



Decision and Reasons for Decision

Citation: *T98 and Cairns Regional Council [2024] QICmr 28*
(25 June 2024)

Application Number: 317472

Applicant: T98

Respondent: Cairns Regional Council

Decision Date: 25 June 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - application to access information related to a pool safety certificate - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - IRRELEVANT INFORMATION - application to access information related to a pool safety certificate - documents outside the scope of the application - information irrelevant to the terms of the application - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant contends that further documents should exist in relation to his request - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Cairns Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access information identified as follows:

This application for evidence is related to an external review being carried out at QCAT regarding my purchase of [specific address] on [specific date], in which a fraudulent pool safety certificate was provided by Pool Safety Inspector [named individual].

¹ Access application dated 31 May 2023. The date range of the application was specified as 'May 2020 to present'.

Councils [sic] involvement in the QCAT review is the fact that various Council officers lead [sic] by [Officer A] came to my home on 3 or 4 separate occasions due to my complaint to Queensland Building and Construction Commission over the fraudulent safety certificate. The visits to my home started in the middle of May to the end of June 2020.

2. The application identified that the types of requested documents were '*all emails, internal memos, records of telephone conversations and any other correspondence*', however, the application also attached a five-page document titled '*Types of Documents required as follows*:', which contained 11 items and attached a one page email dated 27 May 2020.
3. Council located 171 pages as relevant to the application, disclosed 129 pages and decided² to refuse access to parts of 42 pages on the ground that disclosure would, on balance, be contrary to the public interest.³
4. The applicant then applied⁴ to the Office of the Information Commissioner (**OIC**) for review of Council's decision, raising a concern that access had been refused to the names of the Council officers who had come to his property '*among other arbitrary redactions*'.⁵
5. Council disclosed a small amount of further information to the applicant during the review (which included the names of Council officers which appeared within the located documents). However, the applicant remains dissatisfied with the level of information which has been located and disclosed to him.
6. For the reasons set out below, I vary Council's decision and find that:
 - access to certain information may be refused under the RTI Act on the ground its disclosure would, on balance, be contrary to the public interest;⁶
 - certain information is irrelevant to the access application and certain further information sought by the applicant is outside the scope of the access application; and
 - access may be refused to any further documents relevant to the access application on the ground that they are nonexistent or cannot be located.⁷

Background

7. Prior to purchasing his property, the applicant obtained a pool safety certificate that was issued in March 2020. The applicant subsequently made a complaint to Queensland Building and Construction Commission (**QBCC**) in relation to that pool safety certificate, as the applicant held concerns that the pool safety barrier was non-compliant.
8. In May 2020, QBCC notified Council of the applicant's pool safety concerns and requested that a Council compliance officer conduct a further inspection.
9. The documents Council disclosed to the applicant confirm that:

² Decision dated 11 July 2023.

³ Section 47(3)(b) of the RTI Act.

⁴ External review application dated 3 August 2023.

⁵ External review application.

⁶ Under sections 47(3)(b) and 49 of the RTI Act.

⁷ Under sections 47(3)(e) and 52 of the RTI Act.

- two Council officers met with the applicant at his property on 19 May 2020 about his pool safety concerns and conducted an inspection;
 - following that inspection, Council wrote to the applicant on 27 May 2020 about identified pool barrier non-compliance;
 - in June 2020, Council officers met again with the applicant (at his request) to discuss proposed rectification works;
 - a Council officer attended the applicant's property on 2 July 2020 to re-inspect conducted rectification works;
 - following that re-inspection, Council wrote to the applicant on 2 July 2020 to confirm the pool barrier rectification had been completed and the pool barrier was satisfactory;
 - QBCC subsequently notified the applicant of the disciplinary action it had decided to impose upon the individual who issued the pool safety certificate; and
 - the applicant has sought review of QBCC's decision and is involved in proceedings before the Queensland Civil and Administrative Tribunal (**QCAT**) in that regard.⁸
10. In the early stages of this external review, the applicant identified⁹ that he was seeking a list of the names of Council officers who had attended his property and that he needed this information quickly to meet timeframes in the QCAT proceedings in which he was involved.¹⁰ As the Information Commissioner is required to promote settlement and identify opportunities and processes for early resolution of external review applications,¹¹ OIC asked the applicant whether he wished to continue with the external review, given the other information disclosure processes that were available to him.¹² The applicant confirmed he wished to proceed with this external review.
11. The significant procedural steps taken during this review are set out in the Appendix.

Reviewable decision

12. The decision under review is Council's decision dated 11 July 2023.

Evidence considered

13. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
14. The applicant provided a number of submissions to OIC during the review¹³ and I have taken them into account to the extent that they are relevant to the issues for determination in this review.
15. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁴ I consider a decision-maker will be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act, when

⁸ To avoid identifying the applicant, I am unable to provide any further details about these decisions.

⁹ For example, in the external review application and in emails OIC received on 3 August 2023 and 7 August 2023.

¹⁰ The applicant indicated to OIC that he wished to call those officers in the QCAT proceedings.

¹¹ Section 90(1) of the RTI Act.

¹² By letter dated 31 August 2023, which also confirmed that the RTI ACT did not empower the Information Commissioner to compel an agency to create a document containing the information requested by an applicant. In this regard, I also note that Council had informed the applicant, by email dated 3 August 2023, that he may wish to request the names of these Council officers via QCAT processes.

¹³ As set out in the Appendix.

¹⁴ Section 21(2) of the HR Act.

applying the law prescribed in the RTI Act.¹⁵ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁶

Information in issue

16. As noted in paragraph 5 above, Council disclosed additional information to the applicant during the review, including the names of Council officers who attended the applicant's property (as they appeared within the located documents).¹⁷
17. The remaining undisclosed information within the located documents (**Information in Issue**) broadly comprises:
 - portions of information refused on five pages (**Third Party Information**), being the names of individuals other than the applicant,¹⁸ the names and an email address of Council officers,¹⁹ and the email and direct telephone number of a QBCC officer;²⁰ and
 - the name of a Council officer, who printed or converted the located documents to PDF, which appears at the top of 29 pages (**Deleted Name**).²¹

Issues for determination

18. External review under the RTI Act is a merits review process²² of government decisions about access to, and amendment of, documents. Under section 105(1)(b) of the RTI Act, the Information Commissioner is empowered to make any decision in respect of an access application that could have been made by the agency. As such, in making a decision, the Information Commissioner²³ may rely on RTI Act provisions which are different to those relied upon by the agency in the decision under review.
19. The applicant generally submitted that the initial redactions made by Council were '*absurd*'²⁴ and that Council had not comprehensively addressed his access request.²⁵ The applicant also argued that, as he knows some of the redacted names, access cannot be refused to them. Further, the applicant identified specific additional information which he considered to be missing²⁶ and the parts of his access application that he considered Council had not addressed.²⁷

¹⁵ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from OIC's position).

