OFFICE OF THE
Information Commissioner
QUEENSLAND

Decision and Reasons for Decision

Citation:	**S85 and Brisbane City Council [2026] QICmr 151 (20 August 2026)**
Application Number:	**00022860**
Applicant:	**S85**
Respondent:	**Brisbane City Council**
Decision Date:	**20 August 2026**
Catchwords:	**ADMINISTRATIVE LAW – RIGHT TO INFORMATION – EXEMPT INFORMATION – LEGAL PROFESSIONAL PRIVILEGE – whether information would be privileged from production in a legal proceeding – whether access may be refused on the basis it is exempt information – section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – CONTRARY TO THE PUBLIC INTEREST INFORMATION – business, commercial, financial information – whether disclosure of information would, on balance, be contrary to the public interest – section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – DOCUMENTS OF AN AGENCY – DOCUMENTS TO WHICH ACT DOES NOT APPLY – information relating to legal costs incurred in defending the applicant's complaint – external legal practice and barrister – whether requested documents are 'documents of an agency' – whether documents are in the possession or the control of the agency – sections 13 and 40(1)(a) of the *Information Privacy Act 2009* (Qld) and section 12 of the *Right to Information Act 2009* (Qld)**

ADMINISTRATIVE LAW - RIGHT TO INFORMATION – SCOPE OF APPLICATION - whether certain documents fall within the scope of the application - whether terms of the application can be unilaterally expanded on external review - section 43 of the *Information Privacy Act 2009* (Qld)

DECISION

I vary[1] the reviewable decision of Brisbane City Council (**Council**) and find: [2]

- access to the Category A Information[3] may be refused under section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 7 of the RTI Act
- access to the Category B Information and the Category C Information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act
- access to the Category D Information may be refused on the ground the requested documents are not documents of Council and there is therefore no right of access to them under section 40(1)(a) of the IP Act.; and
- the Category E Information falls outside the scope of the application.

This means that no further information is to be released to the applicant.

My reasons for the decision follow.

[redacted]

A Rickard
Assistant Information Commissioner

Date: 20 August 2026

[1] Under section 123(1)(b) of the *Information Privacy Act 2009* (Qld) (**IP Act**). On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts, which may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> and <https://www. legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> respectively.
[2] I have made this decision as a delegate of the Information Commissioner under section 139 of the IP Act.
[3] The five categories of information are identified at paragraphs 6 and 7 of the decision.

REASONS FOR DECISION

Summary

1. The applicant applied[4] to Council for access under the IP Act to documents between 8 May 2024 and 10 July 2024 concerning a complaint made by her to the Queensland Human Rights Commission (**QHRC**) which was subsequently referred to the Queensland Civil and Administrative Tribunal (**QCAT**).

2. In its initial decision,[5] Council decided to give the applicant full access to 716 pages, partial access to 155 pages, and to refuse access in full to 317 pages. Access to information was refused either because it comprised exempt information, in particular information subject to legal professional privilege (**LPP**), or because its disclosure would, on balance, be contrary to the public interest.

3. The applicant applied for internal review.[6] Council affirmed its original decision.[7]

4. The applicant applied[8] to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.

5. During the external review, Council located and disclosed to the applicant parts of a document relating to Council's internal legal costs as they appeared in a Matter Cost Summary Report by Council's in-house Brisbane City Legal Practice (**BCLP**).[9]

6. The following information located by Council remains in issue:

    - **Category A Information** – 319 full pages[10] and 148-part pages[11] which Council refused access to on the ground that it is subject to LPP
    - **Category B Information** – the remaining parts of the one-page Matter Cost Summary Report by BCLP; and
    - **Category C Information** - 52-part pages[12] which Council refused access to on the ground that disclosure would, on balance, be contrary to the public interest.

