QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Whiteroom Architects Pty Ltd v Information Commissioner* [2021] QCATA 108
PARTIES:	**WHITEROOM ARCHITECTS PTY LTD** (applicant/appellant) **v** **OFFICE OF THE INFORMATION COMMISSIONER** **MORETON BAY REGIONAL COUNCIL** **MICHAEL NIVEN** (respondents)
APPLICATION NO/S:	APL308-20
MATTER TYPE:	Appeals
DELIVERED ON:	15 September 2021
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Judicial Member D J McGill SC
ORDERS:	**1. Appeal dismissed.** **2. If any party seeks an order for costs, the party is to file and serve on the other parties written submissions identifying the order sought, and setting out the grounds supporting it, within twenty-one days of this decision.** **3. If such submissions are filed, the party from whom costs are sought may file and serve submissions in response within twenty-one days from receipt of the served submissions.** **4. If submissions in response are filed and served, the party seeking costs may file and serve submissions in reply within fourteen days.** **5. If no submissions seeking costs are filed within twenty-one days from this decision, there be no order as to costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – FREEDOM OF INFORMATION – REVIEW OF DECISIONS – OTHER STATES AND TERRITORIES – appeal to Tribunal only

	on question of law – whether nature of the applicant for disclosure relevant matter – appellant failed to show error of law by decision maker
	Right to Information Act 2009 (Qld) s 119.
	Commissioner for Liquor and Gaming v Farquhar Corporation Pty Ltd [2018] QCA 202 *Osland v Secretary, Department of Justice* (2010) 241 CLR 320 *Powell v Queensland University of Technology* [2018] 2 Qd R 276
APPEARANCES & REPRESENTATION:	
Applicant:	Self-represented
Respondents:	Self-represented
	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

[1] On 4 September 2020 the first respondent, the Information Commissioner, set aside the decision of the second respondent to refuse access to certain information under the *Right to Information Act* 2009 (Qld) ("the RTI Act"), and decided that there were no grounds on which access to the information in question could be refused under the RTI Act. The appellant has appealed to the Appeal Tribunal to review this decision, as it is entitled to under the RTI Act s 119.

[2] By that section, the appeal is only on a question of law, and may only be by way of a rehearing. That the appeal provided by s 119, because it was confined to a question of law, is in the nature of judicial review, is supported by strong authority.[1] The appeal does not provide a mechanism for reconsidering any issue of fact decided by the first respondent, except on the narrow ground that, as a matter of law, the decision on the issue was not open on the material before the first respondent. The only issue is whether an error of law was made by the first respondent.[2]

[3] The appeal was heard on the papers, pursuant to a direction of the President of the Tribunal on 8 June 2021. The appellant set out, with the Application, appeal grounds which are essentially brief submissions is support of the appeal, and otherwise relied on a letter sent to the first respondent in response to the preliminary view expressed by the first respondent in response to the request for external review. The first respondent has filed brief formal submissions, and the second respondent has filed brief submissions supporting the decision of the first respondent. The third respondent filed submissions in writing in opposition to the appellant, and

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1 *Osland v Secretary, Department of Justice* (2010) 241 CLR 320; *Powell v Queensland University of Technology* [2018] 2 Qd R 276 at [42] – [46]. That case involved the *Information Privacy Act* 2019 (Qld) s 132, but that is relevantly in the same terms as the RTI Act s 119.

2 As to the identification of an error of law, see also *Commissioner for Liquor and Gaming v Farquhar Corporation Pty Ltd* [2018] QCA 202.

subsequently further submissions in writing. No submissions in reply have been provided by the appellant.

Background

[4] The appellant, as part of its business, investigates sites for possible development on behalf of owners or developers. It charges fees for such services. As part of that process, it prepares for and undertakes a prelodgement meeting with officers of the relevant local authority (in this case the second respondent) in which a development proposal prepared by the appellant is shown to the officers and comments are obtained from them on the issues they would assess and the policies they would apply if the proposal were the subject of a formal application for development approval. In this way, guidance can be obtained as to the likely approach of the local authority to a formal application for development approval, and the opportunity would arise for the modification of the proposed development so as to improve the prospects for approval in a modified form. Apart from helping to shape a proposal to maximise the prospects of approval, such an exercise would assist in the process of assessing the viability of a particular development proposal. The views expressed by the officers do not bind the local authority, but no doubt such a practice assists in managing development, by helping to bring development proposals into line with the planning requirements of the local authority.