¹⁶ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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.*'

¹⁷ Council disclosed this additional information to the applicant by email dated 20 December 2023. Council also sent a copy to the applicant by post (which was delivered to the applicant on 5 January 2024).

¹⁸ At page 6.

¹⁹ At pages 160, 163 and 166.

²⁰ At page 167.

²¹ Pages 80, 96-101, 103-104, 109, 111, 113, 117, 119, 121-123, 126, 130, 132, 134, 137, 139, 141, 145-146, 150, 160 and 163. This information was refused by Council on the ground its disclosure would, on balance, be contrary to the public interest.

²² That is, external review is an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision.

²³ Or delegate.

²⁴ For example, applicant's emails dated 17 January 2024 and 26 April 2024. In the Applicant's email dated 7 February 2024, he also described Council's redactions as '*CRAZY*' and the applicant similarly submitted (in his email dated 29 January 2024) that Council had been '*redaction crazy from the beginning*'. In a number of conversations with OIC staff, including myself, the applicant also characterised Council's redactions as absurd.

²⁵ Applicant's emails dated 7 February 2024 and 26 April 2024.

²⁶ For example, as confirmed in OIC's email to the applicant dated 25 September 2023.

²⁷ For example, in the applicant's emails dated 17 January 2024, 29 January 2024 and 26 April 2024.

20. Accordingly, the issues for determination in this review are whether:
- access to the Third Party Information may be refused on the ground that disclosure would, on balance, be contrary to the public interest;²⁸
 - the applicant is entitled to access the Deleted Name under the RTI Act;
 - certain further information sought by the applicant falls outside the scope of the access application; and
 - access to any further documents relevant to the access application may be refused on the ground they are nonexistent or unlocatable.²⁹

Preliminary issues

21. Before considering the issues for determination, it is necessary to deal with the following preliminary issues arising from concerns expressed in the applicant's submissions.

Council's processing of the access application

22. The applicant expressed concern that there was no '*ORDERLY response*'³⁰ from Council and no order in how Council presented documents to the applicant.³¹
23. Although section 68 of the RTI Act deals with the form in which access can be given to a document,³² there is no requirement for an agency to provide an applicant with documents in a particular order. I also note that, where the applicant had raised a concern that certain responsive information had not been provided and that information was contained within the documents located by Council, I have notified the applicant where that information could be found and I have otherwise addressed the applicant's concerns about missing information in this decision.
24. The applicant submitted³³ that he considers Council's unnecessary redactions and omissions show that Council has not demonstrated good faith in following the RTI Act. The applicant also raised generalised concerns about what he considered to be the '*bad behaviour*'³⁴ of Council's RTI department and alleged that his access application had been '*obviously manipulated by higher powers within the Queensland government establishment*'.³⁵ As noted in paragraph 18 above, external review is a merits review process, meaning the applicant's entitlement to access information requested in his access application has been considered afresh. Given this, OIC's jurisdiction on external review does not extend to investigating or providing any remedy to the applicant in respect of his concerns about the manner in which Council dealt with the access application.³⁶ I do, however, note that there is no evidence before me which supports the applicant's assertions that Council's processing of the access application, or the conduct of its officers in that processing, was inappropriate or that Council's decision-maker had been '*manipulated*' as the applicant alleges.³⁷

²⁸ Pursuant to sections 47(3)(b) and 49 of the RTI Act.

²⁹ Sections 47(3)(e) and 52 of the RTI Act.

³⁰ Applicant's email dated 23 February 2024.

³¹ This submission was confirmed in an email to the applicant dated 19 April 2024. The applicant also more generally submitted that Council had not released information in an appropriate manner according to the provisions of the RTI Act (in his email dated 26 April 2024).

³² For example, by providing a copy of a document or a reasonable opportunity to inspect a document.

³³ Applicant's email dated 9 January 2024.

³⁴ Applicant's email dated 26 April 2024.

³⁵ Applicant's email dated 17 January 2024. The applicant also submitted that an attitude of hostility and negligence is manifested by Council's behaviour in relation to his access application (in his email dated 20 March 2024).

³⁶ With the exception of section 113 of the RTI Act, the Information Commissioner has no jurisdiction to deal with complaints made about agency RTI decision-makers.

³⁷ Accordingly, there is insufficient evidence before me to give rise to grounds for invoking the Information Commissioner's disciplinary powers under section 113 of the RTI Act.

The external review process

25. The applicant has also raised a number of concerns about how the external review was conducted.³⁸ More specifically, the applicant considers that:
- discussing the external review with decision-makers over the telephone, rather than communicating in writing, was the most efficient way to progress the review;³⁹
 - this matter required the direct involvement of the Information Commissioner because it involves Council's '*absurdity*' and a serious breach of trust and the Information Commissioner has the power and responsibility to look into those concerns;⁴⁰
 - he should be entitled to speak directly to the Information Commissioner about the review issues;⁴¹ and
 - someone other than myself, who has what he considers to be the necessary authority and experience, should deal with his review.⁴²
26. Under the RTI Act:
- the procedures to be followed on external review are, subject to the Act, within the discretion of the Information Commissioner and external review proceedings are required to be conducted with as much expedition as the requirements of the Act and a proper consideration of the matters before the Information Commission allow;⁴³ and
 - the RTI Act permits the Information Commissioner to delegate all or any of the Commissioner's powers under the Act.⁴⁴
27. Under OIC's external review procedures, applicants may be contacted by either telephone or in writing during an external review.⁴⁵
28. Between August and November 2023, the applicant spoke with OIC staff on five occasions, raising concerns about redacted and missing information and providing background information which he considered relevant to the access request. The applicant also provided, in writing, information he considered relevant to the review. A written preliminary view about the reviewable issues was then conveyed to the applicant on 7 December 2023 and the applicant was invited to provide a submission if he wished to contest that view.⁴⁶ The applicant did contest that view, including in email correspondence he sent to OIC.