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[4] On 5 November 2024.
[5] Dated 10 December 2024.
[6] On 31 January 2025. Council agreed to extend the timeframe for this application under section 96(c) of the IP Act.
[7] In a decision dated 25 February 2025. This is the *reviewable* decision being considered on external review.
[8] On 22 April 2025. OIC exercised its discretion under section 101(1)(d) of the IP Act to extend the timeframe for the applicant to submit her external review.
[9] This Matter Cost Summary Report was given to the applicant on 16 December 2025.
[10] At pages 243-253, 264-274, 288-298, 393-403, 405-415, 434-444, 461-471, 483-493, 638-648, 650-660, 662-672, 684-696, 703-715, 717-729, 731-741, 743-753, 765-775, 942-951, 961-973, 1054-1064, 1071-1081, 1088-1098, 1105-1115, 1122-1132, 1141-1142, 1143-1188 of the 1188-page PDF Council provided to OIC.
[11] At pages 1, 2, 3, 5, 214, 241, 255, 257, 258, 259, 260, 261, 262, 276, 277, 278, 279, 282, 283, 284, 285, 286, 287, 377, 381, 388, 392, 404, 416, 418, 419, 432, 433, 445, 446, 460, 620, 621, 622, 626, 627, 628, 630, 631, 637, 649, 661, 673, 675, 676, 677, 678, 680, 681, 682, 683, 697, 698, 699, 700, 701, 716, 730, 742, 754, 755, 756, 757, 759, 760, 761, 762, 763, 839, 887, 911, 918, 921, 922, 926, 928, 930, 931, 932, 933, 935, 936, 937, 938, 939, 940, 941, 952, 953, 954, 955, 956, 957, 958, 959, 960, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 1065, 1066, 1067, 1068, 1069, 1082, 1083, 1084, 1085, 1086, 1087, 1099, 1100, 1101, 1102, 1103, 1104, 1116, 1117, 1118, 1119, 1120, 1121, 1133, 1134, 1135, 1136, 1137, 1138, 1140 of the 1188 page PDF Council provided to OIC.
[12] At pages 513, 515, 520, 683, 700, 701, 716, 839, 875, 921, 926, 928, 930, 931, 932, 933, 935, 936, 937, 938, 939, 940, 953, 954, 956, 957, 958, 959, 960, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 1065, 1082, 1083, 1099, 1100, 1116, 1117, 1133, 1134, 1135, 1140 of the 1188 page PDF Council provided to OIC.

7. The applicant maintains she should be given access to the above information.[13] The applicant also contends[14] that Council failed to conduct searches for and/or locate:

    - **Category D Information** – any documents relating to the fees charged by any external lawyers or a named barrister when the applicant's complaint about Council was before QCAT; and
    - **Category E Information** – documents in the Lord Mayor's office or the office of Council's Chief Executive Officer, as referred to by the applicant in her access application.

Issues for determination

8. The issues for determination are whether:

    a) access to the Category A Information may be refused because it is subject to LPP
    b) access to the Category B and Category C Information may be refused on the ground that on balance, disclosure would be contrary to the public interest
    c) access to the Category D Information may be refused on the basis that they are not documents of Council within the meaning of section 12 of the RTI Act,[15] and there is therefore no right of access to them under section 40(1)(a) of the IP Act; and
    d) the Category E Information falls within the scope of the access application.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken account of the applicant's submissions to the extent they contain information relevant to the issues for determination in this review.[16]

10. A majority of the applicant's submissions comprise concerns or complaints about Council generally or about the processing of her application by Council.[17] I am satisfied that in previous external reviews it has been explained to the applicant that most of these concerns are either outside of OIC's jurisdiction under the IP Act or are irrelevant on external review, and these explanations have been noted in ensuing decisions issued under section 123 of the IP Act.[18]

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[13] Applicant's submission to OIC dated 20 July 2026.
[14] Ibid.
[15] Noting section 13 of the IP Act refers to a '*document of an agency*' meaning anything that is a document of an agency under the RTI Act.
[16] Taking into account the needs identified by the applicant, the issuing of the preliminary view was delayed until 8 December 2025 and an extended period of nearly three months was given for a response to the preliminary view. Further extensions of time for a response were granted until 26 April 2026, then 26 June 2026, then 10 July 2026 and then 20 July 2026. The applicant responded on 19 and 20 July 2026. Accordingly, this decision takes into account the applicant's submissions contained in her external review application dated 22 April 2025 and her emails of 2 March 2026 and 19 and 20 July 2026.
[17] These include complaints about the documents disclosed by Council not containing watermarks. While OIC does not have jurisdiction to address these issues, I am satisfied the applicant has been provided with explanations as to why this is the case in formal decisions which have finalised previous external review applications made by the applicant and in a letter to the applicant dated 2 December 2025 in external review 318421.
[18] For example, *U24 and Brisbane City Council* [2021] QICmr 61 (22 November 2021); *R43 and Brisbane City Council* [2024] QICmr 71 (12 December 2024) and *D26 and Brisbane City Council* [2026] QICmr 68 (1 May 2026).

11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.[19] 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.[20] I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Concerns raised by the applicant

12. During the course of this review, the applicant made complaints regarding a number of OIC officers involved in this and other external reviews, including me. These have and continue to be addressed in accordance with OIC's complaints management procedure.

13. Noting the High Court's test for assessing apprehended bias of a decision maker,[21] to the extent the applicant's complaints regarding me may allege bias, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I[22] might not bring an impartial and unprejudiced mind to the resolution of this matter.

