

Customer Contact
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07 4679 4000

www.wdrc.qld.gov.au



OUR COMMUNITIES | OUR FUTURE

Address all correspondence to the
Chief Executive Officer PO Box 551, DALBY, QLD 4405

info@wdrc.qld.gov.au

ENQUIRIES TO:
K Gillespie
P 1300 268 624
P 07 4679 4000 (interstate)

FILE REF:
AD8.1.4
RTI 23/24-009

ECM DOC SET
5036134

KMG

18 April 2024

KJA

Via email: foi+request-11229-ca019c1d@righttoknow.org.au

Dear KJA

RE: APPLICATION UNDER THE RIGHT TO INFORMATION ACT 2009
OUR REF: RTI 23/24-009

I refer to your application which was received by Western Downs Regional Council on 14 March 2024 seeking access to the following documentation:-

'...any information on the development of Thomas Jack Park from 2020 through 2024 including community consultation, surveys, council minutes, public engagement, non council engagement, submissions from third party consultants, architects, public relation firms or another entity and any other material related to any proposed development of the park.'

Further, I refer to Council's correspondence dated 21 March 2024 advising that I had formed the view that your application was not valid because the application was not in the approved form, and no application fee accompanied the application. This letter provided you the opportunity to rectify by 16 April 2024. No response was received.

The purpose of this correspondence therefore is to notify you of my decision on your application.

DECISION NOTICE
Right to Information Act 2009

I confirm that as a decision maker with delegated authority by the Chief Executive Officer to make decisions on applications¹, I have made a decision to **refuse to deal with your application because it is noncompliant with the application requirements in section 24 of the RTI Act.**

The relevant sections of the RTI Act are set out below:

24. Making access application

(1) *A person who wishes to be given access to a document of an agency or a document of a Minister under this Act may apply to the agency or Minister for access to the document.*

(2) *The application must—*

- (a) *be in the approved form and be accompanied by the application fee; and*
- (b) *give sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and*
- (c) *state an address to which notices under this Act may be sent to the applicant; and*
- (d) *state whether access to the document is sought for the benefit of, or use of the document by—*

- (i) *the applicant; or*
 - (ii) *another entity; and*
- Example for paragraph (d)(ii)—*

A journalist makes an access application for a document for use of the document by an electronic or print media organisation.

(e) *if access to the document is sought for the benefit of, or use of the document by, an entity other than the applicant—the name of the other entity. ...*

(4) *The application fee mentioned in subsection (2)(a) may not be waived.*

33. Noncompliance with application requirement

(1) *This section applies if—*

- (a) *a person purports to make an access application for a document to an agency or Minister; and*
- (b) *the application does not comply with all relevant application requirements.*

(2) *The agency or Minister must make reasonable efforts to contact the person within 15 business days after the purported application is received and inform the person how the application does not comply with a relevant application requirement.*

(3) *An agency or Minister must not refuse to deal with an application because it does not comply with all relevant application requirements without first giving the applicant a reasonable opportunity to consult with a view to making an application in a form complying with all relevant application requirements.*

(4) *The applicant is taken to have made an application under this Act if and when the application is made in a form complying with all relevant application requirements.*

(5) *Subsection (4) does not limit section 32 .*

(6) *If, after giving the opportunity mentioned in subsection (3) and any consultation, an agency or Minister decides the application does not comply with all relevant application requirements, the agency or Minister must, within 10 business days after making the decision, give the applicant prescribed written notice of the decision.*

(7) *In this section—*

"relevant application requirement" , for an access application, means a matter set out in section 24 (2) or (3) that is required for the application.

The reasons for my decision are as follows:-

- (i) within 15 business days of the purported application being received, Council made reasonable efforts in the form of correspondence dated 21 March 2024, to inform you that your application did not comply with the relevant application requirements provided in section 24 of the RTI Act and provided you with reasonable opportunity to consult with a view to making your application

¹ *Right to Information Act 2009 - Section 30(2) – ‘The agency’s principal officer may delegate the power to deal with the application to another officer of the agency’.*

compliant;

- (ii) this correspondence was required as part of an agency's obligations pursuant to section 33(2) and (3) of the RTI Act;
- (iii) section 24(4) of the RTI Act clearly states that the application fee may not be waived; and
- (iv) as no application fee has been received, your application does not comply with all relevant application requirements as prescribed in section 24(2)(a) of the RTI Act.

Compatibility with human rights

The *Human Rights Act 2019* (the HR Act) requires all public sector entities in Queensland to act compatibly with human rights and to give proper consideration to human rights before making a decision. Subject to some exceptions, it is unlawful for a public entity to make a decision in a way not compatible with human rights, or to make a decision and fail to give proper consideration to relevant human rights.

These exceptions include that the public entity could not reasonably have acted differently or made a different decision because of another law. Human rights may also be limited where that limit is justified and reasonable.

In making this decision, I have had regard to the *Human Rights Act 2019*, particularly the right to seek and receive information incorporated in the right to freedom of expression as embodied in section 21 of the HR Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be 'respecting and acting compatibly with' this right and others prescribed in the HR Act, and that I have done so in making this decision, as required under section 58(1) of the HR Act.

Review rights

If you are not satisfied with this decision (or any part of it) you have the right to request a review of the decision either by Council (internal review) or by the Office of the Information Commissioner (external review).

(a) Internal Review

Under the RTI Act you have the right to request an internal review of this decision². An application for an internal review must be made to Council within 20 business days of this decision. Council then has up to 20 business days to complete the review.

Applications for review can be lodged in person, by post, by fax or by email.

Chief Executive Officer
Western Downs Regional Council
30 Marble Street
(PO Box 551)
DALBY QLD 4405
Fax: (07) 4679 4099 or Email: info@wdrc.qld.gov.au

The review will be undertaken by an officer more senior to the original decision maker. The internal review officer is required to make an independent decision on your application and will consider additional evidence or information raised in your review request.

If you are still not satisfied with the internal review decision, you will have the right to request an external review. However, **you do not have to request an internal review to be eligible to apply for an external review.**

² *Right to Information Act 2009* - Section 80 - Internal Review

(b) External Review

You may wish to apply for an external review of this decision by the Office of the Information Commissioner³. You do not need complete an internal review before submitting a request for external review. To apply for an external review, please contact the Office of the Information Commissioner. If you wish to discuss your application with the Office of the Information Commissioner, please telephone (07) 3234 7373.

An external review application must be made to the Information Commissioner within **20 business days** from the date of this written notice of decision.

Applications for external review should be forwarded to –

Office of the Information Commissioner
PO Box 10143
Adelaide Street
BRISBANE QLD 4000
Telephone: (07) 3234 7373
Fax: (07) 3405 1122
Email: administration@oic.qld.gov.au
Online:- www.oic.qld.gov.au

Useful links

I am providing some links to websites which you may find helpful.

www.legislation.qld.gov.au (Queensland legislation)
www.oic.qld.gov.au (Office of the Information Commissioner)

To discuss this decision or if you have any queries, please contact me on telephone 1300 268 624 or email info@wdrc.qld.gov.au.

Yours faithfully

K M Gillespie

K Gillespie
DECISION MAKER

³ Right to Information Act 2009 - Section 85– External Review