³⁸ In the applicant's emails dated 9 January 2024, 16 January 2024, 19 February 2024, 12 March 2024, 14 March 2024, 20 March 2024, 11 April 2024 and 26 April 2024. Certain of these concerns were also confirmed in a letter to the applicant dated 11 April 2024 and emails sent to the applicant on 19 February 2024 and 19 April 2024.

³⁹ This submission was confirmed in an email sent to the applicant on 19 April 2024. The issue was also raised by the applicant in his emails dated 9 January 2024, 16 January 2024 and 12 March 2024.

⁴⁰ This submission was confirmed in an email to the applicant dated 19 April 2024.

⁴¹ In the applicant's emails dated 19 February 2024, 14 March 2024, 20 March 2024 and 26 April 2024, the applicant requested to speak directly with the Information Commissioner. This request was also confirmed in an 11 April 2024 letter to the applicant.

⁴² For example, in the applicant's email dated 29 January 2024. Similar submissions were also confirmed in emails to the applicant dated 19 February 2024 and 19 April 2024 and in a letter to the applicant dated 11 April 2024.

⁴³ Section 95(1)(a) of the RTI Act.

⁴⁴ Section 145 of the RTI Act.

⁴⁵ This was confirmed to the applicant in the attachment to the letter sent to him on 31 August 2023, accepting his external review application. The applicant was similarly appraised of this by email sent to him on 14 March 2024 and in an 11 April 2024 letter.

⁴⁶ It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

29. As the delegated decision-maker in this matter, I spoke with the applicant, at length, on two further occasions during the review. In those conversations, the applicant provided some further detail of his concerns about redacted and missing information and repeated much of the background information he had previously raised in prior conversations and in his email correspondence.⁴⁷ Having considered all the information then before me, I conveyed a further written preliminary view to the applicant on 11 April 2024 and invited the applicant to provide submissions if he wished to contest that view. The applicant did contest that view, including in email correspondence he sent to OIC.
30. Accordingly, the applicant has been afforded several opportunities to put forward submissions and relevant information supporting his position. In these circumstances, and notwithstanding the applicant's repeated concerns that he was not able to speak to specific staff (including the Information Commissioner) when he requested to do so, I am satisfied that the review process has been procedurally fair (as it enabled the applicant to provide any information to OIC that he considered to be relevant) and that the applicant has been afforded due process in this review.
31. To the extent that the applicant has submitted another decision-maker should deal with this review, I have noted above that the external review procedure is determined by the Information Commissioner, and I am the delegated decision-maker in this matter.⁴⁸ There is no actual, perceived or potential conflict of interest of which I am aware that should preclude me acting as the decision-maker in this matter.⁴⁹ I am also satisfied that the applicant's external review application has been properly considered on its merits.
32. Finally, the applicant raised generalised concerns about the timeliness of the external review process.⁵⁰ While I accept that the time taken to complete this review may not have met the applicant's expectations, the Appendix demonstrates that reasonable steps were taken, in a timely manner, to progress the review and address the various matters the applicant raised during the review.
33. I will now turn to consideration of the substantive issues to be determined in this review.

Third Party Information

34. I am constrained about the level of detail I can provide about this information.⁵¹ However, as the nature of the Third Party Information is evident from the surrounding text which has been disclosed to the applicant, I confirm that it comprises:
- the names of a real estate agent and an individual from a pool inspection company;⁵²
 - the name and email address of a senior Council customer service officer who internally onforwarded an email from the applicant, but was not otherwise involved in Council's inspection of the pool barrier;⁵³

⁴⁷ Following each conversation, I emailed the applicant to summarise the issues he had raised for consideration during the conversation and invited him to correct or, where necessary, add to that summary.

⁴⁸ In accordance with my delegation, the Right to Information Commissioner was consulted on this decision before it was issued.

⁴⁹ To the extent the applicant's concern could be interpreted as raising an issue of apprehended bias, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias-refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

⁵⁰ For example, in the applicant's email dated 12 March 2023.

⁵¹ Section 108(3) of the RTI Act.

⁵² At page 6.

⁵³ At pages 160 and 163.

- the name of a Council officer who is listed as the 'Creation Officer' on a Customer Request Management Enquiry form⁵⁴; and
- the direct email and telephone number of the QBCC officer who initially contacted Council.⁵⁵

Relevant law

35. Under the RTI Act, an individual has a right to be given access to documents of an agency,⁵⁶ however, this access right is subject to limitations, including grounds upon which access to information may be refused.⁵⁷
36. One ground of access refusal under the RTI Act is where disclosing information would, on balance, be contrary to the public interest.⁵⁸ In deciding whether disclosure of information would, on balance, be contrary to the public interest,⁵⁹ the RTI Act requires a decision-maker to:⁶⁰
- identify any irrelevant factors and disregard them;
 - identify relevant public interest factors favouring disclosure and nondisclosure;
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, 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 public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my decision. I have also kept in mind the RTI Act's pro-disclosure bias⁶¹ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.⁶²

Findings

38. I have taken no irrelevant factors into account in making my decision.

Public interest factors favouring disclosure

39. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;⁶³
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁶⁴ and

⁵⁴ At page 166. I note that, apart from this name, all information on this page has been disclosed to the applicant.

⁵⁵ At page 167.

⁵⁶ Section 23 of the RTI Act.

⁵⁷ The refusal grounds are set out in section 47 of the RTI Act.

⁵⁸ Sections 47(3)(b) and 49 of the RTI Act.

⁵⁹ The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

⁶⁰ Section 49 of the RTI Act.

⁶¹ Section 44 of the RTI Act.

⁶² Section 47(2)(a) of the RTI Act.

⁶³ Schedule 4, part 2, item 1 of the RTI Act.

⁶⁴ Schedule 4, part 2, item 3 of the RTI Act.

