheet would have to be found, and you would also need to include the column headings to make sense of the contents, otherwise the information in the row/s containing his name may be meaningless. The rows relating to everyone else would have to be deleted or redacted as being at the very least irrelevant, or potentially not falling under the definition of work-related personal information and hence contrary to the public interest to release.*

*With these 2100 emails which eDiscovery has converted to pdf format...there are 2100 pdf emails/email threads... they include links to attachments which are still in their original various formats e.g. MS Word, MS Excel, pdf and a variety of other formats.....all of these attachments would have to be converted to pdf format prior to review and matched up with their covering email. I believe that this process alone would take one person a number of weeks to prepare the documents and structure them in a way that they could then be reviewed. This work would have to be done by one of the RTI Unit's support or information officers (4.4 FTE available, so one of these FTE's would be unable to undertake any of their regular work on any other applications for several weeks).*

<sup>24</sup> Letter to Council dated 10 June 2021.

<sup>25</sup> Council advised in an email of 11 October 2021 that *eDiscovery* is not in fact the correct term for the search tool used to search Council's email accounts using defined parameters/search terms, and that it is more accurately referred to as *SourceOne*. Although Council's submissions refer to *eDiscovery*, I will hereinafter refer to the email account search tool as *SourceOne*.

*Then once the documents are ready for review, and if we use the estimated figure of 5000 pages, which as I have considered above to be very conservative, allowing again a conservative estimated review/markup/notation time of 1 page per minute, this equates to 83 hours for review time.*

*With 80+ current RTI/IP applications on hand, if the BCC RTI Unit were to even attempt to deal with [the applicant's] application as it currently stands...and with only 2 delegated decision makers, one of those decision makers would be unable to deal with any other applications (or any other work such as disclosure log or external reviews), and as such be effectively off-line, for at least a 3 to 4 week period to progress [the applicant's] application beyond the stage where it is currently at. This certainly represents a significant and unreasonable diversion of Council's resources in terms of at least two members of the RTI Unit...would equate to about 1/3 of the RTI Unit's total resources being dedicated solely to one access application over at least a 3 to 4 week period, to the detriment and exclusion of all other applications and functions required to be handled by the Unit.*

...

*If the eDiscovery searches were to be excluded from scope, then the application would certainly be reasonable to be dealt with, however, given that the documents being requested are 7 years old, then searches beyond what is reasonable would have to be undertaken by the work units to identify all relevant documents without leaving Council open to sufficiency of search issues being raised at internal/external review stage.*

*I trust that the above information justifies Council's refusal to deal with this application under Section 60 of the IP Act.*

*Approximately 5 hours were spent in preparing this response.*

25. As Council's submission appeared to be based on the initial 12 month time frame of the applicant's access application, rather than the reduced seven month period, Council was asked to clarify its submission.<sup>26</sup> In response, Council confirmed that it maintained its position:<sup>27</sup>

*Even with the reduction of scope to seven months (January to July 2014) instead of 12 months (January to December 2014), [the applicant's] IP application still very much so represents a substantial and unreasonable diversion of resources, unless he was prepared to eliminate all of the eDiscovery search results, as I advised in my email of 27 July.*

*The eDiscovery results that we have are unable to sorted electronically, however I opened the first 200 emails appearing the folder (i.e. just under a 10% sample size) just to be able to read the email date to get a manual tally of those that would fall within the January to July 2014 timeframe, as opposed to those falling within the August to December 2014 timeframe. Of these 200 emails, 114 (57%) of these fell within the first seven months, and 86 (43%) the latter five months.*

*Using this as an [sic] reasonable way of estimating the total number of the 2100 emails that would in all likelihood fall within the January to July 2014 timeframe, I would estimate that there would be in the order of 1190-1200 emails. Of the ones I opened a considerable number of these also had attachments....some being very large spreadsheet of lists of employees, of which [the applicant] would be one name appearing amongst the rest (which would have to be found and then the details of all other employees removed....most of these spreadsheets are payroll related, or contain information such as payroll numbers and other non-routine work related information of public sector employees).*

...