14. I will now consider the issues for determination in this matter.

Category A Information

Relevant law

15. Under section 40 of the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information. However, this right is subject to a number of exclusions and limitations including grounds for refusal of access.[23]

16. Schedule 3 of the RTI Act specifies the types of information Parliament has determined is exempt information because release would be contrary to the public interest.[24] Relevantly, information is exempt information if it would be privileged from

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[19] Section 21(2) of the HR Act.
[20] *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573], wherein Bell J observed *'it is perfectly compatible with the scope of 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'* on the interaction between equivalent pieces of Victorian legislation; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note OIC's approach to the HR Act set out in this paragraph was considered by QCAT in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] and Justice Member McGill saw *'no reason to differ'* from OIC's position.
[21] That is, *'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide'* – see *Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337* at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.
[22] As a delegate of the Information Commissioner under section 139 of the IP Act.
[23] Section 67(1) of the IP Act provides an agency or Minister may refuse access in the same way and to the same extent as under section 47 of the RTI Act. Section 47(3) of the RTI Act contains various grounds for refusal of access.
[24] Section 47(3)(a) of the RTI Act allows refusal of access to exempt information.

production in a legal proceeding on the ground of LPP.[25] This exemption reflects the requirements for establishing LPP at common law.[26]

17. Establishing whether LPP applies to information at common law requires that the information must comprise a communication:[27]

- made in the course of a lawyer-client relationship
- which was and remains confidential; and
- which was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.

18. When each of these requirements is met, LPP is established.[28]

Findings

19. The Category A Information comprises:

a. confidential communications between Council and the external legal practice and communications between the external legal practice and the barrister; or
b. information in the Matter Cost Summary Report, that would reveal the nature of the advice or assistance BCLP provided to Council.

20. Based on the information before me in this review, I had understood Council had directly instructed the external legal practice in relation to the applicant's complaint.[29] However, during the review, Council provided information that it was Council's insurer JLT which had instructed the external legal practice, not Council. I address this further in relation to the Category D Information.

21. In relation to the communications referred to at a., I conveyed a preliminary view to the applicant[30] that, although Council was in possession of the communications, LPP belonged to an entity named JLT in its capacity as client of the external legal practice, not Council.

22. I explained to the applicant that this view was based on submissions received from Council that it had not directly instructed the external legal practice in relation to the applicant's complaint. Rather:

- JLT had instructed the external legal practice; and

[25] Schedule 3, section 7 of the RTI Act.
[26] The doctrine of LPP is both a rule of evidence and a common law right. The High Court in *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commissioner* (2002) 213 CLR 543 (***Daniels***) at 552 relevantly noted *'It is now settled that* [LPP] *is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings*' (footnotes omitted). See also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (***Esso***).
[27] *Esso* and *Daniels*.
[28] However, qualifications and exceptions to privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore is exempt under the RTI Act.
[29] I also note this was OIC's understanding in previous external review applications made to OIC by the applicant.
[30] Letter to the applicant dated 8 December 2025.

- JLT is the manager of Local Government Mutual (**LGM**), which provides liability cover to its members, including Council.

23. Information on the LGM's website[31] explains:

- the purpose of LGM is to provide a pooled fund and a scheme to '*manage liability and professional indemnity risks of* [Local Government Association of Queensland (**LGAQ**)] *members which may arise in connection with the members' exercise of their powers, duties or functions*'; and
- JLT's role includes *'managing all claims against members for which indemnity has been granted'*.

24. In response,[32] the applicant contended that Council, not JLT, was the client of the external legal practice and provided copies of documents containing information which she considered supported this position. It is my understanding that these submissions were focussed on the Category D Information, and demonstrating that that particular information should be in the possession or control of Council.

25. In terms of the Category A Information, these submissions do not materially change the outcome. I am satisfied that, whether Council or JLT as manager of LGM is considered to be the client, the requirements of LPP are met.

26. Based on the material currently before me, including the submissions of both Council and the applicant, it appears the circumstances are akin to those in an insurance matter – with Council in the position of an insured, LGM the insurer, and JLT the claims manager for the insurer. In this context, it is generally accepted that the insurer retained lawyer acts for the insurer regarding insurance coverage issues, and both the insured and the insurer regarding conduct of the matter.[33] It has been found that joint privilege may arise in such circumstances, and where it does not common interest privilege will.[34] As such, I am satisfied:

- there was a lawyer-client relationship between the external legal practice, and JLT as manager of LGM, or JLT and Council, at the time the communications occurred
- the information in the communications was and remains confidential; and
- the communications were for the use or in relation to the proceedings in QCAT.

27. There is nothing before me to suggest that the qualification or exceptions to privilege apply.

28. In relation to the communications between the external lawyer and its appointed barrister, I am also satisfied that there is a sufficient common interest between

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[31] *Queensland Local Government Mutual – Trust Deed and Scheme Rules* <https://www.lgms.net.au/files/assets/lgms/v/1/about/lgms-documents/2026-lgm-factsheet-final-nov-25.pdf> (accessed on 17 August 2026).
[32] Applicant's submission to OIC dated 20 July 2026.
[33] See for example, Queensland Law Society, *'Guidance Statement: No. 33 Acting for insured and insurers'* – <https://www.qls.com.au/practising-law-in-qld/ethics/guidance-statements/no-33-acting-for-insured-and-insurers>.
[34] *Mercantile Mutual Insurance (NSW Workers Compensation) Ltd v Murray* [2004] NSWCA 151 (11 June 2004) at [39]-[66].