- reveal the reason for a government decision and any background or contextual information that informed the decision.⁶⁵
40. Here, Council has disclosed almost all the located information to the applicant. I consider this has substantially advanced the factors relating to Council's accountability and transparency, as the disclosed information enables scrutiny of how Council managed the applicant's pool safety concerns and provides some background about why Council did not pursue any further action about those concerns. However, given the limited nature of the Third Party Information, I do not consider its disclosure would further advance the disclosure factors in schedule 4, part 2, items 3 and 11 of the RTI Act.⁶⁶
41. In respect of the remaining disclosure factor referenced in paragraph 39 above, I do not consider that disclosing the names of individuals, who are not public sector officers, would further advance Council's accountability. Nor do I consider that disclosing contact details of a QBCC officer or the names and contact details of Council officers who were not involved in the substantive Council process of addressing the applicant's compliance concerns would, in any meaningful way, further advance Council's (or the government's) accountability. Accordingly, I afford the public interest factor favouring disclosure in schedule 4, part 2, item 1 of the RTI Act only low weight.
42. Under the RTI Act, factors favouring disclosure will also arise where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;⁶⁷ and
 - contribute to the administration of justice generally, including procedural fairness, or for a person.⁶⁸
43. Although the applicant has raised general fairness arguments, he has not enunciated how disclosure of this particular Third Party Information would contribute to his fair treatment or procedural fairness.⁶⁹ In this regard, I note that the disclosed information confirms that Council met with the applicant to discuss the pool barrier non-compliance and the applicant's proposed rectification works. The applicant has also confirmed that he is involved in proceedings before QCAT concerning his disagreement with QBCC's disciplinary decision related to his complaint.⁷⁰ In these circumstances, and taking the information which has been disclosed to the applicant and the particular nature of the Third Party Information into account, I am not satisfied that there is a reasonable expectation disclosing the Third Party Information would advance the applicant's fair

⁶⁵ Schedule 4, part 2, item 11 of the RTI Act.

⁶⁶ Given the limited nature of this information and the context in which it appears, I also do not consider the disclosure factor in schedule 4, part 2, item 2 of the RTI Act applies to favour disclosure of the Third-Party Information.

⁶⁷ Schedule 4, part 2, item 10 of the RTI Act.

⁶⁸ Schedule 4, part 2, items 16 and 17 of the RTI Act. In determining whether the factor in schedule 4, part 2, item 17 of the RTI Act applies to favour disclosure of the Third Party Information, I must consider whether:

- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the Information in Issue would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.

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

⁶⁹ The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

⁷⁰ In the applicant's emails dated 17 January 2024 and 29 January 2024, he referenced information that he had received from QBCC in response to a separate access application.

treatment or contribute to the general administration of justice, including procedural fairness. For these reasons, I find that the factors in schedule 4, part 2, items 10 and 16 of the RTI Act do not apply to favour disclosure of the Third Party Information.

44. The applicant submitted that the requested information was necessary ‘for a case before QCAT’.⁷¹ As mentioned above, the applicant also submitted that, for those ongoing proceedings, he required the names of the Council officers who attended his property.⁷²
45. Again, I note that Council has disclosed almost all the located information to the applicant, including the names of the officers who attended the applicant’s property, as they appear within the located documents. I also note that the RTI Act was not designed to serve as an adjunct to court processes (in which there are separate disclosure processes that may be available to the parties involved in those proceedings). Instead, the access right under the RTI Act comprises a stand-alone mechanism for enabling public access to government-held information.⁷³ Based on information provided by the applicant, it appears that the applicant is already involved in proceedings before QCAT, to which Council is not a party. While the applicant has made reference to an obligation of ‘Council officers employed in an investigatory position’ to provide evidence to ‘a judicial body’,⁷⁴ none of the Third Party Information is about any Council officer employed in an investigatory position. Given the limited nature of the Third Party Information, it is also unclear how its disclosure would assist the applicant, in any way, to pursue a remedy, or evaluate whether a remedy is available or worth pursuing. In all these circumstances, I do not consider the factor in schedule 4, part 2, item 17 of the RTI Act applies to favour disclosure.
46. The applicant submitted that there is a ‘behind the scenes’ cover up, which is obvious from Council’s redactions.⁷⁵ Public interest factors favouring disclosure also arise in circumstances where disclosing information could reasonably be expected to allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of QPS or its officers.⁷⁶ Having carefully considered the Third Party Information, I am satisfied that there is nothing within it which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. On this basis, I find these factors do not apply to favour disclosure of the Third Party Information.
47. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant’s submissions. Having done so, and given the limited nature of the Third Party Information, I cannot identify any other public interest considerations favouring disclosure of the Third Party Information.⁷⁷

⁷¹ Applicant’s email dated 12 March 2024.

⁷² Applicant’s email dated 20 March 2024. In this regard, the applicant also submitted (in his email dated 20 March 2024) that he had requested contact information for those Council officers to ‘make it possible to notify them that they will be required to appear as witnesses in a future QCAT hearing’.

⁷³ See *Endeavour Foundation and Department of Communities, Child Safety and Disability Service; 32SGRU* (Third Party) [2017] QICmr 37 at [28] citing with approval the comments of the Information Commissioner in *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

⁷⁴ The applicant’s email dated 20 March 2024.

⁷⁵ Applicant’s email dated 17 January 2024.

⁷⁶ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁷⁷ None of the Third Party Information is the applicant’s personal information (schedule 4, art 2, item 7 of the RTI Act). I also cannot see how disclosing the Third Party Information could, for example, ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); reveal the Third Party Information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); or contribute to the maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 15 and 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of the Third Party Information.

