



## Decision and Reasons for Decision

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Citation:	<i>C72 and Queensland Curriculum and Assessment Authority [2024] QICmr 12 (22 March 2024)</i>
Application Number:	316556
Applicant:	C72
Respondent:	Queensland Curriculum and Assessment Authority
Decision Date:	22 March 2024
Cchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - year 12 achievement data - per-school or school-by-school data - data excluding tertiary entrance ranks - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - year 12 commendation awards - Certificates of Academic Commendation - Subject Achievement Commendations - whether recipient consented to publication of information about them - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Queensland Curriculum and Assessment Authority (**QCAA**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to year 12 achievement data for 2020 on a per-school basis; and information about the 2020 recipients of two types of awards,<sup>2</sup> particularly the schools attended by them.
2. QCAA's decision<sup>3</sup> refused access to some of the per-school year 12 achievement data (that is, data relating to tertiary entrance ranks known as **ATARs**<sup>4</sup> – **ATAR Information**) on the ground that this data was nonexistent in documents of QCAA. It refused access to the rest of the requested information on the ground that disclosure of this information would, on balance, be contrary to the public interest.

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<sup>1</sup> Received on 8 November 2021. The application became compliant on payment of the application fee on 22 November 2021.

<sup>2</sup> Certificates of Academic Commendation and Subject Achievement Commendations.

<sup>3</sup> Dated 7 January 2022.

<sup>4</sup> Australian Tertiary Admission Ranks - see <https://www.qcaa.qld.edu.au/senior/australian-tertiary-admission-rank-atar>. Note - all documents available online and webpages mentioned in this decision were viewed on 11 March 2024. Given the number of hyperlinks to online documents and webpages, I state this here rather than for each individual hyperlink.

3. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for an external review of QCAA's decision. During the review, the ATAR Information was excluded from consideration.
4. For the reasons explained below, I vary QCAA's decision and find that:
  - for the remaining per-school year 12 achievement data and information about award recipients who consented to QCAA's publication of information about them – no grounds for refusing access apply to this information and therefore the applicant must be given access to it; and
  - for information about award recipients who did not consent to QCAA's publication of information about them – this information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

## Background

5. QCAA is a statutory body established by the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld). QCAA is responsible for functions regarding syllabuses for senior subjects, assessment of students undertaking senior subjects, moderation of assessment, and certificates of achievement.<sup>6</sup>
6. The access application to QCAA requested:<sup>7</sup>

*Part 1; this part requests, on a per-school basis, statistical information of the outcomes for students who finished year 12 in 2020. This is in line with the usual year 12 Outcomes report that is published by QCAA every year. The specific information items requested are listed in the table below.*

...

*The 2020 year 12 per-school information items requested are, at a minimum: -*

- i. *The number of students who received a Senior Education Profile [SEP],<sup>[8]</sup>*
- ii. *The number of students who were awarded a QCE,<sup>[9]</sup>*
- iii. *The number of students who were awarded a QCIA,<sup>[10]</sup>*
- iv. *The number of students who were awarded one or more VET<sup>[11]</sup> qualifications,*
- v. *The number of students who received an ATAR,*
- vi. *The percentage of students who applied for and received an offer of a tertiary place through QTAC,*
- vii. *The number of students whose ATAR result was in the band 99.95-90, 89.95-80, 79.95-70, 69.96[sic]-60, 59.95 or below,*
- viii. *The median ATAR result for the school,*
- ix. *The number of students who were awarded an International Baccalaureate Diploma (IBD),*
- x. *The number of students awarded an IBD whose results were in the bands 45-51 points, 40-36 points, 35-31 points, 30-24 points,*
- xi. *The number of students who completed a university subject while at school.*

...

<sup>5</sup> Received on 31 January 2022.

<sup>6</sup> See sections 9, 13A, 14 and 15 of the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld).

<sup>7</sup> Bold emphasis is mine, as are footnotes regarding acronyms.