Council and the external legal practice such that privilege to that information has not been waived.[35]

29. In relation to the information referred to at b. of paragraph 19 above, this comprises narrations of the work undertaken by individuals within BCLP for the time billed in the Matter Cost Summary Report. Information of this nature has been found to be privileged, where its disclosure would reveal the nature of the legal services provided by the lawyer to the client.[36] In the circumstances of this matter, I am satisfied that disclosure of the information referred to at b. would reveal the nature of the legal services provided by BCLP to Council and access to the information can be refused on this basis.

30. Apart from the submissions noted at paragraph 24 above, the only submissions made by the applicant concerning the Category A Information were that:

   - there were inconsistencies in the redactions applied to documents disclosed to the applicant; and
   - she failed to see how the subject and attachment lines of emails can be subject to LPP.

31. In relation to the first point, I acknowledge that there are inconsistencies in how an email from a lawyer at the external legal practice to a Council officer has been redacted, where this email appears throughout the documents.[37] In the email, the lawyer provides the Council officer with a copy of the applicant's final submissions in the QCAT proceeding. The email appears three times in the documents disclosed to the applicant[38] and redactions have been applied to one copy of the email.[39] However, given that the further two copies of the email have been disclosed to the applicant in full,[40] I am satisfied that the applicant is in possession of this information. Given this, I consider there is little utility in requesting Council disclose a third full copy of this email to the applicant.

32. In addition, the applicant referred to these three emails and similar emails where the lawyer at the external legal practice provided other current or former Council officers with a copy of her final submission,[41] which were disclosed to her in full.[42] The applicant then submitted that she considered that an email from that lawyer to a former Council officer[43] contained the same information, and accordingly questioned how parts of that email could be refused on the basis that the information is subject to LPP. I am limited in what I can say, given the IP Act prevents me from disclosing exempt

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[35] In *Morton v Bolinda Publishing Pty Ltd* [2017] FCA 187 at [74] the Court described common interest privilege as follows '*Where a person entitled to legal professional privilege has such a commonality of interest in relation to the subject matter of the privilege that sharing the content with an identified third party is consistent, rather than inconsistent with an ongoing intention to preserve confidentiality and privilege, then the provision of a privileged document to that party will not result in the loss of privilege*'.

[36] *Hodgson v Amcor Ltd; Amcor Ltd v Barnes (No 2)* [2011] VSC 204 at [62].

[37] Being an email sent on 3 June 2024 at 12.56pm.

[38] At pages 420, 448 and 851 of the 1188-page PDF Council provided to OIC.

[39] At page 851 of 1188.

[40] At pages 420 and 448 of 1188.

[41] At pages 363, 863 and 875 of 1188, being emails sent on 3 June 2024 at 1.00pm and 12.58pm respectively.

[42] With the exception of the personal email address of a former Council officer as it appears at page 875 of 1188.

[43] Email sent on 3 June 2024 at 12.56pm at page 839 of 1188.

information.[44] I can confirm, however, that I am satisfied that the redacted information satisfies the requisite test for LPP.

33. In relation to the second point at paragraph 30, where access to the subject or attachment line of an email has been refused on the ground of LPP, I am satisfied that the redacted information would reveal the nature of the advice or assistance provided to Council. Consequently, I am satisfied that the information is subject to LPP.

34. For the reasons above, I find that the Category A Information satisfies the requisite test and is therefore exempt information.[45] Access under the IP Act may be refused on that basis.

Category B Information

Relevant law

35. Another ground for refusal of access is where disclosure would, on balance, be contrary to the public interest.[46]

36. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:[47]

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

37. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these lists,[48] together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias[49] and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.[50]

Finding

38. The Category B Information comprises references to the charge-out rates of individual lawyers employed in BCLP comprised within the Matter Cost Summary Report, as well as associated legal costing information which would enable charge-out rates to be calculated.

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[44] Section 121(3) of the IP Act.
[45] Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 7 of the RTI Act.
[46] Section 47(3)(b) of the RTI Act.
[47] Section 49(3) of the RTI Act.
[48] I have considered each of the public interest factors outlined in schedule 4 of the RTI Act.
[49] Section 64(1) of the IP Act.
[50] Section 67(2) of the IP Act and section 47(2) of the RTI Act. In deciding whether disclosure of the Category B Information would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

39. Throughout her submissions the applicant referred to previous access applications she has made to Council in which she was given Matter Cost Summary Reports, and her view that there are inconsistencies in how Council discloses information of this nature. I am required to stand in Council's shoes and conduct merits review regarding the particular information in issue. In this particular review, the only information that has not been disclosed to the applicant is information that would enable the hourly charge out rates of individuals to either be identified or calculated.

