



Decision and Reasons for Decision

Application Number: 310717

Applicant: Nine Network Australia Pty Ltd

Respondent: Brisbane City Council

Decision Date: 7 June 2012

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – applicant sought information about the top five revenue raising parking meters and amounts raised for the 2010 calendar year – whether the information comprises exempt information the disclosure of which would endanger a person’s life or physical safety under schedule 3, section 10(1)(c) and/or endanger the security of a structure under schedule 3, section 10(1)(h) of the *Right to Information Act 2009 (Qld)* – whether disclosure of the information would, on balance be contrary to the public interest – section 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

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 the street and suburb locations of the top five revenue raising parking meter machines in 2010 and the amounts raised by each machine.
2. Council located one page of relevant information and found that it was exempt from disclosure.¹
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council’s decision refusing access.
4. In the circumstances, Council is not entitled to refuse access to the relevant information in this review.

¹ Council later submitted in its letter to the OIC dated 27 September 2011 that disclosure of the information would, on balance, also be contrary to the public interest under section 47(3)(b) of the RTI Act.

Significant procedural steps

5. Significant procedural steps are set out in the Appendix.

Reviewable decision

6. The decision under review is Council's decision dated 25 July 2011.

Relevant information

7. Council produced a one page spreadsheet containing the five highest earning parking meters detailing the street name, suburb, number of parking spaces, hours and days of operation, hourly parking rate and total annual revenue of each machine (**Relevant Information**).²

Material considered

8. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix).

Relevant law

9. Under section 23 of the RTI Act, a person has a right to access documents of an agency subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

10. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises 'exempt information'. Schedule 3 sets out the types of information which the Parliament considers to be 'exempt information' as its disclosure would, on balance, be contrary to public interest.

11. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest.

Issues for determination

12. The issues for determination in this decision are whether:

- the Relevant Information comprises exempt information, the disclosure of which would:
 - endanger a person's life or physical safety³
 - endanger the security of a structure;⁴ or
- disclosure of the Relevant Information would, on balance, be contrary to the public interest.⁵

13. I will examine these issues in turn.

² During the course of the review, OIC obtained the agreement of the applicant to exclude the individual machine identification numbers and the location of each machine on the street from the scope of the application. Accordingly, this information does not form part of the Relevant Information.

³ Schedule 3, section 10(1)(c) of the RTI Act.

⁴ Schedule 3, section 10(1)(h) of the RTI Act.

⁵ Section 47(3)(b) and 49 of the RTI Act.

Findings

Is the Relevant Information exempt from disclosure?

14. No, for the reasons that follow.

15. Council submits that the Relevant Information comprises exempt information, the disclosure of which could reasonably be expected to:

- endanger a person's life or physical safety⁶ and
- endanger the security of a structure.⁷

16. The term 'could reasonably be expected to' requires that the relevant expectation is:⁸

- reasonably based; and
- neither irrational, absurd or ridiculous, nor merely a possibility
 - whether the expected consequence is reasonable requires an objective examination of the relevant evidence
 - the expectation must arise as a result of disclosure, rather than from other circumstances; and
 - it is not necessary for a decision-maker '*to be satisfied upon a balance of probabilities*' that disclosing the relevant information will produce the anticipated prejudice.

17. In summary, Council submits that:⁹

- meters in Brisbane have been the subject of frequent attacks and thefts
- meter attendants have been verbally abused when attending to meters
- raising awareness of the amounts of money held by meters may create new opportunities for theft
- disclosure of the Relevant Information could reasonably be expected to result in:
 - relevant meters being targeted for theft and/or vandalism
 - relevant staff facing a greater risk of criminal activity.

18. With respect to Council's submission regarding disclosure leading to an increased likelihood of criminal activity, which could reasonably be expected to endanger a person's life or physical safety or the security of a structure, I am not satisfied on the evidence before me that such an expectation is reasonably based given that:

- information which is currently publicly available reveals parking meter revenue collected by Council¹⁰ and statistical data relating to the number of meters in Brisbane¹¹
- the clearance of meters occurs in public and may be observed by members of the public; and
- the Relevant Information does not identify specific meters, nor does it reveal monetary amounts held at any one time.

⁶ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(c) of the RTI Act.

⁷ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(h) of the RTI Act.

⁸ Most recently *Nine Network Australia Pty Ltd and the Department of Justice and Attorney-General* (310280, 14 February 2012) at paragraphs 29 to 31.

⁹ Council's submission to the OIC dated 27 September 2012.

¹⁰ Council's Annual Reports.

¹¹ Information available from www.data.gov.au Parking Meter Areas Brisbane City Council.

19. After carefully considering all of the information before me and on the basis of the matters set out above, I am satisfied that:

- there is insufficient evidence to conclude that disclosure of the Relevant Information could reasonably be expected to increase the likelihood of relevant criminal activity, as submitted by Council; and
- the Relevant Information does not comprise exempt information, the disclosure of which could reasonably be expected to endanger a person's life or physical safety¹² or the security of a structure.¹³

Would disclosure of the Relevant Information be contrary to the public interest?