*The eDiscovery search results are so voluminous that even by reducing the timeframe from 12 months to seven months it is still not enough to remove the grounds for Council refusing to deal with this application on the basis of substantial and unreasonable diversion of resources.*

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<sup>26</sup> OIC's email to Council of 16 August 2021.

<sup>27</sup> Email of 16 August 2021.

## Applicant's submissions

26. The applicant responded<sup>28</sup> to Council's submissions by email on 20 September 2021. Many of the points raised by the applicant fall outside OIC's jurisdiction and/or are irrelevant to the issue to be determined in this review. This includes the applicant's complaints about:

- Council's decisions<sup>29</sup>
- the way in which Council utilises its staff
- the fact that Council emails about him do not always include his name in an alleged deliberate attempt by Council to make relevant emails 'unsearchable and effectively undiscoverable'
- the absence of responsive documents located by particular work units; and
- the applicant's suspension and subsequent termination of employment by Council.

27. The applicant's agent otherwise submitted:

*I believe it has also been demonstrated that **5000 pages** is, with respect, a ludicrous and far-fetched amount of documents for this application (respectfully, 5000 pages was the estimated amount that City Legal's Internal Review officer appeared to have 'manufactured' ). It's as ludicrous as **3000 pages** on my similar Council information application, only to find that **44 pages was located and released to me** in the end !! Not 500 pages or 1000 pages, **but only 44 pages !!** Conservative? I think a bit overdone and exaggerated.*

*Brisbane City Council is the largest Council in Australia, yet only has two (2) delegated decision makers!?*

...

*With respect, I do **not** believe there is a **substantial and unreasonable diversion of resources** in completing [the applicant's] application. It appears that Council does not have enough (delegated) staff allocated to the RTI Unit, and is using this as an excuse by saying there is only two (2) delegated officers. At the same time Council is now, all-of-a-sudden, adding the excuse of the **E-discovery** search (which they clearly FAILED to use on previous applications) and say that this **E-discovery** search locates all these other documents (hundreds or thousands of them) which in the past, on many applications, [the applicant] and I have been absolutely correct in saying that Council fails to locate documents ie sufficiency of search (and how true was this!). With respect, this Council has been deliberately withholding countless documents for a number of years!*

...

*Does Council's RTI Unit tell the OIC that they don't have the resources to deal with an External Review? No, of course not – they ensure they prioritise staff for this because it is the Privacy Commission. Does Council tell the QIRC they don't have the resources to deal with an unfair dismissal case? No, of course not. Or that Council can't deal with a workers' compensation claim, or deal with [the applicants] review with the Workers' Compensation Regulator or communications with Industrial Relations? No, of course not!*

*To state 'substantial and unreasonable diversion of resources' means that you have to have those resources to divert in the first place, and as Council only has two (2) delegated officers then the largest Council in the country clearly needs to delegate more officers.*

...

*If [the applicant] was to consider, for example, out of the 2100 unsorted emails (that [Council] mentioned in his email of 27 July 2021) which were located from an **E-discovery search** (using [the applicant's name]) then only those emails specifically related to [the applicant] (as opposed to multiple email listing) - so this would potentially rule-out those emails where [the*

<sup>28</sup> Through his agent.

<sup>29</sup> The applicant has been advised on several occasions in previous reviews that, because OIC conducts a merits review, complaints about the contents of agency decisions are irrelevant because any procedural errors are corrected on external review.

applicant's] name is but one amongst many or appearing somewhere amongst a much larger staff list (such as spread sheets and emails generated to hundreds of Council staff). This may mean decreasing significantly those emails that would need to be considered for his application.

[The applicant] is **not** prepared to exclude the **E-discovery search**, as we believe this would set a precedent that may (negatively) affect other applications. Council may simply say to other applicants, who may request a thorough, general search of Council's information, including **E-discovery searches** – that such removal was negotiated on an application. **E-discovery** search will be requested on any future information applications to Council.