[5] In this case, the appellant made application for, and held on 14 June 2019, such a prelodgement meeting, with reference to a proposal to develop a particular parcel of land. For this purpose, a plan of the proposed development was prepared by the appellant, and provided to the second respondent. The meeting was held, and an officer of the second respondent prepared a document, described as minutes of the meeting, which was provided to the appellant. For practical purposes, the document acts as a written record of the views expressed at the meeting by the officers as to the proposed development, and any difficulties with any planning policies of the council which it would produce. The first respondent identified the documents in issue as the plan provided by the appellant to the second respondent, and the minutes of the meeting.

[6] This occurred in a context where the second respondent had, on 12 April 2019, approved an application for a development permit for a material change of use of the relevant parcel of land for childcare centre. That approval is a public document, and sets out some conditions of the approval. The application under the RTI Act was made to the second respondent by the third respondent on 6 August 2019, referred to the approval of April 2019, and "correspondence … after the development approval was issued" with persons who would include the appellant. This material was identified as falling within the scope of the request. Evidently after the prelodgement meeting a development proposal was submitted to the second respondent, and approved by it. That approval is available to the public.

Appellant's submissions

[7] The first two paragraphs of the grounds of appeal are in very general terms, and presumably summarise the effect of what follows. The first substantive argument was that the first respondent had erred in failing to have regard to the nature of the applicant under the RTI Act, said to be required by the RTI Act. As emerges from following paragraphs, what is relied on is that the third respondent, who made the application under the RTI Act, was said to be a director of a company owning a

parcel of land near the parcel the subject of the prelodgement meeting, which had been the subject of a successful application for development approval, granted in September 2017, for a childcare centre. It was said that in these circumstances the applicant had not been acting in the public interest, but acting for commercial gain.[3] It was also said that he had lodged a submission opposing the grant of the development permit for a material change of use of the relevant parcel of land.

[8] The short answer to this point is that it was not a matter raised by the appellant with the first respondent. In a response to the preliminary view of the first respondent, the appellant sought the identity of the applicant, but it does not appear that the information relied on above was put before the first respondent. There was therefore no error of law by the first respondent in failing to have regard to it, unless the RTI Act requires that the nature of the applicant be taken into account in a way that the first respondent overlooked. The appellant did not identify any specific provision of the RTI Act which was relied on to show that the first respondent was obliged to consider the nature of the applicant for the information, and I have identified no such provision.[4]

[9] An examination of Schedule 4 to the RTI Act indicates that sometimes the relationship between a particular person and the relevant information is relevant on some basis. For example, if the information is personal information, it is relevant whether the applicant is the person in question. But there does not appear to be any provision which makes the nature of the applicant a relevant matter in all cases. Therefore there was no error of law in failing to have regard to this matter.

[10] It was also submitted that the disclosure of the information would destroy or diminish the commercial value of the information to the appellant. It would disclose information dealing with the business, professional, commercial or financial affairs of the appellant, and of its client, and could reasonably be expected to have an adverse effect on those affairs. As well, it could reasonably be expected to prejudice the supply of future information of this type.

[11] The first respondent identified as relevant factors favouring non-disclosure, that disclosure could reasonably be expected to prejudice the business, professional, commercial or financial affairs of entities, or to cause a public interest harm because the information sought to be disclosed had a commercial value, and disclosure could reasonably be expected to destroy or diminish that value: [36]. These matters were considered, but the first respondent did not accept that the information provided by the appellant was sufficient to establish that any of these matters was made out. It seems to me that these were essentially factual conclusions, which are not shown to be so unreasonable as to amount to an error of law.

[12] I can see that, at least in theory, being able to obtain a copy of the minutes of the prelodgement meeting and the plan on which it was based could, in some circumstances, be of benefit to a potential client of the appellant, who could in this way avoid engaging the appellant (or someone in the same business) to repeat the exercise, perhaps with a slightly different plan. The difficult with that in the present case however is that there has subsequently been an application for development approval lodged in respect of the site, and at that point a good deal of information

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3 I should record that this is a conclusion disputed in submissions by the third respondent. It is unnecessary to consider the factual issues raised by the third respondent.

4 There is authority to the contrary: *State of Queensland v Albietz* [1996] 1 Qd R 215 at 219.

about this site became publically available anyway, including information of this nature. In those circumstances, it was reasonable for the first respondent to have concluded that these factors favouring non-disclosure had little or no weight.

[13] The first respondent also considered some other factors, but these do not appear to be pressed on appeal. In any case, the situation is essentially the same as with the factors considered above. Overall, the appellant has failed to demonstrate any error of law on the part of the first respondent. From the limited material provided by the appellant, it appears to have been really seeking a merits review of the decision of the first respondent, but that is not the type of appeal provided for by the RTI Act s 119. In those circumstances, the appeal is dismissed, with directions about any submissions for costs