20. No, for the reasons that follow.

21. In determining whether disclosure of the Relevant Information would, on balance, be contrary to the public interest I must:¹⁴

- identify and disregard irrelevant factors
- identify factors favouring disclosure of the information in the public interest
- identify factors favouring nondisclosure of the information in the public interest
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information would, on balance, be contrary to public interest.

Irrelevant factors

22. I have examined schedule 4 of the RTI Act and consider that no irrelevant factors arise.

Factors favouring disclosure

23. After carefully considering all of the information before me, I am satisfied that the factors favouring disclosure of the Relevant Information include that disclosure could reasonably be expected to:

- ensure effective oversight of expenditure of public funds¹⁵
- promote open discussion of public affairs and enhance the Council's accountability;¹⁶ and
- contribute to positive and informed debate on important issues or matters of serious interest.¹⁷

¹² Schedule 3, section 10(1)(c) of the RTI Act.

¹³ Schedule 3, section 10(1)(h) of the RTI Act.

¹⁴ Section 49(3) of the RTI Act.

¹⁵ Schedule 4, part 2 item 4 of the RTI Act.

¹⁶ Schedule 4, part 2, item 1 of the RTI Act.

¹⁷ Schedule 4, part 2, item 2 of the RTI Act.

24. Based on the information before me, I am satisfied that:

- disclosure of the Relevant Information (revealing a snapshot of revenue raised by Council meters identified by street and suburb) could reasonably be expected to enhance the public interest factors favouring disclosure
- there is a strong public interest in ensuring that people affected by Council services (including users of parking meters and Council rate payers) are informed about Council's management and collection of revenue from its parking meters; and
- the public interest factors favouring disclosure should be afforded moderate to significant weight in the circumstances.

Factors favouring nondisclosure

25. After carefully considering all of the information before me, I am satisfied that the factors favouring nondisclosure of the Relevant Information include that disclosure could reasonably be expected to prejudice the business, commercial or financial affairs of Council.¹⁸

26. With respect to this factor, I am mindful of Council's submission that disclosure of the Relevant Information could reasonably be expected to affect Council revenue if:

- revenue is lost through theft
- meters are inoperable due to damage; and/or
- Council is required to expend funds on repairs to or replacement of meters.¹⁹

27. I am also mindful of Council's public interest submission that '*disclosure could reasonably be expected to prejudice the security of these parking meters and the public safety of officers servicing them*'.²⁰

28. I have carefully considered the factors favouring nondisclosure and am satisfied on the information before me that disclosure of the Relevant Information could not reasonably be expected to prejudice the business, commercial or financial affairs of Council, security, law enforcement or public safety, given that:

- information which is currently publicly available reveals parking meter revenue collected by Council²¹ and statistical data relating to the number of meters in Brisbane²²
- the clearance of meters occurs in public and may be observed by members of the public; and
- the Relevant Information does not identify specific meters, nor does it reveal monetary amounts held at any one time.

29. On the basis of the matters set out above, I am satisfied that the public interest factors favouring nondisclosure should be afforded little weight in the circumstances.

¹⁸ Schedule 4, part 3, item 2 of the RTI Act.

¹⁹ Council's submission to the OIC dated 27 September 2012.

²⁰ Schedule 4, part 3, item 7 of the RTI Act

²¹ Council's Annual Reports.

²² Information available from www.data.gov.au

Balancing the public interest

30. In accordance with the matters set out above, I am satisfied that:

- the public interest factors favouring disclosure of the Relevant Information outweigh those favouring nondisclosure; and
- disclosure of the Relevant Information would not, on balance, be contrary to the public interest.

DECISION

31. I set aside the Department's decision to refuse access to the Relevant Information and find that this information:

- does not comprise exempt information under section 47(3)(a) of the RTI Act; and
- would not, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act.

32. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Assistant Commissioner Henry

Date: 7 June 2012

APPENDIX**Significant procedural steps**

Date	Event
4 July 2011	Council received the applicant's RTI Act application.
25 July 2011	Council issued its decision to the applicant refusing access to a one page document.
28 July 2011	OIC received the applicant's external review application.
14 September 2011	OIC conveyed a preliminary view to the Council that access to some information could be refused as exempt information but the remainder could be disclosed. OIC invited the Council to provide submissions to OIC by 28 September 2011
27 September 2011	Council contested the OIC preliminary view and maintained all information was exempt information. It also raised fresh claims that disclosure of the information would, on balance, be contrary to the public interest.
28 September 2011	Applicant provided a submission to OIC detailing the release of similar information by another city Council.
16 May 2012	Applicant agreed to exclude some information from the scope of the application