Public interest factors favouring nondisclosure

48. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁷⁸ and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁷⁹
49. As noted at paragraph 34, the Third Party Information identifies, or is about, individuals other than the applicant. I am therefore satisfied that it comprises the personal information of those other individuals.⁸⁰
50. As to the weight to be afforded to these factors, I note that, generally, information created in the course of a person's employment is considered to be their routine personal work information and, as such, does not attract a high privacy interest and the harm arising from disclosure is considered to be low.⁸¹
51. In relation to the name and email address of the Council senior customer service officer, I acknowledge that this information appears within routine work information. However, given the officer only internally onforwarded an email from the applicant to the relevant department and otherwise had no involvement in the applicant's matter, I consider that disclosure of the name and contact details of this officer could be expected to cause a slightly higher level of harm and prejudice. For this reason, I afford these nondisclosure factors moderate weight.
52. The remainder of the Third Party Information relates to individuals who are not Council employees.
53. For the names of individuals who are not public sector officers, I consider a significantly higher level of privacy intrusion and harm that could be expected to arise from disclosure. On this basis, I afford high weight to these factors which favour nondisclosure of these names. The applicant submitted that he is already aware of the names of these individuals. In particular, he referred to Council's disclosure of one name on another page and, as a result, the applicant submitted that the names of these individuals are not '*private*' and the refusal to disclose this information by Council is '*absurd*'.⁸² While the names of third parties may be ones known to the applicant, I do not consider this negates the right to privacy or the harm disclosure of this personal information would cause (noting there can be no restriction on the use, dissemination or republication of information disclosed under the RTI Act).
54. I consider that mobile phone numbers and direct extensions are different to other contact details (such as email addresses or general office phone numbers) in that they allow an individual to be contacted directly and potentially outside of office hours. Here, this gives rise to a reasonable expectation of intrusion into the QBCC officer's personal sphere. Accordingly, for information of this nature, I afford moderate weight to these nondisclosure factors.

⁷⁸ Schedule 4, part 4, section 6 of the RTI Act.

⁷⁹ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

⁸⁰ '*Personal information*' is defined in section 12 of the *Information Privacy Act 2009* as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

⁸¹ Routine personal work information can include, for example, a work email address, a work phone number or an opinion given in a professional capacity.

⁸² This submission was confirmed in an email sent to the applicant on 19 April 2024.

Balancing the public interest factors

55. For the reasons outlined above, I am satisfied that privacy considerations and the protection of the personal information of other individuals warrant high and moderate weight in respect of the names of non-public sector individuals and the contact details of a QBCC officer. For the names and contact details of Council officers within the Third Party Information, I have afforded moderate weight to these factors, given the context in which that information appears.
56. On the other hand, taking into account the information which has been disclosed and the nature of the Third Party Information, I have afforded only low weight to the disclosure factor relating to Council's accountability.
57. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Third Party Information outweigh the factor favouring disclosure. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁸³

Deleted Name

Relevant law

58. Section 73 of the RTI Act permits an agency to delete information that is not relevant to the access application from the document before giving access to a copy of the document.
59. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.⁸⁴

Findings

60. In the decision under review, Council refused access to the Deleted Name under section 47(3)(b) of the RTI Act. As noted in paragraph 18 above, in making this decision about the applicant's entitlement to access the Deleted Name, I am not required to rely on the same ground that Council relied upon.
61. On 11 April 2024:
 - I explained to the applicant that, as the Deleted Name had only been included on 29 pages as a result of the administrative processes involved in Council's processing of the access application, it was my preliminary view that the Deleted Name on these pages was not relevant to the access application and it may be deleted on that basis; and
 - the applicant was invited confirm whether he accepted that preliminary view.⁸⁵
62. In response, although the applicant indicated he did not wish to access the Deleted Name, he submitted it was another example of Council's '*absurd*' redactions.⁸⁶

⁸³ Under section 47(3)(b) of the RTI Act.

⁸⁴ *Van Vennendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

⁸⁵ This preliminary view had previously been conveyed to the applicant in a letter dated 7 December 2023, however, it had not been specifically addressed in the applicant's submissions.

⁸⁶ This was confirmed in an email to the applicant dated 19 April 2024.

63. Having carefully considered the terms of the access application, I am satisfied that the Deleted Name is unrelated to the subject matter of the access application (that is, it does not relate to the pool barrier at the applicant's property or the compliance investigation in that regard).
64. On this basis, I find the applicant is not entitled to access the Deleted Name in the documents that Council has disclosed, as it is not relevant to the access application and may be deleted under section 73 of the RTI Act.

Scope of the access application

65. An access application must give sufficient information concerning the documents sought to enable a responsible officer of the agency to locate the relevant documents.⁸⁷ There are sound practical reasons for the documents sought by an applicant to be clearly and unambiguously identified, as the terms of an access application set the parameters for an agency's search efforts and therefore are of primary importance where an applicant contends, as is the case in this review, that the agency has not located all relevant documents.⁸⁸
66. As noted in paragraph 2 above, the access application attached a five-page document titled '*Types of Documents required as follows:*', on which the following items were listed:
1. *Names of all council officers who came to my home, dates etc.*
 2. *All communications between all Council officers regarding Council's investigation at my home. That would include all communication between Queensland Building and Construction Commission and the Chief Compliance Officers office at Cairns City Council (emails, phone records, interoffice memos, etc)*
 3. *All documents regarding Council's visits and conclusions to investigations completed at my home (photos at my home etc).*
 4. *Verification of [named individual's] status as a [job title] at Cairns City Council at time of Council's involvement (May 2020) (till present).*
 5. *Name of Chief Compliance Officer at time of Council's involvement (all emails between myself and Chief Compliance Officer and his assistants that were involved with me and inter-office communication.*
 6. *Record of all communication between Council officers involved in this case and [named individual] as [job title] and employed at [company name].*
 7. *Determine if [named individual] is still employed at Cairns City Council.*
 8. *Records of any communication between [Officer A] and the other officers who came to my home and the Queensland Building and Construction Commission.*
 9. *Contact information for all officers that came to my home to do the pool safety inspection (info may be necessary for witnesses at hearing).*
 10. *Records of any communication between the Chief Compliance Officer at Cairns City Council and the Queensland Building and Construction Commission from May 2020 till present, or any other officer in the Chief Compliance Officer's office.*

⁸⁷ Section 24(2)(b) of the RTI Act.

⁸⁸ *Usher and Department of Natural Resources and Mines* [2014] QICmr 51 at [15]. See also *Lonsdale and James Cook University* [2015] QICmr 34 at [9] and *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 at [15]. In this regard, I also note the following observations of the Information Commissioner in *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 (**Cannon**) at [8], when addressing similar considerations under the predecessor to 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 the 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. Indeed the FOI Act itself makes provision in this regard with s.25(2) not only requiring that an FOI access application must be in writing, but that it must provide such information concerning the document to which access is sought as is reasonably necessary to enable a responsible officer of the agency to identify the document.* These observations were also cited with approval in *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (**O80PCE**) at [33] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].