40. In relation to factors favouring nondisclosure of the Category B Information, in *Price and Department of Justice and Attorney-General*,[51] the Information Commissioner found that disclosure of information about lawyers' billing structure and hourly charge-out rates might reasonably be expected to assist the lawyers' competitors to compete with them more effectively in the legal services market generally. The Information Commissioner was satisfied that disclosing such information could reasonably be expected to prejudice the commercial and financial affairs of the relevant entity,[52] given the commercially competitive field in which legal practices operate, and would, on balance, be contrary to the public interest to disclose. For government lawyers who, as in Council's case, operate on commercial terms and charge the agency for the legal services provided, the same principles apply to their fee structure. Accordingly, I afford moderate weight to these nondisclosure factors.

41. In relation to the factors favouring disclosure of the Category B Information, the applicant submitted that Council should be accountable for expenditure of public funds[53] and how much a litigation matter costs '*should be disclosed for openness, transparency and for trust in Council's decision making*'.[54] However, given that Council has disclosed the unbilled balance *total* to the applicant in this matter and the applicant has received information relating to the total internal legal costs to Council in relation to the applicant's complaint from another access application to Council that is also subject to external review,[55] I consider that this factor only attracts low weight.

42. In her submissions the applicant also contended that Council should be accountable for decisions to engage lawyers, including BCLP,[56] as she considers that her concerns could have been addressed prior to or without them. Given the Category B Information comprises or would reveal charge-out rates, it could not reasonably advance understanding of how or why Council engaged lawyers. Consequently, I cannot see how a factor favouring disclosure of this type is relevant to the Category B Information.

43. I am unable to identify any other factors favouring disclosure beyond the general public interest in accessing information held by government.[57] However, this factor is advanced to a substantial degree by the release of the unbilled balance total and

[51] (Unreported, Queensland Information Commissioner, 12 March 2002).
[52] Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.
[53] Raising the factor favouring disclosure referred to in schedule 4, part 2, item 4 of the RTI Act.
[54] Applicant's submission dated 20 July 2026.
[55] External review number 318669.
[56] Engagement of external lawyers is addressed below regarding the Category D Information.
[57] Schedule 4, part 2, item 1 of the RTI Act.

does not carry significant weight regarding the remaining Category B Information. I therefore also afford this factor only low weight in balancing the public interest.

44. In summary, I afford moderate weight to the factors favouring nondisclosure and low weight to the factors favouring disclosure. I am satisfied that the public interest in protecting the business and commercial affairs of Council's internal legal providers regarding the breakdown of the fees charged outweighs the public interest in the accountability of Council, which I consider is largely discharged by disclosure of the unbilled balance total in the Matter Cost Summary Report.

45. Upon balancing the various public interest factors weighing both for and against disclosure of the Category B Information, I am satisfied that the factors favouring nondisclosure outweigh those favouring disclosure, such that disclosure of the Category B Information would, on balance, be contrary to the public interest. Access may be refused on that basis.

Category C Information

Relevant law

46. The law that is relevant to the Category C Information is referred to at paragraphs 35 to 37 above.

Findings

47. The Category C Information comprises:

- the mobile telephone numbers of a lawyer within the external legal practice and the barrister appointed by the external legal practice and that barrister's email address; and
- the personal email addresses and signatures of former Council officers.

48. Given the limited nature of the Category C Information as noted above, apart from the general public interest in accessing information held by Government, I have not been able to identify any factors favouring disclosure of this information.

49. In her submissions, the applicant stated that in response to previous access applications that she has made to Council, the mobile number and email address of the barrister has been disclosed.[58] My role is to conduct merits review regarding the particular information in issue. I cannot identify how disclosing this information could reasonably be expected to enhance Council's transparency and accountability in any way,[59] particularly when the information disclosed by Council shows that the communications are to or from the barrister.

50. In terms of the factors favouring nondisclosure of the Category C Information, the RTI Act recognises that there is a public interest harm in disclosing an individual's

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[58] Applicant's submission attached to her external review application.
[59] As referred to in schedule 4, part 2, item 1 of the RTI Act.

personal information to someone else[60] and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy[61] gives rise to a public interest factor favouring nondisclosure.[62]

51. In relation to the email addresses and mobile telephone numbers of the barrister, the applicant's abovementioned submission about being given these in previous matters may be taken to contend that prior disclosure negates the intrusion and harm. With respect to email addresses and mobile telephone numbers of both the barrister and the lawyer at the external legal practice, the applicant also contends that this information is publicly available.[63] While these contentions may be so, the information was not previously disclosed, and is not publicly available, in the particular contexts in which it appears in the documents located by Council in this matter. As such, while the intrusion and harm resulting from disclosure may be reduced to some extent, an appreciable level of intrusion and harm remains. Taking these matters into consideration, I afford the factors favouring nondisclosure moderate weight.

52. In relation to the personal email addresses and signatures of individuals who I understand to be former Council officers; I consider that disclosure of this information would represent a significant intrusion into the privacy of those individuals. I also consider that a high level of harm could be expected to arise from disclosure of their personal information. For these reasons, I afford significant weight to the factors favouring nondisclosure.

