



Decision and Reasons for Decision

Application Number: 220120

Applicant: Brisbane Central Business District Bicycle User Group

Decision Date: 15 September 2020

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – application to the Information Commissioner for financial hardship status – whether the applicant is a non-profit organisation in financial hardship - section 67 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The Brisbane Central Business District Bicycle User Group (**CBD BUG**) is a non-profit organisation which is in financial hardship for the purpose of section 67 of the *Right to Information Act 2009* (**RTI Act**).
2. CBD BUG's financial hardship status has effect for one year from the date of the decision.

Background

3. On 10 September 2020, the Office of the Information Commissioner (**OIC**) received an application from CBD BUG requesting financial hardship status under section 67 of the RTI Act.¹
4. In making this decision, I have considered:
 - CBD BUG's application for financial hardship status (**Application**)
 - CBD BUG's Constitution (**Constitution**)
 - CBD BUG's bank account statement for the period 22 July 2019 - 21 January 2020 (**Bank Statement**)
 - information from CBD BUG's public Facebook profile²
 - relevant provisions of the RTI Act; and
 - relevant administrative decisions and case law as identified in this decision.

¹ The email correspondence received from CBD BUG on 10 September 2020 asked for an update and included a forwarded email with attachments which was shown to have been sent to the Office of the Information Commissioner (**OIC**) on 17 July 2020. No record of the email dated 17 July 2020 can be located by the OIC. As such, the application is taken to have been received on 10 September 2020.

² <https://www.facebook.com/cbdbug>, accessed 14 September 2020.

Relevant law

5. Whether an organisation is in financial hardship must be determined objectively³ and will depend upon the particular circumstances of the case.⁴
6. Section 67(1) of the RTI Act provides that:

67 Financial hardship status for non-profit organisation

- (1) *The information commissioner may, on written application by a non-profit organisation, decide whether a non-profit organisation has financial hardship status by considering the nature and size of the organisation's funding base and the amount of the organisation's liquid funds.*

Example—

The fact an organisation receives significant government funding may indicate its finances are strictly limited.

7. Therefore, in deciding the Application, I must consider whether CBD BUG is:
 - a) a non-profit organisation; and
 - b) in financial hardship, by reference to the nature and size of its funding base and the amount of its liquid funds.

Findings

Is CBD BUG a non-profit organisation?

8. Schedule 5 of the RTI Act defines 'non-profit organisation' as an organisation that is not carried on for the profit or gain of its individual members.
9. CBD BUG was established in 2005 and had more than 800 members at the time of the Application.
10. CBD BUG's Constitution states that its objective is:

To improve conditions for cyclists living in or cycling to, within, and from the Brisbane CBD. To this end the BUG will –

- *Advocate and promote better cycle routes to, within, and from the CBD.*
 - *Advocate and promote better end-of-trip facilities in the CBD for cyclists.*
 - *Pursue this objective with the relevant instrumentalities of the Brisbane City Council and Queensland Government, as well as any other organisations or individuals who have relevant responsibilities impacting on cycling to, within, and from the CBD, including building owners, managers and tenants.*
11. CBD BUG convened nine meetings for members between June 2019 and February 2020 with the event time and agenda available on the CBD BUG public Facebook page.⁵ Meetings were suspended temporarily due to restrictions related to the COVID-19 pandemic but resumed virtually from June 2020 to be held monthly.

³ As discussed in *Van De Wiel and Civil Aviation Safety Authority* (2006) 93 ALD 163, at 170, a decision concerning similar provisions under the *Freedom of Information Act 1982* (Cth).

⁴ As discussed in *FG O'Brien Pty Ltd v Elliot* [1965] NSWLR 1473, at 1475, and applied in *Re Kabalan* (1993) 40 FCR 560, at 562.

⁵ <https://www.facebook.com/cbdbug>, accessed 14 September 2020.

12. I accept that CBD BUG's objective does not include the generation of profit for its individual members. This is supported by the Constitution which provides:
- *CBD BUG is a non-profit organisation and its assets and income are to be applied solely in furtherance of its objectives and no portion is to be distributed directly or indirectly to members except as bona fide compensation for services rendered or expenses incurred on behalf of CBD BUG.*⁶
 - *In the event of CBD BUG's dissolution, the amount remaining after satisfaction of all debts and liabilities shall be transferred to any association with similar purposes which is not carried on for the profit or gain of its individual members.*⁷
13. I am satisfied that CBD BUG is a non-profit organisation and is therefore entitled to apply for financial hardship status under section 67 of the RTI Act.

Is CBD BUG in financial hardship?

14. The RTI Act provides that I must determine whether a non-profit organisation has financial hardship status by considering the:
- nature and size of the organisation's funding base; and
 - amount of liquid funds.

Nature and size of CBD BUG's funding base

15. CBD BUG's funding is dependent upon donations made through the goodwill of its members and executive committee.⁸
16. CBD BUG does not charge a membership fee.
17. CBD BUG's Financial Statements show that there were no transactions in the account for the period of 22 July 2019 – 21 January 2020.
18. On the basis of the above, I consider that CBD BUG's funding base is limited and highly unpredictable.

CBD BUG's liquid funds

19. The Application identified that CBD BUG held \$285.74 in its bank account.⁹
20. CBD BUG does not have any physical assets¹⁰ and no liabilities were identified.
21. There are a variety of financial analysis tools that can be used to determine the financial condition of a non-profit organisation, the most common of which is liquidity analysis. Where liabilities do not exist or are uncertain, these analysis tools are of little assistance.
22. CBD BUG does not have any identified liabilities or physical assets which means that liquidity analysis tools cannot be effectively applied.

⁶ 'Non-profit organisation' clause in the Constitution.

⁷ 'Dissolution of organisation' clause in the Constitution.

⁸ The Constitution states that members may be asked from time to time to voluntarily donate some small sum to facilitate CBD BUG activities, and the Application notes that CBD BUG's executive committee meets the organisation's operating costs from their personal resources.

⁹ Supported by the most recent Bank Statement dated 21 January 2020 which reflects the same amount.

¹⁰ As stated in the Application.

23. The Information Commissioner has previously decided¹¹ that the task under section 67 of the RTI Act is to determine, quite simply, the amount of the organisation's liquid funds.
24. I am satisfied that CBD BUG holds \$285.74 in liquid funds.

Financial hardship

25. The term 'hardship' implies a level of '*severe toil, trial, oppression or need*'¹² and '*severe circumstances would need to be demonstrated before it became applicable*'.¹³
26. Taking into account the nature and size of the funding base and the shortage of liquid funds, I am satisfied that CBD BUG has strictly limited finances to support its activities and is in financial hardship.

DECISION

27. I have decided that CBD BUG is a non-profit organisation with financial hardship status under section 67 of the RTI Act.
28. The effect of my decision is that any processing charge or access charge relating to CBD BUG under the RTI Act must be waived.¹⁴
29. This decision has effect for one year from the date of this decision.¹⁵
30. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Louisa Lynch
Right to Information Commissioner

Date: 15 September 2020

¹¹ In granting financial hardship status to *Kalinga Woolloowin Residents Association* on 31 August 2010.

¹² *The Macquarie Dictionary – Sixth Edition (Online)*, available at www.macquariedictionary.com.au.

¹³ *Re Hounslow and Department of Immigration and Ethnic Affairs* (1985) 7 ALN N362, at n367.

¹⁴ Section 66(2)(b) of the RTI Act.

¹⁵ Section 67(3) of the RTI Act.