11. See attached email to me on Wed. May 27, 2020 from [Officer A]. [Officer A] mentions his not issuing a *SHOW CAUSE Document* for the removal of the Form 23 (Safety Certificate) after identifying over a dozen non-compliant violations of pool safety standards at my home. [Officer A] also sent me and Council various emails connected to his inspection all of which I will need copies of. I also need detailed information as to why a *SHOW CAUSE Document* was not issued & any response from the Chief Compliance Officer about that.
67. The applicant submitted⁸⁹ that Council had failed to locate any information concerning a particular individual's role within Council, as referred to items 4 and 7 above.⁹⁰ Those items do not identify any specific documents or type of documents to which the applicant sought access—instead, they seek 'verification' and 'determination' of the particular individual's employment status at Council.⁹¹ When presented with requests of this nature, best practice for an agency includes taking the opportunity to clarify the documents which the applicant was seeking to access. While this did not occur in the present matter, Council took a constructive approach on external review.
68. Given the way the applicant had framed items 4 and 7, and in accordance with OIC's legislated obligation to promote early resolution and settlement of external review applications,⁹² I asked Council whether it would be prepared to create, and disclose, a summary of the information requested in items 4 and 7.⁹³ Council agreed to do this and I emailed the provided summary information to the applicant.⁹⁴ I can confirm that this summary provided the commencement and termination dates of the specified individual's employment with Council and the positions held by the individual during that period (including the dates on which the individual commenced in those positions).
69. The applicant did not accept that the provided summary information satisfied his requests in items 4 and 7—he submitted that those items did identify the documents he requested and he considered that Council will have a document with all the requested information in the relevant individual's personnel records.⁹⁵ The applicant also characterised his request as being for '*documented information*' concerning the particular individual's '*employment record and status at Council*'.⁹⁶
70. Items 4 and 7 do not, on their face, request the personnel records of the named individual. Instead, they asked Council to verify or determine the employment status of a particular individual. Noting how the requests in items 4 and 7 are expressed and their lack of mention of any specific documents, I am satisfied that the personnel records now requested by the applicant fall outside the scope of the access application. It is therefore unnecessary for me to consider whether Council has taken reasonable steps to locate those personnel records.
71. The applicant also submitted that Council had not located and disclosed the following further information, which he considers is captured by his access application:

⁸⁹ For example, in the applicant's email dated 17 January 2024 and 29 January 2024.

⁹⁰ The applicant's request in item 4 was the main focus of his emails dated 9 January 2024, 17 January 2024. I note that the applicant's email dated 17 January 2024 also submitted that he had already established that the named individual had been employed by Council.

⁹¹ The RTI Act creates a right to apply for access to documents, however it does not create a right to have questions answered or to have answers to questions extracted from documents by the agency – see *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at [30].

⁹² Section 90(1) of the RTI Act.

⁹³ Notwithstanding that, as I have noted above, the RTI Act does not require an agency to create a document to respond to an access application.

⁹⁴ On 26 March 2024.

⁹⁵ This submission was confirmed in an email to the applicant dated 19 April 2024.

⁹⁶ Applicant's email dated 26 April 2024.

- the job descriptions and employment status of the officers who attended his property;⁹⁷ and
- the qualifications ‘*from personnel records (documentation)*’ of the officers who attended his property.⁹⁸

72. Items 1 and 9 above do request names of the Council officers who came to the applicant’s property, the dates of their attendance and their contact details. However, the access application did not request information about the job descriptions, employment status or qualifications of those officers. It is not open for an access applicant to unilaterally expand the scope of an access application on external review.⁹⁹ Having assessed the application scope objectively and without undue technicality,¹⁰⁰ I find that this additional Council officer information requested by the applicant falls outside the scope of the access application. As a result of my finding, it is unnecessary for me to consider whether this additional information exists or whether Council has taken reasonable steps to locate it.

Sufficiency of search

73. The applicant submitted that Council had failed to locate all relevant documents, as he considered Council had only addressed one of the items listed in the five-page attachment to the access application.¹⁰¹

74. The applicant further submitted that the following specific information exists, is relevant to his application and had not been located by Council:

- recordings of conversations with Council employees and audio/video recordings of property inspections¹⁰² (**Audio/Video Recordings**)
- documents where the attending Council officers were ordered to attend the applicant’s property (**Inspection Orders**);¹⁰³ and
- the full names and contact details of Council officers who attended the applicant’s property¹⁰⁴ and the dates of such attendance¹⁰⁵ (**Officer Information**).

Relevant law

75. The Information Commissioner’s external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.¹⁰⁶ However, access to a document may be refused if it is nonexistent or unlocatable.¹⁰⁷

⁹⁷ Applicant’s email dated 29 January 2024.

⁹⁸ Applicant’s email dated 26 April 2024. A similar submission, seeking qualifications and employment details of these Council officers, was confirmed by email to the applicant dated 19 April 2024.

⁹⁹ *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 (13 February 2015) at [14], citing *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]. See also *Lonsdale and James Cook University* [2015] QICmr 34 (15 December 2015) at [9].

¹⁰⁰ *Cannon* at [8] and *O80PCE* at [33].

¹⁰¹ In the applicant’s email dated 29 January 2024, he submitted that items 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11 of the attachment to the access application had not been addressed by Council.

¹⁰² This submission was confirmed in a letter to the applicant dated 7 December 2023.

¹⁰³ This submission was confirmed in an email sent to the applicant on 19 April 2024.

¹⁰⁴ Applicant’s email dated 26 April 2024. A similar submission was confirmed in an email sent to the applicant on 19 April 2024.

¹⁰⁵ This submission was confirmed in an email sent to the applicant on 19 April 2024.

¹⁰⁶ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 115 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act ‘*does not contemplate that [the Information Commissioner] will in some way check an agency’s records for relevant documents*’ and that, ultimately, the Information Commissioner is dependent on the agency’s officers to do the actual searching for relevant documents.

¹⁰⁷ Sections 47(3)(e) and 52(1) of the RTI Act.

76. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.¹⁰⁸ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.¹⁰⁹
77. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:¹¹⁰
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities¹¹¹
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
78. By considering the above key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency.¹¹²
79. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.¹¹³ What constitutes reasonable steps will vary case by case as the search inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the circumstances.¹¹⁴ It should be noted that all *reasonable* steps is not the same as all *possible* steps.
80. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.¹¹⁵ However, where an external review involves the issue of missing documents, as is the case here, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not

¹⁰⁸ Section 52(1)(a) of the RTI Act.

¹⁰⁹ Section 52(1)(b) of the RTI Act.

¹¹⁰ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (**PDE**). These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

¹¹¹ Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

¹¹² However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.

¹¹³ In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors (*Pryor* at [21]).

¹¹⁴ Such steps may, for example, include inquiries and searches of all relevant locations identified after consideration of relevant key factors.

¹¹⁵ Section 87(1) of the RTI Act.

discharged its obligation to locate all relevant documents.¹¹⁶ Suspicion and mere assertion will not satisfy this onus.¹¹⁷

Findings

81. Given the applicant's submission referenced in paragraph 73 above, I asked Council to conduct further searches for the items listed in the attachment to the access application. No additional responsive documents were located by Council's further searches. I also provided a detailed explanation to the applicant where information relevant to specific items in the attachment to the access application had been disclosed to him.¹¹⁸
82. As noted above, the question I must consider is whether Council has taken all reasonable steps to locate documents relevant to the access application.
83. Council relies on the searches and enquiries conducted by its officers to justify its position that reasonable steps have been taken to locate documents responsive to the access application and has provided information about its searches and enquiries, as set out below.
84. Council's provided search information¹¹⁹ demonstrates that searches for responsive documents were conducted (both during Council's processing of the application and on external review) of the following Council record keeping systems and locations:
 - Council's Electronic Document Records Management System (eDRMS), using the applicant's address and surname as search terms, and Council's Property and Customer Request Management System (**CRM**), using the applicant's address as the search term¹²⁰
 - Council's off-site storage facility; and
 - the email account of the Council regulatory compliance officer who was the primary contact with the applicant, using the suburb of the applicant's property, 'QBCC' and the date range nominated in the access application.
85. Having considered all of the information before me (including details of Council's searches, the documents located by Council and submissions from the applicant), I consider that Council has conducted suitably targeted searches in the record-keeping systems where it would be reasonable to expect the requested information would be found. I also consider that those searches were conducted by appropriately qualified Council staff, using appropriate search terms.
86. Accordingly, I am satisfied that:
 - Council has taken reasonable steps to locate documents relevant to the access application; and

¹¹⁶ While the applicant has submitted that he does not believe he should have to identify documents that he considers Council has failed to locate (in a telephone conversation with OIC on 19 April 2024), the applicant has in fact identified information that he considers to be missing. Accordingly, I have not addressed the applicant's submission in this regard.

¹¹⁷ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

¹¹⁸ This explanation was provided to the applicant in an attachment to a letter dated 11 April 2024.

¹¹⁹ Council's letters dated 16 November 2023 and 25 March 2023 (which included a search certification) and a further search certification received on 4 April 2024.

¹²⁰ These searches were conducted for documents within the timeframe nominated in the access application.

- access to any further documents relevant to the access application may be refused on the basis they do not exist or cannot be located.¹²¹

87. I set out below my consideration of the specific further documents identified in paragraph 74 above, which the applicant contends exist and should be located.

Audio/Video Recordings

88. OIC asked¹²² Council to address the applicant's assertion that the Audio/Video Recordings should have been located by Council.

89. In response,¹²³ Council confirmed that:

- apart from telephone calls to its Customer Service Call Centre, Council did not record conversations between Council staff or with members of the public;
- audio/video is not commonly used when conducting inspections as photographs were taken to provide evidence of complaint or compliance issues and those were stored in the CRM system; and
- searches did not locate any Audio/Video Recordings relevant to the access application.

90. The above explanation was conveyed to the applicant¹²⁴ and, while the applicant contested that Council had conducted reasonable searches for requested information, he did not provide any further submissions (or evidence) supporting his claim that Audio/Video Recordings relevant to the application had not been located by Council.

91. Accordingly, taking into account the explanations provided by Council (as summarised in paragraph 89 above), I am satisfied that reasonable steps were taken to locate any Audio/Video Recordings relevant to the access application and responsive documents of this type do not exist.

Inspection Orders

92. The documents disclosed to the applicant confirm that QBCC requested that Council inspect the pool barrier at the applicant's property. The applicant has not provided, or pointed to, any information which supports his position that that written orders requiring particular Council officers to attend his property exist. While I acknowledge that the applicant believes "Inspection Orders" *should* exist, this is not evidence that documents of this nature were in fact created by Council. The request for a particular Council officer to attend the applicant's property may, for example, have been made verbally, without the creation of an Inspection Order. Accordingly, aside from the applicant's assertion, there is no evidence before me that Inspection Orders exist.

93. In any event, I consider that if any Inspection Order type documents (as envisaged by the applicant) had been created by Council, these documents would have been stored in the locations that Council has searched. I am therefore satisfied that all reasonable steps have been taken to locate the Inspection Orders and documents of this nature either do not exist or cannot be located.

Officer Information

¹²¹ Under section 47(3)(e) of the RTI Act.

¹²² By letter dated 26 October 2023.

¹²³ Council's letter dated 16 November 2023.

¹²⁴ Letter dated 7 December 2023.