**No** undertaking will be given in relation to pursuing sufficiency of searches on any future Internal Reviews or External Reviews, as [the applicant] was justified in raising this (sufficiency of search) issue because Council clearly failed to adequately search for personal information on or about [the applicant] in past applications.

[The applicant] is seeking a **FORMAL** decision in this matter.

[Applicant's emphasis]

## Findings

### **What work would be involved in dealing with the access application?**

28. Council has submitted that the applicant's application would be able to be processed if *SourceOne* emails were excluded from scope.<sup>30</sup> However, the applicant has refused to exclude them. Council contends that targeted searches for responsive documents conducted by the eight areas of Council identified by the applicant in his access application could reasonably be expected to locate documents of value and relevance to the applicant.<sup>31</sup> However, *SourceOne* searches, using the applicant's name as a search term, would not only duplicate emails located by the individual areas of Council identified by the applicant as likely holding responsive documents, but would also identify each and every email held by Council that refers to the applicant in any way. This would potentially include many duplicates of emails contained within email threads.
29. I accept Council's submissions at paragraphs 244-255 above regarding the estimate of the number of responsive emails. Over a seven month period, at a time when the applicant was employed by Council, and taking account of issues arising between Council and the applicant during that period, I do not consider it is unreasonable to expect that there may be over 1000 emails generated across an organisation the size of Council that would contain the applicant's name or that were otherwise sent or received using his work email address.
30. Council had estimated 5000 responsive pages based on 2100 responsive emails over a 12 month period. It then estimated 1200 responsive emails over the reduced timeframe of seven months. I therefore consider it is reasonable to estimate 2800 responsive pages<sup>32</sup> for 1200 emails. I accept Council's submission that its estimate is based on previous experience with the applicant's access applications and the types of responsive documents, as well as its review of a sample of the emails located in this review, both of which indicate that the emails are '*often multi-paged email threads, and many ... have attachments*'.<sup>33</sup>

<sup>30</sup> Submission dated 27 July 2021.

<sup>31</sup> Telephone call on 11 October 2021.

<sup>32</sup> Based on an estimate of each responsive email generating approximately 2.38 pages.

<sup>33</sup> Submissions dated 27 July 2021.



31. The applicant's agent, however, contends that Council's estimate of responsive emails is not reasonable based on their experience in a previous access application, where they allege that an estimate of 3000 responsive pages by Council was vastly overstated, as only 44 pages were ultimately released to them.<sup>34</sup> Notwithstanding the applicant's submissions on this issue, what may have occurred in the processing by Council of other access applications is not relevant to my consideration of the Council's estimate in this case. There is nothing before me to suggest that Council's estimate of over 1000 responsive emails is not accurate or reasonable given the timeframe and the very broad terms of the request. I also note, on the applicant's own submission, that Council did not include the results of *SourceOne* searches in these previous applications.<sup>35</sup>
32. I accept Council's submission regarding the work involved in dealing with, and making a decision about, the emails and their attachments. I consider it is reasonable to expect that a significant amount of work would be involved in:
- opening each email and reviewing its contents
  - opening each attachment, reviewing its contents and converting it to pdf format
  - editing the emails and attachments so as to redact references to irrelevant information/information concerning other Council employees or other third parties; and
  - making a decision about access to the emails.
33. I am satisfied that, while an agency is required to consider how much time an access application is likely to take to process, a precise assessment is not required. As such, in cases where an assessment may, in itself, substantially and unreasonably divert the agency's resources, an estimate is acceptable. I also consider that, in conducting a merits review of an agency's decision, it is necessary for me to determine whether the agency's processing estimate is reasonable.
34. In terms of the time involved in a decision-maker reviewing the emails and marking up each page in preparation for release, Council estimated one minute per page, which it submitted was a conservative estimate.<sup>36</sup> Based on this estimate, the time taken to review and mark up the approximately 2800 responsive pages would therefore be in the vicinity of 47 hours.
35. However, I agree with Council's description of this estimate as '*conservative*'. If, for example, the email attachment is a payroll spreadsheet that contains the names and details of numerous other Council employees,<sup>37</sup> I consider it is reasonable to expect that the time taken to review and redact irrelevant/personal information of other persons from the spreadsheet may be significantly more than one minute. For this reason, I find that an estimate of an average of two minutes per page is a more reasonable and realistic estimate. This equates to over 93 hours of work for a decision-maker to review and mark-up each responsive page.
36. Council also estimated that it would take one administrative officer '*several weeks*' to compile responsive emails, convert the attachments to a pdf format, and structure them in preparation for review by a decision-maker.<sup>38</sup>

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<sup>34</sup> Submissions dated 20 September 2021.

