



Decision and Reasons for Decision

Citation:	<i>W54 and Sunshine Coast Regional Council</i> [2024] QICmr 42 (10 September 2024)
Application Number:	317861
Applicant:	W54
Respondent:	Sunshine Coast Regional Council
Decision Date:	10 September 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCES - EXEMPT INFORMATION - applicant seeks access to information concerning the identity of a complainant - whether disclosure could reasonably be expected to enable the existence or identity of a confidential source of information in relation to the enforcement or administration of the law, to be ascertained - whether information is exempt from disclosure under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(1)(b) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Sunshine Coast Regional Council (**Council**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information about a complaint made about the applicant's use of his property for short term accommodation, including the complainant's name and the reason for the complaint.
2. Council located 26 pages relevant to the application and released 23 full pages to the applicant and decided² to refuse access to parts of the remaining 3 pages.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.
4. For the reasons set out below, I affirm Council's decision and find that access to the redacted information in the 3 part pages can be refused on the ground that it is exempt information, as its disclosure could reasonably be expected to enable the identity of a

¹ Access application dated 8 February 2024.

² Decision dated 28 February 2024.

³ External review application dated 29 February 2024.

confidential source of information, in relation to the enforcement or administration of the law, to be ascertained (**the confidential source exemption**).⁴

Background

5. A complaint was made to Council about the applicant's property being used for short term accommodation. As a result, Council conducted a compliance investigation and concluded that the applicant's use of his property for short term accommodation was unlawful as it was not in compliance with planning laws.⁵

Reviewable decision

6. The decision under review is Council's decision dated 28 February 2024.

Evidence considered

7. Significant procedural steps relating to the external review are set out in the Appendix.
8. 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). I have taken into account the applicant's submissions⁶ to the extent they are relevant to the issue for determination in this review.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.⁸ I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*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*'.¹⁰

Information in issue

10. The only information in issue in this review is the full name and email address of the complainant (**Identifying Details**) appearing on three pages of the information located in response to the applicant's access application.

Issue for determination

11. The issue for determination is whether access to the Identifying Details may be refused on the basis that disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.¹¹

⁴ Section 67(1) of the IP Act and sections 47(3)(a), 48, and schedule 3, section 10(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁵ Sunshine Coast Planning Scheme 2014 and *Planning Act 2016* (Qld).

⁶ Submission received with application for external review form on 29 February 2024 and further submissions from the applicant by email on 24 June 2024.

⁷ Section 21(2) of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

¹¹ Section 67(1) of the IP Act, sections 47(3)(a), 48, and schedule 3, section 10(1)(b) of the RTI Act.

12. OIC's jurisdiction under the IP Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies and Ministers. The applicant provided OIC with submissions in support of his external review application and during the external review.¹² Some of the applicant's submissions raise concerns that are outside OIC's jurisdiction which are not relevant to the issue for determination in this review and which, consequently, have not been considered in this decision. Generally, these relate to the applicant's concerns about the:
- interference of others and his rights being breached regarding how he should be able to use his own home
 - actions and processes Council undertook in not attempting to resolve the compliance issues (in relation to the property being used as short term accommodation), informally with him and the complainant; and
 - the financial loss as a result of not being able to use the property for short term accommodation and a request for this lost money to be repaid.

Relevant law

13. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information¹³ subject to certain limitations.¹⁴ One such limitation is that an agency may refuse access to a document to the extent it comprises exempt information.¹⁵
14. Relevantly, information is exempt if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.¹⁶
15. Information will be exempt under schedule 3, section 10(1)(b) of the RTI Act if:
- there exists a confidential source of information
 - the information which the confidential source has supplied is in relation to the enforcement or administration of the law; and
 - disclosure of the information in issue could reasonably be expected¹⁷ to enable the existence or identity of the confidential source of information to be ascertained.¹⁸
16. In evaluating this exemption, a decision maker must also consider the exceptions outlined in schedule 3, section 10(2) of the RTI Act, in accordance with the comments of Chief Justice Holmes in *Commissioner of the Police Service v Shelton & Anor.*¹⁹

¹² As set out in the Appendix.

¹³ Section 40 of the IP Act.

¹⁴ Section 67(1) of the IP Act provides that an agency may refuse access in the same way and to the same extent as under section 47 of the RTI Act.

¹⁵ Under section 67(1) of the IP Act, sections 47(3)(a) and 48 of the RTI Act.

¹⁶ Schedule 3, section 10(1)(b) of the RTI Act

¹⁷ The phrase 'could reasonably be expected to' requires an objective consideration of all the relevant evidence and consideration of whether the expectation is reasonably based. A reasonable expectation is not irrational, absurd or ridiculous. *Sheridan and South Burnett Regional Council and Others* [2009] QICmr 26 (9 April 2009) at [189]-[193] referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97; see also *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

¹⁸ *McEniery and Medical Board of Queensland* (1994) 1 QAR 349 (**McEniery**) at [16]. *McEniery* considered the application of section 42(1)(b) of the repealed *Freedom of Information Act 1992* (Qld), identical in terms to schedule 3, section 10(1)(b) of the RTI Act, and has been relied upon in subsequent decisions applying schedule 3, section 10(1)(b) of the RTI Act, including *94HQWR and Queensland Police Service* [2014] QICmr 45 (10 November 2014) at [16]-[31] and *Shirrone Pty Ltd and Department of Agriculture, Fisheries and Forestry* [2014] QICmr 46 (18 November 2014) at [13]-[45].

¹⁹ [2020] QCA 96 at [47].

...an agency cannot reach the view necessary... in relation to information which may be exempt under sch 3 s 10 without a consideration of the documents the subject of the application to ascertain whether they fall within s 10(2).

