

Officer: Victor Catchpoole
Direct telephone: 07 5420 8819
Email: rti@sunshinecoast.qld.gov.au
Our reference: RTI20/011
Your reference:

18 January 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

Decision under *Right to Information Act 2009*

I am writing to provide the notice of decision for your application for access to certain documents under the *Right to Information Act 2009* ("RTI Act").

Scope of your application

Your application has sought access as follows:

Subject matter:

Documents relevant to the approval by Sunshine Coast Regional Council (SCRC) of MCU17/0095 and MCU17/0096, development applications by SH Coolum Pty Ltd (Sekisui).

The type of documents:

All internal memos, minutes, correspondence and documents including messages, emails and SMS's between the Assessment staff and their line managers, the Executive Group managers, the CEO, the Mayor and Chief of Staff.

Time period / date range:

1 January 2015 to 21 February 2020

Through subsequent correspondence,¹ it was affirmed that the request be limited to communications between Mark Cornell, John Alderson, Patricia Jensen, James Ruprai, the then CEO Michael Whittaker and the Mayor's Chief of Staff Craig Matheson. It was also clarified that the application will exclude any communications where either the sender or recipients do not include one or more of the officers mentioned.

Searches conducted and documents located

Searches have been conducted to locate all documents relevant to your application and a total of 3702 pages have been identified as relevant.

¹ As per emails with you on 2 and 10 October 2020

Where possible, duplicate documents have not been included. However, the documents still include some duplication, particularly where there are different revisions of draft documents and minor changes result in duplicate content but not a duplicate document. There may be some instances where full documents are exact duplicates and are included more than once, including some duplicates which are attachments and it would not be clear what was attached if they were not provided in-place.

A proportion of the documents identified include drafts which were prepared for Council meetings. One or more of these versions would have been sent between officers via a separate information system for approval of Council meeting material. I am advised that this system does not record or identify the time and date when the documents were submitted and it does not identify exactly which versions were sent between officers. For completeness I am therefore providing all drafts and revisions kept by this system, and again there may be some duplication with this material.

Decision

I have decided to:

- give full access to 3145 pages;
- give access to 200 pages, subject to the deletion of certain information on the basis that disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act; and
- refuse access to 342 pages, as well as certain information in another 18 pages, under schedule 3, section 7 of the RTI Act.

The above figures give a total of 3705 pages, as there are 3 pages under which information is refused under more than one ground for refusal.

Furthermore, I have also decided to delete certain irrelevant information within 4 pages, and these pages are already counted within one of the above items.

Below I have set out the reasons for this decision.

Irrelevant information

Section 73 of the RTI Act states:

- (1) *This section applies if giving access to a document will disclose to the applicant information the agency or Minister reasonably considers is not relevant to the access application for the document.*
- (2) *The agency or Minister may delete the irrelevant information from a copy of the document and give access to the document by giving access to a copy of the document with the irrelevant information deleted.*

Your application has specifically requested internal communications about particular development applications, during a specific date range. I have deleted certain information within 4 pages which relates to a separate issues or locations, or which falls outside of the time frame. It does not comprise the information requested in your application.

Contrary to public interest information

Section 47(3)(b) of the RTI Act provides that access to a document may be refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.

The information to which access is refused under this provision ("matter in issue") is limited to certain names, identifying information, contact details and other personal information of other people, including mobile phone numbers and other purely private information about certain officers.

In deciding that disclosure of this particular information would, on balance, be contrary to the public interest, I have undertaken the steps set out in section 49(3)(a) to (g) of the RTI Act.

Firstly, I have noted and disregarded the irrelevant factors, and secondly I have identified no factors identified as favouring disclosure of the specific information, including the factors in schedule 4, part 2 of RTI Act.

Here are factors identified as favouring nondisclosure (schedule 4, part 3 or 4 of *RTI Act*):

- Disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.
- Disclosing personal information.

It is also well established that a mobile telephone number which allows an officer to be contacted directly and potentially outside of working hours, falls outside the realm of routine work information and attracts a certain level of privacy.²

In the absence of factors favouring nondisclosure of the information, I find that its disclosure is, on balance, contrary to the public interest under section 49 of the RTI Act.

Exempt information – legal professional privilege (schedule 3, section 7)

This provision of the RTI Act states:

"Information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege."

In *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 74 ALJR 339, the High Court laid down the test of legal professional privilege. Legal professional privilege attaches to confidential communications between a lawyer and client (including communications through their respective servants or agents) made for the dominant purpose of -

- (a) seeking or giving legal advice or professional legal assistance; or
- (b) use, or obtaining material for use, in legal proceedings that had commenced, or were reasonably anticipated, at the time of the relevant communication.

Privilege will extend to any document which directly reveals or infers the content or substance of a privileged communication.³ Privilege can also extend to communications with a third party who is not an agent of the client or the lawyer,⁴ as long as the dominant purpose test is met.

The information to which access is refused under this provision comprises confidential communications, which I am satisfied took place for the dominant purpose of obtaining material for use in legal proceedings, or seeking or giving confidential legal advice or professional legal assistance.

Processing and access charges

In this instance I have decided to waive charges as required by section 66(2)(b) of the RTI Act, as I note your organisation currently holds financial hardship status as given by the Information Commissioner.

² *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at paragraph 19.

³ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at page 569; *AWB Ltd v Cole* (2006) 152 FCR 382 at page 417.

⁴ *Pratt Holdings Pty Ltd and Another v Commissioner of Taxation* (2004) 136 FCR 357 at 386.

Access to the documents

I will provide a copy of the documents to which access is given via email. Due to their size, I can send an email which will enable you to download the documents from our secure system.

Public access to the documents

Under the RTI Act, a document which does not contain the applicant's personal information may be made available to the public through the disclosure log on our website.

Review rights

If you are not satisfied with this decision (or any part of it), then you may apply for internal or external review. A review must be made within 20 business days from the date of this notice or within any further time allowed. You do not have to apply for internal review before seeking an external review.

To seek an internal review by a more senior officer, please send a written request to Council.

Alternatively, 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

Yours sincerely

Victor Catchpoole
Right to Information Officer