<sup>35</sup> Submissions dated 20 September 2021.

<sup>36</sup> Submissions dated 27 July 2021.

<sup>37</sup> Council advised in its email of 11 October 2021 that one of the emails it reviewed as part of its sampling was a payroll processing spreadsheet containing the names of thousands of employees.

<sup>38</sup> Submissions dated 27 July 2021.

37. While the estimate of 'several weeks' is vague, I accept that the work involved in preparing the approximately 2800 pages for review by a decision-maker, as described by Council in its submissions above, would be significant. Again, I consider that an estimate of an average of two minutes per page to perform this work is reasonable in the circumstances. This equates to a further 93 hours of work involved in processing the access application. In addition to this, I consider it is reasonable to expect that between three and five hours would be needed to prepare a decision.
38. In summary, I am satisfied that approximately 190 hours of work<sup>39</sup> would be required to process the applicant's access application.

***Would the impact on Council's functions be substantial and unreasonable?***

39. Yes. I am satisfied that processing the access application would substantially and unreasonably impact Council's functions for the reasons set out below.
40. Based on the estimate set out above for compiling, reviewing and editing the responsive emails, as well as making and issuing a decision, the processing of the application would involve approximately 190 hours of work. This equates to one officer in Council's RTI unit working on the access application for approximately 27 business days,<sup>40</sup> or over five weeks, to the exclusion of all other functions.
41. Council has advised that it has two delegated decision-makers employed in the RTI unit, assisted by 4.4 Full Time Equivalent (FTE) support or information officers. As at the time of making its submission, Council advised that it had more than 80 RTI Act/IP Act access applications on hand.<sup>41</sup> As at the time of preparing this decision, Council advised that it had 90 applications on hand.<sup>42</sup> I note that the most recent report that compiles RTI and IP Act statistics from government agencies throughout Queensland indicates that Council receives significantly more access applications than other local governments.<sup>43</sup> I am also aware from OIC's own interactions with Council that it is an extremely busy RTI unit which receives a high volume of access applications relative to other agencies.
42. The applicant submits that Council's resourcing of its RTI unit is inadequate and that the processing of his application would not result in a substantial and unreasonable diversion of Council's resources were the RTI unit to be properly resourced.
43. In determining whether dealing with the access application is reasonably manageable for Council, I am required to give due, but not conclusive, regard to the size of the agency and the extent its resources are usually available for dealing with access applications.
44. As the applicant has submitted, Council is the largest local government in Australia. It employs over 8,000 staff.<sup>44</sup> Council provides a wide range of services to its nearly 1.3 million residents and is responsible for the discharge of many essential local government functions, including infrastructure, town planning services and transport, as well as the administration and enforcement of a wide range of local laws.

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<sup>39</sup> 93 + 93 + 4.

<sup>40</sup> Based on a seven hour working day.

<sup>41</sup> Submission dated 27 July 2021.

<sup>42</sup> In a telephone call on 11 October 2021.

<sup>43</sup> See pages 66-67 of Department of Justice and Attorney-General, 'Right to Information Act 2009 and Information Privacy Act 2009 Annual Report 2019-20' at <rti.qld.gov.au> which show that, in the 2019-2020 financial year, Council received 410 RTI and IP applications; the next highest number of applications were received by City of Gold Coast (157) and Moreton Bay Regional Council (109); and all other local governments received fewer than 100 applications.

<sup>44</sup> Council Annual Report 2020-21.

