



Decision and Reasons for Decision

Application Number: 210964

Applicant: The Courier Mail

Respondent: Brisbane City Council

Decision Date: 21 July 2010

Catchwords: **FREEDOM OF INFORMATION – section 42(1)(h) of the *Freedom of Information Act 1992* (Qld) – matter relating to complaints about a public servant’s conduct - whether disclosure could reasonably be expected to prejudice system or procedure for the protection of persons, property or environment**

FREEDOM OF INFORMATION – section 41(1) of the *Freedom of Information Act 1992* (Qld) – whether matter relating to complaints about a public servant’s conduct amounts to deliberative process – whether disclosure would, on balance, be contrary to the public interest

Contents

Summary	2
Background.....	2
Decision under review	2
Steps taken in the external review process	2
Matter in issue	3
Section 42(1)(h) of the FOI Act.....	3
Application of the law	4
Council’s submissions.....	6
Findings – section 42(1)(h) of the FOI Act	6
Section 41(1) of the FOI Act	7
Application of the law	7
Council’s submissions.....	9
Findings – section 41(1)(a) of the FOI Act	10
Public interest.....	10
Findings – section 41(1)(b) of the FOI Act	12

REASONS FOR DECISION

Summary

1. I set aside the decision under review and find that the matter in issue is not exempt from disclosure under section 41(1) or section 42(1)(h) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**).

Background

2. By letter dated 28 May 2009, the applicant applied to Brisbane City Council (**Council**) for access to "*documents or reports since July 1, 2007 relating to complaints made against the Lord Mayor's media unit. I also request documents relating specifically to complaints made against [a public servant]. Please exclude media reports or duplicates.*"
3. In its original decision dated 10 July 2009, Council advised that pursuant to section 35(2) of the FOI Act, it could neither confirm nor deny the existence of the documents sought.
4. The applicant sought internal review of the original decision.
5. By letter dated 12 October 2009, Mr David Askern, Chief Legal Counsel, affirmed Council's original decision (**Internal Review Decision**).
6. By letter dated 21 October 2009, the applicant sought external review of the Internal Review Decision.

Decision under review

7. The decision under review is the Internal Review Decision.

Steps taken in the external review process

8. This Office liaised with Council about the application of section 35 of the FOI Act and issued a decision on this point dated 15 March 2010. This decision found that Council is not entitled to rely on section 35 of the FOI Act to neither confirm nor deny the existence of documents to which the applicant seeks access.
9. By letter dated 29 March 2010, Council submitted that some of the matter in issue is exempt from disclosure under section 42(1)(b) and/or section 44(1) of the FOI Act.
10. By letter dated 21 April 2010, I advised Council of the preliminary view that as the relevant complainants have no objection to their complaints to Council and Council's responses to them being disclosed to the applicant, the matter in issue should be released to the applicant except for a small amount of information which qualifies for exemption from disclosure under section 44(1) of the FOI Act.
11. Also by letter dated 21 April 2010, I advised the applicant that a small amount of information qualifies for exemption from disclosure under section 44(1) of the FOI Act.
12. By letter dated 6 May 2010, Council advised that it accepted the preliminary view in respect of the section 44(1) material but claimed that the remaining matter in issue is exempt under section 42(1)(h) of the FOI Act as disclosure could reasonably be expected to prejudice the efficacy of Council's complaint system.

13. By letter dated 7 June 2010, I provided Council with a further preliminary review that the remaining matter in issue does not qualify for exemption from disclosure under section 42(1)(h) of the FOI Act.
14. By letter dated 22 June 2010, Council advised that it maintains its claim for exemption in respect of the matter remaining in issue under section 42(1)(h) of the FOI Act and also submits that the information is exempt from disclosure under section 41(1) of the FOI Act.
15. In reaching this decision, I have taken into account:
 - the applicant's FOI application
 - Council's Original Decision
 - the application for internal review
 - Council's Internal Review Decision
 - the application for external review
 - Council's submissions to this Office
 - the matter in issue
 - relevant case law and previous decisions of this Office
 - relevant provisions of the FOI Act.

Matter in issue

16. The matter in issue in this review (**Matter in Issue**) comprises:

Description of documents	Folios
Letter of complaint to Council dated 24 April 2009	1 – 2
Emails between the Lord Mayor, a Councillor and another individual between 7 November 2008 and 10 November 2008	3 – 6
Letter of complaint to Council dated 28 January 2009 (excluding the complainant's residential address and signature)	7
Letter from Council to complainant dated 9 March 2009 (excluding the complainant's residential address)	14 – 15

Section 42(1)(h) of the FOI Act

17. Section 42(1)(h) of the FOI Act provides:

42 Matter relating to law enforcement or public safety

(1) *Matter is exempt matter if its disclosure could reasonably be expected to—*

...