53. Given that I cannot identify any factors favouring disclosure of the Category C Information and I consider that the factors favouring nondisclosure attract moderate to significant weight, I am satisfied that disclosure of the Category C Information would, on balance be contrary to the public interest and access may be refused on this basis.

Category D Information

Relevant law

54. As noted at paragraph 15, under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.[64] Relevantly, section 13 of the IP Act states a document of an agency means '*anything that is a document of an agency under the* [RTI Act]'.

55. Section 12 of the RTI Act states a '*document of an agency*' is a document in the possession or under the control of that agency, regardless of whether the document was brought into existence by the agency or received by it, and includes a document:

- to which the agency is entitled to access; and

[60] Schedule 4, part 4, section 6(1) of the RTI Act.
[61] The concept of privacy in not defined in the RTI Act or the IP Act. It can, however, be viewed as the right of an individual to preserve their '*personal sphere*' free from the interference of others.
[62] Schedule 4, part 3, item 3 of the RTI Act.
[63] In the attachment to the applicant's external review application.
[64] Section 40(1)(a) of the IP Act.

- in the possession, or under the control, of an officer of the agency in the officer's official capacity.

56. The term '*possession*' as used in section 12 of the RTI Act merely requires the document to be in the physical possession of an agency. Possession does not require formal legal possession nor is it concerned with the means by which the documents came into the agency's possession.[65] However, it is limited to instances where the agency is legally entitled to produce the requested documents.[66]

57. Physical possession is not, however, the sole test as to whether a document is a document of an agency subject to the RTI Act. A document not in the physical possession of an agency will nevertheless be a '*document of an agency*' for the purposes of the RTI Act, if it is '*under the control*' of the relevant agency. The Information Commissioner has previously explained that a document will be under the control of an agency where the agency has a present legal entitlement to take possession of the document.[67]

58. If the requested document is not a document of an agency under section 12 of the RTI Act, there is no right to access it under section 40(1)(a) of the IP Act.

Findings

59. The information located by Council in this matter does include an invoice from the barrister to the external legal practice, however this falls within the Category A Information and access may be refused to it for the reasons referred to above.[68]

60. OIC raised the applicant's concern that Council had not located any further documents relating to the fees charged by any external lawyers or a named barrister–that is, any Category D Information.[69] Council replied:[70]

> *That Council is a member of the Queensland Local Government Mutual (**LGM**) Scheme, which provides liability cover to its members.*
> *That Council notified JLT, the manager of the Scheme, when it received* [the applicant's complaint] *and was advised that LGM would provide cover for the matter and the claim would be managed by JLT.*
> *It is JLT as the manager of the claim that instructed* [name of external legal practice]*, rather than Council.*
> *The Scheme Rules provide that while members are entitled to access accounting and all other records of the fund, which is in effect the 'pooled funds' of the LGM, this does not extend to claims information (including* [name of external legal practice] *invoices), which is the property of LGM.*

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[65] *Kalinga Wooloowin Residents Association Inc and Department of Employment, Economic Development and Innovation; and Another* (Unreported, Queensland Information Commissioner, 19 December 2011) at [14] to [15] and [19].
[66] *Carmody v Information Commissioner & Ors (No 4)* [2018] QCATA 17 at [66] per Hoeben J.
[67] *Price and the Nominal Defendant* (1999) 5 QAR 80 at [18]. In that decision, the Information Commissioner went on at [18] to explain that *'The ruling test imposed by the definition of "document of an agency" is comprised in the words "in the possession or under the control of an agency". The remaining words of the definition illustrate, rather than extend, the ruling test'*.
[68] As referred to at footnote 20 of the letter to the applicant dated 8 December 2025.
[69] Email to Council dated 21 July 2025 in relation to this and a number of other external reviews sought by the applicant.
[70] Email to OIC dated 10 September 2025, again in relation to this and a number of other external reviews sought by the applicant.

> *In relation to the previous* [name of external legal practice] *invoice that Council has disclosed* [to the applicant] *in response to a previous access application, Council states that although the Scheme Rules do not allow it to access or obtain information that is the property of the LGM, it may nevertheless retain records or copies of information that have come into its possession.*
> …[U]*nder the Scheme Rules* [Council] is *not entitled to request access to such documents.*

61. Council provided OIC with copies of the Trust Deed that established the LGM and the LGM Scheme Rules.

62. After carefully considering the information provided by Council, I conveyed a preliminary view[71] to the applicant addressing the relationship between Council, LGM and JLT noted at paragraphs 22 and 23 above and stated:

> *Having considered the information provided by Council, including the relevant aspects of the Scheme Rules, I am satisfied that Council is not in possession of documents relating to external legal fees, costs and associated information, and does not have any present legal entitlement to access those documents as required by the IP/RTI Act. On that basis, it is my preliminary view that the requested documents are not documents of Council for the purpose of the IP/RTI Act, and access to them cannot be requested nor given under the IP Act.*

63. As noted at paragraph 24 above, in support of her view that documents relating to the fees charged by any external lawyers or a named barrister *are* documents of Council, the applicant submitted that Council was the client of the external legal practice and provided copies of documents containing information which she considered supported this position. Specifically, she provided a number of documents from the QHRC and QCAT proceedings which refer to the external legal practice as 'acting for', 'representing' and 'being instructed by' its 'client' Council.[72] The applicant also pointed to previous OIC decisions which refer to the external legal practice being Council's lawyers.