17. Schedule 3, section 10(2) of the RTI Act provides that information is not exempt information if it consists of:

- ...
- (a) *matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or*
 - (b) *matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or*
 - (c) *a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or*
 - (d) *a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the Crime and Corruption Act 2001; or*
 - (e) *a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.*

Findings

18. I consider each of the factors of the confidential source exemption are satisfied in this case, as set out below.

Is the source of the information confidential?

19. Yes, for the following reasons.

20. A confidential source of information supplies information on the understanding that their existence or identity will remain confidential.²⁰ This understanding may arise by express agreement between the parties.²¹ Alternatively, the surrounding circumstances may indicate an implicit mutual understanding of confidentiality of the identity of the source between the parties.²²

21. On the information before me, there is no evidence to indicate that an express assurance of confidentiality was given by Council to the person who made the complaint. It is therefore necessary to consider the surrounding circumstances to determine whether a mutual understanding of confidentiality of the identity of the source can be implied between the parties.

22. In this case, guidance as to an implied mutual understanding of confidentiality can be gleaned from Council's online complaint form,²³ which appears to have been used to submit the complaint and which explicitly states that Council will deal with personal information in line with its privacy policy.²⁴ The reference to Council's Privacy Policy implies that personal information will not be given to any other party, unless the complainant provided his or her permission, or the law required Council, as regulator, to do so.²⁵

²⁰ *McEniery* at [20]-[22].

²¹ *McEniery* at [35].

²² *McEniery* at [50].

²³ <https://www.sunshinecoast.qld.gov.au/council/contact-council/concerns-complaints-compliance/development-work>, accessed on 12 August 2024.

²⁴ [SCC policy document_strategic \(kc-usercontent.com\)](#), accessed on 12 August 2024.

²⁵ The Information Commissioner has previously recognised an implicit understanding that the identity of the complainant will not be disclosed in circumstances where the implied right to privacy is expressly stated in the complaint form used to make complaints to Council, in *Sedlar and Logan City Council* [2017] QICmr 52 (7 November 2017) at [76].

23. In addition, I consider that the fact that the complainant chose not to complain directly to the applicant but rather chose to complain to Council and Council did not disclose the Identifying Details of the complainant when conducting its compliance investigation, demonstrate an implied understanding that the Identifying Details were those of a confidential source of information.
24. Taking all of this into consideration, I consider that these circumstances demonstrate that there is an implied understanding of confidentiality between Council and the complainant. On this basis, I am satisfied that the complainant is a confidential source of information and therefore this first requirement is met.

Was the information supplied in relation to the enforcement or administration of the law?

25. Yes, for the following reasons.
26. The term 'in relation to the enforcement or administration of the law' has been interpreted broadly and has been recognised as extending to various government activities in relation to which the relevant agency has regulatory responsibilities.²⁶ The Information Commissioner has previously found that a complaint to Council relates to the enforcement or administration of Council bylaws.²⁷
27. As set out in the background above, a complaint was made to Council about the applicant's property being used for short term accommodation which was found by Council to breach planning laws.²⁸ I note the information supplied in respect to the complaint relates to the Sunshine Coast Planning Scheme 2014 and the *Planning Act 2016* (Qld) which Council administers and/or enforces.
28. The applicant confirmed that, as a result of the complaint, Council issued a cease and desist notice to him for the infringement of a bylaw.²⁹
29. In its IP Act decision,³⁰ Council confirmed '*... the present case deals with reported breaches of planning legislation including under the Planning Act 2016. Council is a regulatory agency with compliance and enforcement functions for such laws.*'
30. In these circumstances, I am satisfied that the information supplied in the complaint relates to the enforcement or administration of the law. Accordingly, this second requirement of the confidential source exemption is made out.

Would disclosure of the Identifying Details reasonably be expected to enable the identity of the confidential source of information to be ascertained?

31. Yes, for the following reasons.
32. The Identifying Details comprise the complainant's first and last name, and email address. Therefore, given the complainant is the confidential source of information, disclosure of the Identifying Details could reasonably be expected to enable the identity of the confidential source to be ascertained.

²⁶ *Bussey and Bowen Shire Council* (1994) 1 QAR 530 (*Bussey*) at [28].

²⁷ *Bussey* at [28]-[29].

²⁸ As detailed in Council's letter to the applicant dated 28 November 2023.

²⁹ In a telephone conversation between an OIC staff member and the applicant on 26 April 2024.

³⁰ Dated 28 February 2024.

33. I am therefore satisfied the third requirement of the confidential source exemption is met.

Do any of the exceptions apply?

34. No, for the following reasons.
35. I have reviewed the Identifying Details and am satisfied that the complainant's information does not consist of any of the information set out in the exceptions under schedule 3, section 10(2) of the RTI Act.

Conclusion

36. I am satisfied that all requirements of the confidential source exemption are met and that no exceptions to the exemption apply. Therefore, I am satisfied that access to the Identifying Details may be refused on the ground that the information is exempt information.³¹

DECISION

37. I affirm Council's decision and find that access to the Identifying Details may be refused under section 67(1) of the IP Act and sections 47(3)(a), 48, and schedule 3, section 10(1)(b) of the RTI Act because disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.
38. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 10 September 2024

³¹ Section 67(1) of the IP Act and sections 47(3)(a), 48, and schedule 3, section 10(1)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
29 February 2024	OIC received the application for external review.
28 March 2024	OIC notified the applicant and Council that the application for external review had been accepted and requested information from Council.
28 March 2024	OIC received the requested information from Council.
26 April 2024	OIC conveyed an oral preliminary view to the applicant.
4 June 2024	OIC conveyed a written preliminary view to the applicant.
24 June 2024	OIC received the applicant's written submissions contesting the preliminary view.
15 August 2024	OIC notified the applicant that a formal decision would be issued to finalise the review.