(h) *prejudice a system or procedure for the protection of persons, property or environment; or*

...

18. The Information Commissioner has previously discussed the operation of section 42(1)(h) of the FOI Act and stated that for the provision to apply, each of the following requirements must be satisfied:¹

¹ *Ferrier and Queensland Police Service* (1996) 3 QAR 350 (**Ferrier**) at paragraphs 27-36.

- a) there exists an identifiable system or procedure
- b) it is a system or procedure for the protection of persons, property or environment
- c) disclosure of the matter in issue could reasonably be expected to prejudice that system or procedure.

19. In *Attorney-General v Cockcroft*,² (**Cockcroft**) which dealt with the interpretation of the phrase 'could reasonably be expected to prejudice the future supply of information' in the context of the section 43(1)(c)(ii) (business affairs) exemption contained in the Commonwealth FOI Act, Bowen CJ and Beaumont J said:³

In our opinion, in the present context, the words "could reasonably be expected to prejudice the future supply of information" were intended to receive their ordinary meaning. That is to say, they require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect that those who would otherwise supply information of the prescribed kind to the Commonwealth or any agency would decline to do so if the document in question were disclosed under the Act. It is undesirable to attempt any paraphrase of these words. In particular, it is undesirable to consider the operation of the provision in terms of probabilities or possibilities or the like. To construe s.43(1)(c)(ii) as depending in its application upon the occurrence of certain events in terms of any specific degree of likelihood or probability is, in our view, to place an unwarranted gloss upon the relatively plain words of the Act. It is preferable to confine the inquiry to whether the expectation claimed was reasonably based (see Jason Kioa v. The Honourable Stewart John West, High Court, unreported, 18 December 1985 per Mason, J. at p 36; see also per Gibbs, C.J. at p 12).

20. The Justices' interpretation of the phrase 'could reasonably be expected to' and the proposed line of inquiry is relevant in the context of the exemptions contained in section 42(1) of the FOI Act and requires consideration of whether the expectation that disclosure of the matter in issue could prejudice a system or procedure for the protection of persons, property or environment is reasonably based.

Application of the law

21. The Information Commissioner has previously considered the application of section 42(1)(h) of the FOI Act in a number of published decisions.
22. For example, in *Ferrier*⁴ the Information Commissioner decided that the functions and methods of the Counter-Terrorist Section (**CTS**) (part of the Bureau of Criminal Intelligence within Queensland Police Service) formed a sufficiently coherent, organised and comprehensive scheme to answer the description of a 'system' within the terms of section 42(1)(h) of the FOI Act and was a system which clearly had the objects of protecting persons and property.
23. In relation to requirement c) of section 42(1)(h) of the FOI Act, the Information Commissioner decided that disclosure of the matter in issue would reveal whether a particular organisation had been targeted for scrutiny by the CTS and accepted that disclosure of such information could reasonably be expected to prejudice a system or procedure for the protection of persons or property on the basis that:⁵
- disclosure could prompt the individual, or members of the organisation, to be more secretive and guarded in their activities

² (1986) 64 ALR 97.

³ *Cockcroft*, at 106.

⁴ At paragraph 33.

⁵ *Ferrier* at paragraph 34.

- conversely, knowledge by members of an activist political organisation that it had not been targeted for scrutiny might encourage them to undertake illegal activity, knowing that their chances of being detected were reduced
- as a result, the effectiveness of the system and procedures for preventing 'politically motivated violence' would be correspondingly diminished.

24. In *GIM and Department of Health*⁶ the Information Commissioner considered the application of section 42(1)(h) of the FOI Act in the context of a Justices Examination Order (**JEO**) issued under the *Mental Health Act 2000*. The Information Commissioner noted that the objective of a JEO is to allow a person or persons in the community to request a non-urgent (and involuntary) mental health assessment for a person who they believe may be experiencing mental health problems.⁷ The JEO procedure was explained in the Explanatory Notes to the *Mental Health Bill 2000*, as follows:⁸

The scheme for involuntary treatment is necessary to protect the health and safety of persons with a mental illness and to ensure the safety of the community. A significant feature of some mental illnesses is the person's inability to recognise the presence of illness and the need for treatment. Without treatment, the person is likely to remain unwell for an extended period to the detriment of their own quality of life, health and safety and in a small number of cases, the safety of others.