64. The applicant's submissions above and the further submissions made during the review are directed at demonstrating that it was Council which instructed the external legal practice, not JLT – and therefore Council itself which received and paid invoices. On this basis, the applicant contends that further documents relating to the fees charged by any external lawyers or a named barrister within Council's possession or control exist, and must be located by Council and disclosed in response to her access application.

65. The information provided by the applicant is consistent with the external legal practice representing and obtaining instructions from Council during the conduct of a matter. It does not demonstrate that it was Council, rather than JLT, which instructed the external legal practice, in the sense of engaging it to act on Council's behalf.

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[71] Letter to the applicant dated 8 December 2025.
[72] The applicant also raised an email from Council regarding Council's payment of an amount to her, and her subsequent receipt of that amount from Council, not JLT.

66. Having considered the submissions of Council and the applicant (both of which are more extensive than that available at the time of the previous OIC decisions raised by the applicant[73]), there is nothing to suggest that indemnity arrangements in place under the Trust Deed and LGM Scheme Rules, including coverage of legal costs, did not apply. I am satisfied that JLT as manager of LGM provided the instructions which retained the external legal practice, and that the fees associated with its engagement were therefore invoiced to and paid out of LGM's pooled fund.

67. The applicant provided an invoice from the external legal practice that had been disclosed to her in a previous application which was addressed to Council, care of JLT at JLT's address.[74] This in my opinion supports Council's submission that it was JLT which instructed the external legal practice, rather than Council. The applicant referred to the subject of the invoice stating that it related to the applicant's complaint against Council and that it '*does not say about JLT being who the claim is against*'.[75] While the invoice does relate to work carried out by the external legal practice in relation to the applicant's complaint about Council, this does not of itself mean that it was Council that engaged the services of the external legal practice, such that any invoices would be documents of Council for the purposes of the IP Act.

68. Further the applicant stated that her receipt of the external legal practice's invoice in a previous application is evidence that Council has this type of information in its possession. In its submission, Council did not state that it does not hold *any* invoices from the external legal practice or the appointed barrister, rather that the Scheme Rules do not allow it to access or obtain information that is the property of the LGM, but that nevertheless it may retain records or copies of information that have come into its possession.

69. In relation to the applicant's comment that there is no correspondence with JLT or mention that JLT sought legal representation from the external legal practice, I note that this comment does not support a conclusion that such correspondence did not occur; rather, the applicant's viewpoint may be attributable to the fact that few communications between the external legal practice and JLT have been captured by her access applications.

70. For the above reasons, and noting in particular the Trust Deed that established the LGM and the LGM Scheme Rules, I accept the submission from Council in relation to the limitations on access to documents of the LGM Scheme that are placed on it by the Scheme Rules. Given this, I am satisfied that documents relating to costs of the external legal practice are not under the control of Council, nor is Council legally entitled to require LGM to produce them.

71. In these circumstances, I consider documents relating to the costs of the external legal practice are not documents in the possession or control of Council, and therefore not '*documents of an agency*' for the purposes of section 12 of the RTI Act.

[73] In terms of the previous OIC decisions made in response to the applicant's previous external review applications raised by the applicant, at the time those decisions were made it was OIC's understanding that Council had instructed the external legal practice. It was only during this review, and a number of other external reviews involving this applicant, that Council provided information about JLT and LGM's involvement.
[74] Submission to OIC dated 27 March 2026.
[75] Applicant's submission to OIC dated 20 July 2026.

Accordingly, access to the Category D Information cannot be requested, nor given, under the IP Act.

Category E Information

Relevant law

72. The IP Act requires that an access application must '*give sufficient information concerning the document to enable a responsible officer of the agency or Minister to identify the document*'.[76]

73. The Information Commissioner has previously recognised that the scope of an access application should not be interpreted legalistically or narrowly[77] - however, balanced against this is the need for agencies to be able to restrict their searches for documents with reference to the terms used in the application. There are sound practical reasons for the documents sought being clearly and unambiguously identified. The terms of an access application set the direction and parameters of an agency's search efforts[78] and are therefore of primary importance where an applicant contends – as is the case in this review – that the agency has not located all relevant documents. For these reasons, the scope of an access application may not be unilaterally widened on external review.[79]

Findings

74. As noted at paragraph 7, the applicant submitted that Council had not conducted searches of either the Lord Mayor's office or the office of Council's Chief Executive Officer, as referred to by the applicant in her access application, and had accordingly failed to locate documents held in these locations.