45. Whether or not Council should employ more staff in its RTI unit is not a matter upon which I am in a position to comment. How an agency decides to employ and distribute its staff is dependent on a number of different factors, including budget, competing priorities, and staff availability and expertise. An agency the size of Council, with the many different services and functions it is required to deliver, will always experience tensions regarding its allocation of staff and budgetary resources. I would simply observe that I do not consider Council's staffing of its RTI unit, with two FTE delegated decision-makers and 4.4 FTE support or information officers, to be unreasonable. I would also observe that the processing of access applications and the making of access decisions under the RTI or IP Acts is a specialised field that requires training and a working knowledge of the requirements of the legislation. It is not the case that, when demand is high, an agency can simply re-deploy untrained staff from other areas of the agency to its RTI unit to process access applications and make access decisions.
46. Furthermore, even if Council did have more resources to devote to its RTI unit, I consider it likely that spending over 27 business days to process one access application would have a substantial and unreasonable impact on those resources.
47. I have had regard to the factors listed at paragraph 211 above to the extent that they are relevant to the circumstances of this case.
48. I accept that the applicant narrowed his application by reducing the timeframe from 12 months to seven months. The applicant is a repeat applicant to Council, and he has made multiple applications to Council for access to all information held by Council about himself across different time periods. I have noted the large volume of documents to which the applicant has already been given access by Council as a result of those applications. However, given that each of those applications encompassed a different timeframe, I am not aware of Council arguing that processing the access application in this review would result in a significant duplication of responsive documents from other of the applicant's access applications.
49. In terms of the public interest in disclosure of responsive emails, and taking account of the applicant's broad request for any documents about him for a seven month period occurring over seven years ago when he was an employee of Council, it is reasonable to expect that there would be minimal public interest in disclosure of those emails that deal with only routine and uncontentious employment matters ordinarily generated by an employer in respect of its employees. The applicant has not restricted his application for access to emails that deal with a specific topic or subject matter of concern to him. He did refer to the possibility of considering only emails '*specifically related to*' him and not other employees.<sup>45</sup> However, this would not avoid the work involved in opening and reviewing every email containing the applicant's name. In addition, Council would be left to use its own judgment as to whether each email was '*specifically related to*' the applicant, and therefore one he would wish to access. That is too vague and does not offer a reasonable narrowing of the terms of the application so as to allow Council to process it.
50. Had the applicant been willing to restrict his application to emails regarding a specific topic or subject matter, this may have reduced the time required to deal with the application. However, the applicant did not elect to narrow his application in this way.
51. In summary, having regard to the above factors, I am satisfied that requiring an officer in the RTI unit to work on processing the applicant's access application, to the exclusion of all other work, for a period of over five weeks, would significantly impact Council's ability

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<sup>45</sup> Submissions dated 20 September 2021 (see paragraph 27 above).

to process other applications and attend to its other local government functions, resulting in a substantial and unreasonable diversion of Council's resources.

52. For the reasons set out above, I am satisfied that the work involved in dealing with the access application would, if carried out, substantially and unreasonably divert Council's resources from their use in the performance of Council's functions.

## **DECISION**

53. I affirm Council's decision to refuse to deal with the applicant's access application under section 60 of the IP Act.
54. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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S Martin  
**Assistant Information Commissioner**

**Date: 21 October 2021**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
12 May 2021	OIC received the applicant's application for external review.
13 May 2021	OIC requested preliminary information from Council.
17 May 2021	Council provided preliminary information.
10 June 2021	OIC requested a submission from Council.
27 July 2021	Council provided a submission.
29 July 2021	OIC provided a copy of Council's submission to the applicant and communicated a preliminary view.
12 August 2021	OIC received an email from the applicant raising a query about the timeframe used in Council's submission.
16 August 2021	OIC requested that Council clarify its submission. Council provided clarification.
29 August 2021	OIC received an email from the applicant.
30 August 2021	OIC provided the applicant with a copy of Council's clarification of its submission.
20 September 2021	OIC received a submission from the applicant.