25. In relation to requirement c) of section 42(1)(h) of the FOI Act, the Information Commissioner referred to the following principles in *ROSK and Department of Health; Others (Third Parties)*:⁹

In my opinion, it is essential for the efficacy of this system or procedure for the protection of persons, that members of the community should not be unduly inhibited from using the scheme if they honestly believe that a person may be mentally ill and a danger to himself/herself or to others. An informant under s.25(1) of the Mental Health Act may have an honest belief that turns out (in the opinion of the health professionals who assess the subject of a mental health warrant) to be a mistaken belief. That is why elaborate safeguards, checks and balances have been built into the statutory scheme. The interests of the community are best served, in my opinion, by having a system or procedure which encourages disclosures which may prevent mentally ill persons harming themselves or others, even if warrants under s.25 of the Mental Health Act are sometimes issued on the basis of mistaken (though honestly held) apprehensions about the subject of the warrant. (I note in this regard that s.57 and s.58 of the Mental Health Act are intended to punish, and thereby inhibit, wilful misuse of the statutory scheme).

I consider it important for the efficacy of this system or procedure for the protection of persons, that those who supply information which supports the issue of a warrant under s.25(1) of the Mental Health Act should (in the absence of their consent to disclosure) be entitled to expect (consistently with indications given in the terms of the statutory scheme itself) that the information would not be disclosed to the subject of the warrant (except in the circumstances referred to in paragraph 21 above, or where the circumstances of a particular case are such that, in practical terms, disclosure of the identity of the informant, or some of the information supplied by the informant, is unavoidable). If information used to support a warrant under s.25(1) of the Mental Health Act were routinely open to disclosure, under the FOI Act, to the subject of the warrant, I consider it reasonable to expect that many members of the community would be inhibited from using this system or

⁶ (Unreported, Queensland Information Commissioner, 26 November 2008) (**GIM**). See also *ROSK and Department of Health; Others (Third Parties)* (1996) 3 QAR 393; *GVK and Department of Health* (Unreported, Queensland Information Commissioner, 24 December 2008); *QPF and Department of Health* (Unreported, Queensland Information Commissioner, 29 June 2009) and *VHL and Department of Health* (Unreported, Queensland Information Commissioner, 20 February 2009).

⁷ *GIM* at paragraph 23.

⁸ Referring to the Explanatory Notes to the *MH Bill 2000* at page 14.

⁹ (1996) 3 QAR 393 at paragraphs 24 and 25.

procedure for the protection of persons, in cases where it should appropriately be used, or else would feel constrained to give information in such guarded terms that it would be of little or no assistance to a justice of the peace, or health care professional, attempting to make the difficult assessment of whether action should be taken in respect of a person to protect that person, or others, from harm.

[my emphasis]

26. The Information Commissioner decided that disclosure of information supplied by persons who provide information in support of a JEO Application under the *Mental Health Act 2000* could reasonably be expected to result in other potential informants being less likely to provide relevant information, thereby prejudicing the system or procedure for the protection of persons which is established by the provisions of the *Mental Health Act 2000*.
27. Given that the requirements for exemption are cumulative, I will first consider whether requirement c) of section 42(1)(h) of the FOI Act is satisfied in the circumstances.

Council's submissions

28. In relation to requirement c), Council submits that:

... while the complainants no longer regard themselves as sources of confidential information, the matter in issue should not be released as disclosure could reasonably be expected to prejudice the efficacy of Council's complaint system.

...

A key aspect of Council's complaints system is that Council will generally not accept anonymous complaints. Nevertheless, as Council is reliant on the information which is provided by members of the public, Council does seek to protect the identity of complainants to encourage residents who may be less inclined to raise their concerns about their complaints.

Council's complaint process and system not only seeks to protect the confidentiality of complainants but also seeks to protect the confidentiality of the officers the subject of the complaint and any witnesses who may be involved in the complaint process.

Council submits that this level of protection is vital for the effectiveness of its complaints system. The disclosure of information which reveals these details would significantly diminish the confidence of residents and others to raise their concerns and Council's ability to seek assistance from those complainants, subject officers and witnesses.