94. As noted in paragraph 5 above, the additional information Council disclosed during the review included the names of Council officers who attended the applicant's property (as they appeared within the located documents). Notwithstanding this, the applicant submitted that Council had failed to provide the full names of these officers and their contact information¹²⁵ and the dates these officers attended the applicant's property.¹²⁶ The applicant further submitted that Council had refused to supply this information from personnel records.¹²⁷
95. The applicant appears to already possess information about the Council officers who attended his property, as he submitted¹²⁸ that *'It was 3 officers from the Cairns Regional Council that came to my home for 5 visits (from mid May and all of June 2020) to investigate issues with the fraudulent pool safety certificate and enforce me to making appropriate reparations'*. As I have also noted above, the names of officers who attended the applicant's property have been disclosed to the applicant where they appear within the located documents. That disclosed information specifically:
- includes the full name, title and contact details (both telephone and email) of Officer A;¹²⁹
 - includes the initials and last names of two other officers;¹³⁰
 - confirms that Officer A attended the applicant's property to conduct the first inspection on 19 May 2020 (accompanied by another officer whose last name has been disclosed);
 - confirms that Officer A attended the applicant's property on 2 June 2020 (accompanied by another officer whose last name has been disclosed); and
 - confirms Officer A conducted a re-inspection at the applicant's property on 2 July 2020.
96. The disclosed documents also confirm that Council officers attended the applicant's property on 25 May 2020 and on (or about) 5 June 2020.¹³¹
97. I have noted above that the RTI Act does not require an agency to create a document to address an applicant's information request. I also note that, on a plain reading of the access application, it did not seek access to the personnel records of Council officers who attended the applicant's property. As the applicant's contention is that further Officer Information exists within Council's personnel records, I am satisfied that any such further information falls outside the scope of the access application. It is therefore unnecessary for me to consider whether Council has taken reasonable steps to locate this further Officer Information within personnel records. In terms of Council Information contained in documents falling within the scope of the applicant, for sake of completeness, I consider this information would have been recorded in the locations that Council has searched and, accordingly, I am satisfied that Council has conducted reasonable searches for this Officer Information and disclosed relevant located information to the applicant.¹³²

¹²⁵ For example, in the applicant's email dated 17 January 2024, 29 January 2024, 19 April 2024 and 26 April 2024.

¹²⁶ For example, the applicant's email dated 29 January 2024, 20 March 2024 and 19 April 2024.

¹²⁷ Applicant's email dated 26 April 2024.

¹²⁸ Applicant's email dated 26 April 2024.

¹²⁹ For example, on pages 5, 6, 14, 16 and 17.

¹³⁰ On pages 2 and 7 respectively.

¹³¹ This information was contained in a letter addressed to the applicant dated 13 August 2020, which appears at pages 18-21 of the disclosed documents. I note that letter provided the applicant with a chronology of Council's visits to his property, together with the reasons for each attendance.

¹³² Having carefully reviewed the terms of the access application, the applicant's submissions, the information which has been disclosed by Council and Council's search submissions and records.

98. On this basis, I find that access to any further Officer Information requested by the applicant may be refused on the basis it does not exist or cannot be located.

DECISION

99. For the reasons set out above, I vary Council's decision and find that:

- access to the Third Party Information may be refused under the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest;¹³³
- the Deleted Name is irrelevant to the terms of the access application and may be deleted;¹³⁴
- access may be refused to certain information on the ground that it is nonexistent or cannot be located;¹³⁵ and
- the remaining information which the applicant contends has not been located by Council has either been released to the applicant or is outside the scope of the application.

100. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

T Lake
Principal Review Officer

Date: 25 June 2024

¹³³ Under sections 47(3)(b) and 49 of the RTI Act.

¹³⁴ Under section 73 of the RTI Act.

¹³⁵ Under sections 47(3)(e) and 52 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
3 August 2023	OIC received the external review application and the applicant's email submission.
7 August 2023	OIC received the applicant's further email submission.
31 August 2023	OIC notified the applicant and Council that the application for external review had been accepted and requested information from Council. OIC received the applicant's email confirmation he wished to proceed with the external review, however, the applicant subsequently indicated he would reconsider his position and provide a further notification if he wished to proceed with the review.
1 September 2023	OIC received the requested information from Council and asked Council to provide submissions and search records.
21 September 2023	OIC notified the applicant and Council that the review had been resolved as the applicant had not confirmed he wished to proceed.
25 September 2023	OIC notified the applicant that the review had been re-opened after he confirmed he wished to proceed.
26 October 2023	OIC conveyed a preliminary view to Council.
16 November 2023	OIC received a Council's submissions.
7 December 2023	OIC conveyed a preliminary view to the applicant and invited the applicant to provide a submission if he wished to contest that view. OIC also asked Council to disclose the further information to the applicant.
20 December 2023	Council disclosed further information to the applicant.
3 January 2024	OIC notified the applicant that Council had been requested to post a further copy of the documents to the applicant. OC also extended the due date, to 19 January 2024, for the applicant's submissions responding to OIC's preliminary view.
9 January 2024	OIC received the applicant's email submission.
16 January 2024	The applicant notified OIC that he would present written submissions after a telephone conversation with the decision-maker. OIC confirmed to the applicant the due date for his written submission and suggested arrangements for a subsequent telephone call. OIC received further email correspondence from the applicant requesting a telephone conversation. OIC received confirmation from Council that the posted copy of the documents had been delivered to the applicant on 5 January 2024.
17 January 2024	OIC received the applicant's email submission. OC confirmed receipt of the applicant's submissions and confirmed arrangements for the telephone conversation. OIC received a further email submission from the applicant.

Date	Event
24 January 2024	OIC provided the applicant with a summary of the issues he had raised for consideration and asked Council to provide further information in relation to items 4 and 7 of the access application.
29 January 2024	OIC received the applicant's further email submission.
30 January 2024	OIC received Council's response concerning items 4 and 7 of the access application.
7 February 2024	OIC received the applicant's further email submission.
13 February 2024	OIC asked Council conduct further searches and respond to the applicant's submissions about unlocated information.
19 February 2024	OIC provided the applicant with an update and summarised the issues which the applicant had requested be addressed in the external review process.
23 February 2024	OIC received the applicant's further email submission.
6 March 2024	Council requested an extension of time (which OIC confirmed) to provide a response to OIC's request that Council conducted further searches.
12 March 2024	OIC received the applicant's further email submission.
14 March 2024	OIC received the applicant's further email submission.
20 March 2024	OIC received the applicant's further email submission.
26 March 2024	OIC received Council's submissions and search records and requested Council to conduct further searches. OIC provided the applicant with the information Council has agreed to disclose in response to items 4 and 7 of the access application.
4 April 2024	OIC received Council's further search records.
11 April 2024	OIC conveyed a preliminary view to the applicant and invited the applicant to provide a submission if he wished to contest that view.
19 April 2024	OIC wrote to the applicant to confirm his disagreement with the preliminary view and provide a summary of the issues he had raised for consideration.
26 April 2024	OIC received the applicant's further email submission.
23 May 2024	OIC reiterated the preliminary view and notified the applicant that a formal decision would be issued to finalise the review.