

Officer: Kim Driver
Direct telephone: 07 5420 8819
Direct email: rti@sunshinecoast.qld.gov.au
Your reference: RTI20/011

Monday, 15 March 2021

Ms Melva Hobson, President
Organisation of Sunshine Coast Association of Residents (OSCAR)
PO Box 105
COOLUM BEACH QLD 4573

By email: president@oscar.org.au

Dear Ms Hobson

Re: Internal review for RTI Application – RTI20/011

I refer to your email of 15 February 2021 addressed to Victor Catchpoole, requesting an internal review of the Right to Information (RTI) decision notice dated 18 January 2021 (reference RTI20/011.)

The request for internal review was passed to me for action pursuant to section 80 of the *Right to Information Act 2009 (Qld)* (**RTI Act**). I am in a more senior role than the original decision maker, and am authorised to decide your request for an internal review.

As the officer conducting the internal review I have carefully considered all the documents redacted or containing redactions under the original decision as well as the questions raised in your letter dated 17 February 2021.

Decision

Following assessment of the information provided to you, I have decided to:

1. Release in full **3216** pages with no redactions
2. Refuse **267** pages in full, and another **18** pages in part, due to legal professional privilege (including legal discussion, legal advice and communications between lawyers) “sch3(7) RTI Act”.
3. Partially refuse **200** pages, to the extent they contain certain personal information, (including mobile telephone numbers of staff and other personal information details) “s.47(3)(b) RTI Act”.
4. Partially refuse **4** pages identified to contain irrelevant information, as marked “s.73 RTI Act - irrelevant”. This information falls outside the scope of the request, as it relates to completely separate locations and matters, or it is outside of the requested date range.

Note: These figures count 3 pages twice which have redactions under both “sch 3(7)” and “s.47(3)(b)”.

In effect, I have made the same decision as the original decision, and have decided to refuse access to the exact same extent of information and documents. The reasons for my decision are outlined below and in the attachment.

Reasons for decision

In your correspondence dated 17 February 2021, you raised a number of questions in relating to specific pages and combination of pages of the original decision. Responses to these questions are contained in Attachment 1 to this letter.

In addition to the comments and explanations in Attachment 1, and the original decision notice, it is my view that:

1. The ground for refusal under Schedule 3, section 7 (*Information subject to legal professional privilege*) of the *Right to Information Act* 2009 is established;
2. on balance, any pro-disclosure arguments are outweighed by the factors favouring nondisclosure, for the information refused under Section 47(3)(b) (*Grounds on which access may be refused*); and
3. Section 73 (*Deletion of exempt information*) does not apply to the irrelevant information identified in the 4 pages.

Review rights

Should you not be satisfied with this decision (or any part of it), then you may apply to the Office of the Information Commissioner for an external review. A review must be made within 20 business days from the date of this notice or within any further time allowed.

An external review can be sent to the Information Commissioner in one of these ways:

Online: <https://www.oic.qld.gov.au/apply-for-external-review>
Email: administration@oic.qld.gov.au
Post: PO Box 10143, Adelaide Street, Brisbane, Qld 4000

If you have any questions when requesting an external review please contact the Office of the Information Commissioner's enquiries service on (07) 3234 7373.

Kind regards



Kim Driver
Manager Corporate Governance Branch

ATTACHMENT 1 – Questions from OSCAR in relation to RTI20/011 (from correspondence dated 17 February 2021 – relating to specific pages and combination of pages

Relevance of current legal case to a decision under schedule 3, section 7 (Legal professional privilege):

In relation to legal professional privilege, the OIC guidelines affirm as follows
(<https://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment/legal-professional-privilege-a-guide-for-applicants>):

Does LPP only apply to current legal proceedings?

No. LPP can apply where a person seeks or obtains legal advice, even if no legal proceedings are currently in progress. LPP can also apply before proceedings begin, if proceedings are likely to commence.

What if the legal proceedings are finalised?

Once the elements of LPP are met, the information will continue to be privileged, even after any legal proceedings are finalised.

Pages 130-134:

- These pages were refused on the basis of legal professional privilege.
- The 4 pages containing irrelevant information are 2523, 2524, 2525 and 2537. You will note that 2523 and 2527 contain information from July 2018 which is outside of the requested date-range, but in any event these messages do not refer to the Sekisui House development applications. 2524 and 2525 have withheld only a few words which identify a different subject matter.

Pages 916-988:

- These pages have been identified as relevant to your request and relate to the Sekisui House development applications.
- If further details about these pages were to be revealed, this may waive the legal professional privilege which attaches to the confidential communications.
- As part of the formal decision to refuse access, there is no requirement to provide you with the exempt information (as per section 55(3) of the RTI Act).

Page 1083:

- This page will directly reveal the content or substance of privileged, confidential communications with a lawyer who was assisting or advising Council.
- As per clause 3 in the preamble to the RTI Act, the Act reflects Parliament's opinion about making information available and the public interest. On this front, section 48(2) provides that schedule 3 sets out the types of information, the disclosure of which Parliament considers would be contrary to the public interest (including legal professional privilege).
- Accordingly, when information is exempt it means that Parliament has already decided it is contrary to the public interest to release and the agency is not required to consider any public interest arguments about why it should be released.

Remaining privileged pages 1577-1724, 1923-1938, 1954-1957, 1987-1989, 2079 and 2217-2232:

- All of these pages comprise privileged, confidential communications with a lawyer who was assisting or advising Council, except for a few pages which would reveal or infer the content or substance of a privileged communication.
- As mentioned above, if further details about these pages were to be revealed, this may waive the legal professional privilege which attaches to the confidential communications.
- As part of the formal decision to refuse access, section 55(3) affirms there is no requirement to provide you with the exempt information.

Page 1326 and internal correspondence from other units:

- The scope of OSCAR's RTI application was limited to particular officers involved in the planning assessment, plus the CEO. This scope has identified over 3700 pages, and if it was broader then Council may have refused to deal with the application on the basis that it would substantially and unreasonably divert Council resources.

Final comments:

- Overall, while Council may be restricted from discussing or revealing the exempt information, Council has already released a very significant amount of information in relation to the development applications, including another 3435 pages which were fully or partially released for your application under the RTI Act.
- Although Council is not required to consider public interest arguments which favour disclosure of exempt information, the original approval, conditions and associated documents were all made public at the time of the decision in 2018, and in my view there is nothing in the privileged documents which would significantly contribute to the transparency around Council's decision making.