Findings – section 42(1)(h) of the FOI Act

29. I acknowledge that Council values the information provided by members of the public and ensures that confidential complaint information is protected as far as is possible in the circumstances of each individual complaint.
30. However, I note that the complaints contained in the Matter in Issue in this review were provided by complainants who do not seek to protect their identity on this occasion.
31. I also acknowledge Council's submission that it *"also seeks to protect the confidentiality of the officers the subject of the complaint..."*
32. Given that the relevant complaints concern the alleged inappropriate behaviour of a public servant whilst at work, I note that it will not always be possible to protect *"the confidentiality of officers"* who are the subject of a complaint, given Council's

obligations of accountability and appropriate transparency which are crucial to the maintenance of public confidence in Council's complaint handling process.

33. Further, I acknowledge Council's concern that disclosure of the Matter in Issue could reasonably be expected to prejudice the efficacy of Council's complaint system by significantly diminishing '*... the confidence of residents and others to raise their concerns and Council's ability to seek assistance from those complainants, subject officers and witnesses.*'
34. After carefully considering all of Council's submissions, relevant decisions of the Information Commissioner and the consents obtained from the complainants to release the Matter in Issue, I am satisfied that:
 - future complainants could not reasonably be expected to be deterred from making a complaint to Council on account of the disclosure of three particular complaints where the complainants consent to release
 - disclosure of these particular complaints could not reasonably be expected to prejudice the efficacy of Council's complaint management system in the manner submitted by Council
 - release of these particular complaints has no effect on the confidentiality of future complainants. The anonymity of complainants will remain a matter for consideration on a case by case basis in accordance with Council's policy and the wishes of particular complainants.
 - requirement c) is not satisfied in the particular circumstances of this external review
 - the Matter in Issue does not qualify for exemption from disclosure under section 42(1)(h) of the FOI Act.

Section 41(1) of the FOI Act

35. Section 41(1)(a) of the FOI Act provides:

41 Matter relating to deliberative processes

(1) *Matter is exempt if its disclosure -*

(a) *would disclose –*

- (i) *an opinion, advice or recommendation that has been obtained, prepared or recorded; or*
- (ii) *a consultation or deliberation that has taken place;*
- (iii) *in the course of, or for the purposes of, the deliberative processes involved*

in the functions of government; and

...

Application of the law

36. For matter to be exempt under section 41(1) of the FOI Act, the following questions must be answered affirmatively:
 - Would disclosure of the matter disclose any opinion, advice, or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken

place, (in either case) in the course of, or for the purposes of, the deliberative processes involved in the functions of government?

- Would disclosure, on balance, be contrary to the public interest?
37. The fact that a document comprises a deliberative process document carries no presumption that its disclosure will be contrary to the public interest.
38. The term 'deliberative processes' is sometimes explained as the pre-decisional thinking processes of an agency. The term refers to the processes of evaluating relevant evidence, arguments and options, for the purpose of making a decision related to the performance of an agency's functions. It includes contributions to the formulation of policy, or to the making of decisions under statutory powers. The Information Commissioner in *Eccleston and Department of Family Services and Aboriginal and Island Affairs*¹⁰ stated that:
- Normally, deliberative processes occur toward the end stage of a larger process, following investigations of various kinds, establishing facts, and getting inputs from relevant sources...*
39. The term 'public interest' under the FOI Act refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens.
40. 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.
41. Under section 41(1) of the FOI Act an applicant is entitled to access documents unless it can be demonstrated that disclosure of the particular deliberative process matter would be *contrary to the public interest*.
42. Unlike other exemption provisions within the FOI Act that incorporate a public interest test, there is no *prima facie* public interest consideration favouring non-disclosure within section 41(1) of the FOI Act. Finding that disclosure would be contrary to the public interest is a separate requirement for exemption which must be independently established.
43. The onus is on the party relying on the exemption to establish that:
- specific and tangible harm to an identifiable public interest(s) would result from disclosing the matter in issue
 - the harm is of sufficient gravity that, when weighed against competing public interest considerations which favour disclosure, it would, on balance, be contrary to the public interest.
44. This means that the party relying on the exemption must identify the specific and tangible harm that would result to an identifiable public interest or interests if the particular documents comprising the matter in issue were disclosed. The identified harm to the public interest must then be weighed against public interest considerations in favour of disclosure.

¹⁰ (1993) 1 QAR 60.

Council's submissions

45. Council submits that release of the Matter in Issue:

... will disclose an opinion, advice or recommendation which has been obtained, prepared or recorded for the purposes of conducting an investigation, and that disclosure of the matter in issue is contrary to the public interest.