75. During the review, OIC requested that Council either conduct further searches or provide a submission explaining why the offices referred to by the applicant would not be in possession of any information responsive to the access application.[80]

76. Council submitted:[81]

> *I wish to advise that both the Mayor's and CEO's offices do not have any dealings to do with any external QHRC matter being heard in QCAT unless, for example, a matter were to relate to their office. … only City Legal and the work area relevant to the alleged human rights breach will generally have any documents relating to such a matter. Any additional work areas will only hold documents if they have been consulted as subject matter*

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[76] Section 43(2)(b) of the IP Act.
[77] *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) (***Fennelly***) at [21].
[78] In this regard, I note the following observations of the Information Commissioner in *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8], when addressing similar considerations under the predecessor of the RTI Act, the *Freedom of Information Act 1992* (Qld) (**FOI Act**): '*The terms in which an FOI access application is framed set the parameters for an agency's response under Part 3 of the FOI Act, and in particular set the direction of the agency's search efforts to locate all documents of the agency which fall within the terms of the FOI access request. The search for relevant documents is frequently difficult, and has to be conducted under tight time constraints. Applicants should assist the process by describing with precision the document or documents to which they seek access*'.
[79] *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17].
[80] In an email to Council dated 21 July 2025.
[81] Email to OIC dated 7 August 2025.

> *experts. As the applicant's claim related to the* [name of unit], *there is no reason why the Mayor's and CEO's offices would hold any documents.*

77. In relation to the searches that it did conduct to locate documents, Council submitted:

> *… searches were completed by / with any officer of Council who would reasonably be expected to hold documents.*

78. I conveyed Council's submission at paragraph 76 above to the applicant and also my preliminary view[82] that the submission provided a reasonable explanation as to why it was not necessary for Council to conduct searches of the respective offices.

79. In response, the applicant submitted that she was aware that Council's Chief Executive Officer would be in possession of information for the timeframe of her application. In support of her submission, the applicant provided a copy of a letter that she had received from Council's Acting Chief Executive Office (**A/CEO**) dated 17 July 2024. The A/CEO's letter refers to an email that the applicant sent to a specific Council officer on 8 July 2024. In this respect, the applicant stated '*I require access to this also, and this is clearly connected with the matter I raised with the CEO's Office (or Acting CEO)*'.[83]

80. Having considered the applicant's email[84] and the A/CEO's letter, I do not agree that either provide support that the CEO would be in possession of documents *relating to the scope* of the applicant's access application.

81. In her application, the applicant specifically requested:

> … [I]*nformation regarding my* [QHRC] complaint files and associated information *from when I lodged a complaint with the QHRC on* [date]. *This QHRC matter was referred to* [QCAT] *on* [date]. *I also request access to information regarding QCAT documentation and information as I have an ongoing QCAT matter which continued in to 2024. …*
>
> …
>
> *Current/Previous staff of Council who would, I believe, have information regarding this QCAT/QHRC matter include [various named individuals]. I'm also assuming City Legal generally, as well as other areas of Council,* ***including the Lord Mayor's and CEO Offices****, Ethical Standards Unit, Governance Council and Committee Services, RTI Unit and senior Management, may have related information.*
>
> …
>
> *Dates are 8 May 2024 to 10 July 2024 (inclusive).*
>
> (bold is my emphasis)

82. The applicant's email of 8 July 2024 falls within the timeframe specified in her access application. It makes reference to the QCAT proceedings being ongoing. Other than that, however, it comprises a complaint which is unrelated to the applicant's QCAT proceedings, both in relation to the nature of the complaint and the officer complained about. This is evident from both the applicant's email and the portion of the A/CEO's letter which responds to the email.

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[82] Letter to the applicant dated 8 December 2025.
[83] Applicant's submission to OIC dated 20 July 2026.
[84] Which Council provided to OIC on 6 August 2026.

83. The A/CEO's letter dated 17 July 2024 post-dates the timeframe specified in the applicant's access application. As well as responding to the applicant's abovementioned email, it also responds to other emails from the applicant raising further concerns. It appears that some of these emails were sent during the timeframe specified in the applicant's access application. However, having carefully considered the relevant portion of the A/CEO's letter, I am satisfied that the concerns in question were unrelated to the applicant's QCAT proceedings, both in terms of their nature and in terms of the officers complained about.

84. As noted at paragraph 73, it is well settled that the scope of an application sets the parameters for an agency's searches. I have carefully considered the wording of the access application, and I am satisfied that its terms are specific to documents relating to the QCAT proceedings and do not include documents relating to later complaints made by the applicant. Given this position, I find that the letter provided by the applicant and any documents related to the complaints referred to in that letter do not fall within the scope of this application. As such, Council was not required to conduct searches for these documents.

Conclusion

85. In summary, I find that:

- access to Categories A to D Information may be refused; and
- the Category E information falls outside the scope of the access application.

86. The above are the reasons for this decision as set out at page 2.