



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>V43 and the Council of the City of Gold Coast; X20 (Third Party) [2024] QICmr 43 (19 September 2024)</i></b>
<b>Application Number:</b>	<b>317928</b>
<b>Applicant:</b>	<b>V43</b>
<b>Respondent:</b>	<b>Council of the City of Gold Coast</b>
<b>Third Party:</b>	<b>X20</b>
<b>Decision Date:</b>	<b>19 September 2024</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - applicant's dog was injured in a dog attack - name of third party dog owner sought in circumstances where the applicant seeks to pursue action recovering veterinary costs resulting from dog attack - third party objects to disclosure of name - administration of justice for a person - personal information and right to privacy</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Council of the City of Gold Coast (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for documents regarding its investigation into an incident where a wandering dog attacked the applicant's dog.<sup>2</sup>
2. Council located 46 pages and decided to disclose 20 full pages and 26 part pages to the applicant.<sup>3</sup> Council refused access to the information on 26 part pages (including the name of the owner of the dog Council found to be responsible for the attack) on the ground that disclosure would be, on balance, contrary to the public interest.<sup>4</sup>
3. The applicant applied to the Information Commissioner for external review of Council's decision, seeking access to the name of the owner of the dog. During the review, the Information Commissioner formed a view that access to this information could not be refused and conveyed this to Council and a third party (**Third Party**). Council accepted the preliminary view that access may not be refused, but the Third Party objected to disclosure.

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<sup>1</sup> On 21 February 2024.

<sup>2</sup> On 12 February 2024.

<sup>3</sup> On 27 March 2024.

<sup>4</sup> Section 47(3)(b) of the RTI Act.

4. For the reasons outlined below, I set aside Council's decision.<sup>5</sup> I find that disclosure of the Third Party's name is not contrary to the public interest and access may not be refused.

## Background

5. Significant procedural steps are set out in the Appendix to this decision.

## Reviewable decision

6. The reviewable decision is Council's decision dated 27 March 2024.

## Evidence considered

7. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
8. The only written submission received from the Third Party advises that they strongly object to disclosure of their name.<sup>6</sup> Despite being given the opportunity to do so, the Third Party did not make any further submissions supporting their case.<sup>7</sup>
9. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the access applicant's right to seek and receive information<sup>8</sup> and the Third Party's right to privacy and reputation.<sup>9</sup> I consider that in observing and applying the law prescribed in the RTI Act and IP Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,<sup>10</sup> and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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.*'<sup>11</sup>

## Information in issue

10. On external review, the applicant only seeks access to the Third Party's name. This information appears on the first page of Council's investigation report<sup>12</sup> (under the heading '*Details of the alleged offender*'). Accordingly, this is the only information in issue in this review.

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<sup>5</sup> Section 110(1)(c) of the RTI Act.

<sup>6</sup> On 4 July 2024.

<sup>7</sup> A preliminary view was conveyed to the Third Party by letter dated 13 June 2024. On the same date, the Third Party called OIC to advise that he objects to disclosure of his name and his intention to make submissions in response to the preliminary view. When no submissions were received by the due date, an email was sent to the Third Party on 3 July 2024 requesting written submissions be provided by 8 July 2024. The applicant replied by email the following day, advising that he objects to disclosure and would finalise his response by the follow day (5 July 2024). The Third Party was again emailed on 18 July 2024 and asked to provide any submissions he sought to rely on in the review, however, no submissions were received.

<sup>8</sup> As embodied in section 21 of the HR Act.

<sup>9</sup> As embodied in section 25 of the HR Act.

<sup>10</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw 'no reason to differ' from our position ([23]).

<sup>11</sup> XYZ at [573].

<sup>12</sup> Dated 18 February 2024.

## Issue for determination

11. The issue for determination is whether disclosure of the Third Party's name would be, on balance, contrary to the public interest to disclose.

## Relevant law

12. A person has a right to be given access to documents of an agency, subject to the provisions of the RTI Act.<sup>13</sup> It is Parliament's intention that if an access application is made to an agency for a document, access should be given to the document unless giving access would be contrary to the public interest.<sup>14</sup>
13. The RTI Act sets out certain grounds on which access to documents may be refused.<sup>15</sup> One of the grounds upon which access may be refused is where disclosure would, on balance, be contrary to the public interest.<sup>16</sup> It is Parliament's intention that grounds for refusing access to information be interpreted narrowly.<sup>17</sup>
14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:<sup>18</sup>
  - 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.
15. 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.

## Findings

### *Irrelevant factors*

16. I have not identified any irrelevant factors that arise in this matter, nor have I taken any into account including those set out in schedule 4, part 1 of the RTI Act.

### *Factors favouring disclosure*

17. The RTI Act recognises that a public interest factor will arise where disclosure could reasonably be expected to contribute to the administration of justice for a person.<sup>19</sup> In *Willsford and Brisbane City Council*,<sup>20</sup> the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. To enliven this public interest factor, an applicant must demonstrate:
  - they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be available under the law
  - they have a reasonable basis for seeking to pursue the remedy; and

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<sup>13</sup> Section 23 of the RTI Act.

<sup>14</sup> Section 44(1) of the RTI Act.

<sup>15</sup> Section 47 of the RTI Act.

<sup>16</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>17</sup> Section 47(2) of the RTI Act.

<sup>18</sup> Section 49(3) of the RTI Act.

<sup>19</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>20</sup> (1996) 3 QAR 368 (*Willsford*).

- disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>21</sup>
18. Based on the information located by Council and released to the applicant, I am satisfied that:<sup>22</sup>
- the applicant's dog was attacked by a roaming dog, while walking on a lead with the applicant
  - the applicant incurred vet bills to treat the injuries his dog sustained in the incident
  - Council investigated the incident to determine what regulatory action should be taken; and
  - Council concluded that the Third Party's dog was responsible for the attack on the access applicant's dog, and issued a penalty infringement notice against the Third Party for not securing his dog and declared the Third Party's dog a dangerous dog.
19. The applicant has suffered a loss and seeks access to the Third Party's name to pursue an action to recover the veterinary costs through a civil claim. This satisfies the first element of the *Willsford* criteria above at paragraph 17. Disclosing the Third Party's name to the applicant would allow the applicant to lodge and serve the claim on the Third Party. This satisfies the third element of *Willsford*.
20. In determining whether the applicant has a reasonable basis to pursue a civil claim against the Third Party, I do not need to be satisfied that the Third Party's dog was the dog responsible for the attack on the applicant's dog. Nor do I require material evidencing 'strong prospects' of successfully pursuing the remedy in question to be satisfied that this factor arises.<sup>23</sup> Noting particularly that Council has issued a fine against the Third Party in relation to the incident, and given the facts of Council's investigation outlined above at paragraph 18, I am satisfied the applicant has a reasonable basis for pursuing the remedy against the Third Party. As this satisfies the second element of *Willsford*, I am satisfied the administration of justice for a person factor is enlivened.

### **Factors favouring nondisclosure**

21. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm and that disclosing information that could reasonably be expected to prejudice the protection of an individual's right to privacy will favour nondisclosure.<sup>24</sup> The Third Party's name is his personal information,<sup>25</sup> enlivening these two nondisclosure factors.

### **Balancing the public interest**

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<sup>21</sup> *Willsford* at [17].

<sup>22</sup> Council's investigation report, including witness statements and photographs, totalling 46 pages and provided to OIC on 10 May 2024.

<sup>23</sup> *Willsford* at [19]-[21].

<sup>24</sup> Schedule 4, part 4, section 6 and schedule 4, part 3, item 3 of the RTI Act.

<sup>25</sup> Schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld) defines personal information 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.'

22. Even though the strength of the prospects of success is not relevant to determining whether the administration of justice factor<sup>26</sup> *applies*, the Information Commissioner has previously found that this will influence the weight to be attributed to this factor.<sup>27</sup>
23. Relevantly, I note Council stated the following when writing to the Third Party about its intention to declare his dog a dangerous dog:<sup>28</sup>

*Because your dog [redacted name and description] was involved in an attack on 12th February 2024 causing the death of another dog.  
Council has vet reports confirming the severity of the injuries sustained in the attack.  
Council has photographic evidence of the injuries sustained in the attack.  
Positive identification of the offending dog [redacted dog name] has been made  
Council is of the opinion that Council has sufficient evidence by way of statements and photographs to confirm an attack has taken place;  
Council is of the opinion that Council has sufficient evidence by way of statements and photographs to confirm an attack has occurred as defined in the Animal Management (Cats and Dogs) Act 2008.*

24. Given Council's findings above, I consider that the access applicant has a strong prospect of success, and the administration of justice disclosure factor should carry substantial weight.<sup>29</sup>
25. Weighing against this is the public interest in protecting the personal information and privacy of the Third Party.<sup>30</sup> These factors are usually considered to be deserving of very high weight, and in many cases, will be determinative. In this case, I am considering release of a person's name which will link that person as the owner of the dog found to be responsible for the fatal attack on another dog, which means the information is quite sensitive. I also recognise that disclosure is likely to result in the Third Party being contacted by the access applicant and therefore very likely to impact the Third Party's privacy. I collectively afford these factors significant weight.
26. The weight for and against disclosure is finely balanced in this matter. While I have taken into account the public interest in protecting the privacy and personal information of the Third Party and have given these factors high weight, I consider that the public interest in the administration of justice carries higher weight and is determinative in this case. Accordingly, I find that disclosure of the Third Party's name is not contrary to the public interest and access may not be refused.

## DECISION

27. I set aside Council's decision<sup>31</sup> and find that disclosure of the Third Party's name would not, on balance, be contrary to the public interest and access may not be refused.
28. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**J Williams**  
**Assistant Information Commissioner**

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<sup>26</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>27</sup> *Willsford* at [18].

<sup>28</sup> On 19 February 2024 (page 34 of the located documents).

<sup>29</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>30</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>31</sup> Section 110(1)(c) of the RTI Act.

**Date: 19 September 2024**

## **APPENDIX**

### **Significant procedural steps**

<b>Date</b>	<b>Event</b>
4 April 2024	OIC received the application for external review.
5 April 2024	OIC requested and received preliminary information and documents from Council.
29 and 30 April 2024	OIC advised the applicant and Council the external review had been accepted. OIC requested the located documents and a submission from Council.
10 May 2024	OIC received the documents and submission from Council.
7 June 2024	OIC requested information from the applicant.
10 June 2024	OIC received information from the applicant.
13 June 2024	OIC issued a preliminary view to Council and the Third Party and invited submissions. OIC also invited the Third Party to join the review as an external review participant. Council advised it accepted OIC's preliminary view on disclosure of the Third Party's name.
3 July 2024	OIC contacted the Third Party about the overdue response to OIC's preliminary view and granted further time to respond.
4 July 2024	OIC received correspondence from the Third Party objecting to disclosure of his name. OIC treated this as an application to participate and joined the Third Party as a participant to the external review.
18 July 2024	OIC advised the applicant and Council the matter would proceed to a formal decision as the Third Party objected to disclosure of his name. OIC contacted the Third Party noting no submissions had been received apart from the objection on 4 July 2024, and granted further time to respond. OIC advised the Third Party the matter would be finalised by a formal decision.