The requirements of section 41(1) were discussed in Re Trustees of the De La Salle Brothers ... (1996) 3 QAR 206

An agency or minister seeking to rely on s.41(1)(a) needs to establish that specific and tangible harm to an identifiable public interest ... could result from disclosure of the particular deliberative process matter in issue. It must further be established that the harm is of sufficient gravity that, when weighed against competing public interest considerations which favour disclosure of the matter in issue, it would nevertheless be proper to find that disclosure of the matter in issue would, on balance, be contrary to the public interest.

The efficiency and effectiveness of Council's Complaints Management System

The release of the matter in issue forms part of Council's deliberative process in relation to the investigation of the actions of the individual accused.

Council submits that there is a public interest in maintaining confidence in the Complaints Management System of Council. Council further submits that confidence in Council's Complaints Management System will be significantly harmed if the matter in issue was released as Council employees conducting an investigation and members of the public who provide information regarding complaints may refrain from expressing relevant opinions, advice or recommendations, which will adversely affect the efficiency and effectiveness of the Council's Complaints Management System, and thereby harm the public interest.

Unsubstantiated Allegations

Council submits that it would be contrary to the public interest to release information concerning the deliberative process of an unsubstantiated allegation. The public interest favours the release information concerning the deliberative processes or investigation into a substantiated allegation.

In the decision of Re Eccleston ... (1993) 3 QAR 299, the Information Commissioner stated that "the FOI Act is intended to strike a balance between competing interests in secrecy and openness for the sake of preventing prejudicial effects to essential public interests, or to the private or business affairs of members of the community, in respect of whom information is collected and held by government.

Council submits that there is a public interest in allowing members of the public to access information concerning the deliberative process and investigation into substantiated allegations brought to Council's attention. However, Council submits that the public interest is not served by releasing information regarding unsubstantiated allegations especially where the release of the information has the potential to cause significant and tangible harm to the personal reputation of the individual accused.

Conclusion

Council [submits that]:

- ...
- *The matter in issue forms part of Council's deliberative processes into the actions of the individual accused in accordance with section 41(1)(a) of the FOI Act;*

- *The release of the matter in issue would be contrary to the public interest as it will hinder the proper investigation of matters by Council employees; and*
- *The release of the matter in issue would be contrary to the public interest as the matter in issue consists of information concerning an unsubstantiated allegation.*

Findings – section 41(1)(a) of the FOI Act

46. After carefully considering the Matter in Issue in this review, I am satisfied that folios 1-2, 7, 14 and 15 do not comprise deliberative process matter, rather they comprise letters of complaint to Council and Council's final response to one of the complaints.
47. With respect to folios 3 – 6 (inclusive)¹¹, I am satisfied that:
- the emails comprising the complaint and the complainant's final response to Council do not comprise deliberative process matter
 - the remainder of the emails (**Remaining Emails**) comprise communications between the Lord Mayor and the complainant, the complainant and the Lord Mayor and a council officer and the complainant
 - it is arguable that the Remaining Emails comprise deliberative process matter in that they record the consultation which occurred during the course of the relevant investigation.
48. In summary, I am satisfied that:
- folios 1, 2, 7, 14 and 15 are not matter of a kind mentioned in section 41(1)(a) of the FOI Act
 - folios 3 – 6 (other than the Remaining Emails) are not matter of a kind mentioned in section 41(1)(a) of the FOI Act
 - the Remaining Emails comprise matter of a kind mentioned in section 41(1)(a) of the FOI Act
 - the Matter in Issue (other than the Remaining Emails) does not qualify for exemption from disclosure under section 41(1) of the FOI Act.

Public interest

49. Given my finding that the Remaining Emails satisfy the requirements of section 41(1)(a) of the FOI Act, it is necessary to consider whether their disclosure would be contrary to the public interest as set out in section 41(1)(b) of the FOI Act (which is a necessary requirement to establish exemption from disclosure as claimed by Council).
50. I confirm that unlike other exemption provisions within the FOI Act that incorporate a public interest test, there is no prima facie public interest consideration favouring non-disclosure within section 41(1) of the FOI Act.
51. Finding that disclosure would be contrary to the public interest is a separate requirement for exemption which must be independently established. It is the responsibility of the party claiming the exemption to establish that:
- a) specific and tangible harm to an identifiable public interest(s) would result from disclosing the matter in issue

¹¹ Which comprise a string of emails containing a complaint, a response from the Lord Mayor to the complainant, a reply from the complainant to the Lord Mayor, an email from a Council employee to the complainant and a response from the complainant.

- b) the harm is of sufficient gravity that, when weighed against competing public interest considerations which favour disclosure, it would, on balance, be contrary to the public interest.

52. This means that Council must identify the specific and tangible harm that would result to an identifiable public interest or interests if the Remaining Emails were disclosed. The identified harm to the public interest must then be weighed against public interest considerations in favour of disclosure.

Analysis

53. I have carefully considered Council's relevant submissions including that:

- *... there is a public interest in maintaining confidence in the Complaints Management System of Council. Council further submits that confidence in Council's Complaints Management System will be significantly harmed if the matter in issue was released as Council employees conducting an investigation and members of the public who provide information regarding complaints may refrain from expressing relevant opinions, advice or recommendations, which will adversely affect the efficiency and effectiveness of the Council's Complaints Management System, and thereby harm the public interest.*
- *... it would be contrary to the public interest to release information concerning the deliberative process of an unsubstantiated allegation. The public interest favours the release of information concerning the deliberative processes or investigation into a substantiated allegation. ... However, Council submits that the public interest is not served by releasing information regarding unsubstantiated allegations especially where the release of the information has the potential to cause significant and tangible harm to the personal reputation of the individual accused.*

54. In summary, Council submits that the relevant specific and tangible harm which would result from disclosure includes harm to:

- confidence in Council's complaints management system and
- the personal reputation of a public servant.¹²

55. With respect to the maintenance of confidence in Council's system, I am satisfied that disclosure of the Remaining Emails would not result in the harm submitted. I say this on the basis that public servants have an obligation to conduct relevant investigations and participate in those investigations as required by their employer and by law. With respect to participation by relevant members of the public, I again note that in this particular case, the complainants agree to release of the relevant information. Accordingly, disclosure of this particular information will have no effect on the confidentiality of future complainants or providers of relevant information, as the anonymity of those persons will remain a matter for consideration on a case by case basis in accordance with law (including Council policy) and the wishes of those particular persons. On this basis, I am satisfied that release of this information would neither harm confidence in Council's complaints management system, nor result in public servants or members of public refraining from "*expressing relevant opinions, advice or recommendations ...*" in the future.

56. With respect to Council's point regarding the alleged potential harm to the personal reputation of a public servant¹³ on account of disclosure, in my view the more relevant

¹² Who is the subject of the relevant complaints.

¹³ Relevantly, I note that embarrassment to the government, an agency or individual officer is not a valid public interest consideration favouring non-disclosure.

identifiable public interest is the proper handling of complaints made to Council regarding the behaviour of its employees in the performance of their official duties and the accountability of public servants for the performance of their official functions.

57. This identifiable public interest comprises one of the considerations favoring disclosure which I consider relevant in the circumstances. Specifically, I consider it relevant to consider the following public interest considerations favoring disclosure:
- enhancing the accountability of agencies and individual officers for the performance of their official functions
 - promoting informed public participation in the processes of government.
58. I note that these public interest considerations are recognised by section 4 of the FOI Act which sets out the objectives of the Act.
59. After carefully considering whether disclosure of the relevant information would allow members of the public a better understanding of action taken by Council and enable them to better scrutinise and assess Council's handling of complaints received in respect of a public servant's alleged actions and behaviour at work, I am satisfied that disclosure would serve to further these objectives of the FOI Act, particularly in circumstances where the complainants agree to the release of relevant information.

Findings – section 41(1)(b) of the FOI Act

60. Based on the matters set out above, I am satisfied in the circumstances that:
- Council has not established that a specific tangible harm to an identifiable public interest would occur if the Matter in Issue were disclosed
 - the public interest in the accountability of agencies and individual officers for the performance of their official functions and promoting informed public participation in the processes of government are relevant public interest considerations favouring disclosure
 - the public interest considerations favouring disclosure of relevant information should be afforded significant weight in the circumstances
 - disclosure of the Remaining Emails would not, on balance, be contrary to the public interest, therefore, section 41(1)(b) of the FOI Act is not made out in the circumstances
 - none of the Matter in Issue in this review qualifies for exemption from disclosure under section 41(1) of the FOI Act.

DECISION

61. I set aside the decision under review and find that the Matter in Issue is not exempt from disclosure under section 42(1)(h) or section 41(1) of the FOI Act.
62. I have made this decision as a delegate of the Information Commissioner, under section 90 of the FOI Act.

F Henry
Assistant Commissioner

Date: 21 July 2010