<sup>8</sup> A SEP may contain a Senior Statement, a Statement of Results, a Queensland Certificate of Education (QCE) and/or a Queensland Certificate of Individual Achievement (QCIA) - see <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/sep>.

<sup>9</sup> The QCE is Queensland's senior school qualification, which is awarded to eligible students, usually at the end of Year 12. To receive a QCE, students must achieve the set amount of learning, at the set standard, in a set pattern, while meeting literacy and numeracy requirements. See <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce>.

<sup>10</sup> The QCIA recognises the achievements of students who are on individualised learning programs, for which they are eligible because of impairments or difficulties in learning that are not primarily due to socioeconomic, cultural or linguistic factors. It is an official record that students have completed at least 12 years of education and provides students with a summary of their skills and knowledge to present to employers and training providers. See <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qcia>.

<sup>11</sup> Vocational education and training – see <https://www.qcaa.qld.edu.au/senior/vet>.

**Part 2;** concerning the recipients of the QCAA 2020 Certificate of Academic Commendation,<sup>[12]</sup> this part **requests the school attended by each award recipient**, both named and anonymous. In other words, i) award recipient name or 'anonymous', ii) school attended, and iii) list of 'A' grade subjects. This information has been published by QCAA every year since 2015.

**Part 3;** concerning the recipients of the QCAA 2020 Subject Achievement Commendation,<sup>[13]</sup> this part requests the **school attended by each award recipient**, both named and anonymous. In other words, i) award recipient name or 'anonymous', ii) school attended, and iii) list of 'highest result' subjects.

7. QCAA's decision<sup>14</sup> acknowledged that:

*Prior to 2020, most of the information you are requesting was publicly released via the QCAA website. The information in part 1 of your request was included in the annual Year 12 Outcomes report<sup>[15]</sup> and the information in part 2 was a component of the annual Queensland Certificate of Education (QCE) Achievement Awards. Part 3 of your request refers to a new QCE Award commendation that was introduced for the 2020 cohort of students.*

8. QCAA's pre-2020 approach to publishing information remains evident on its website – see:

- 'Year 12 Outcomes Reports' containing per-school year 12 achievement data<sup>16</sup>
- information about recipients of Certificates of Academic Commendation, including the schools attended by them;<sup>17</sup> and
- QCAA's then rationale for publication.<sup>18</sup>

9. QCAA explained its change in approach as follows:<sup>19</sup>

*In recent years, concerns about the misuse of student achievement data, including the production of school league tables by the media, led the QCAA to reconsider its approach to the reporting of student achievement. ...*

*The transition to the new Queensland Certificate of Education system in 2019/20 afforded an opportunity to review Queensland's existing approach to the reporting of senior secondary outcomes information. A broad process of consultation with key education stakeholders was conducted in the lead-up to implementation of the new system.*

*Ultimately, it was decided that school-by-school reporting of student achievement should cease in favour of statewide reporting on the overall health of the new QCE system and public acknowledgement of the individual achievements of high performing students.*

10. From 2020 onwards, QCAA implemented its new approach. It began statewide reporting and stopped mentioning the schools attended by award recipients – see:

<sup>12</sup> Certificates of Academic Commendation are awarded to all students who achieve an 'A' grade in at least six General and/or General Extension subjects – see <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/categories-criteria>.

<sup>13</sup> Subject Achievement Commendations are awarded to the students who achieve the highest results in each General and/or General Extension subject – again see <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/categories-criteria>.

<sup>14</sup> At [10].

<sup>15</sup> Except that it related to Overall Positions (that is, **OPs** – the then applicable ranking for university entrance) rather than ATARs and excluded any median ranking as requested at Part 1, viii of the application.

<sup>16</sup> See <https://www.qcaa.qld.edu.au/news-data/statistics/statistics-before-2020>.

<sup>17</sup> See <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners>.

<sup>18</sup> See [https://www.qcaa.qld.edu.au/downloads/publications/qcaa\\_stats\\_yr12\\_outcomes.pdf](https://www.qcaa.qld.edu.au/downloads/publications/qcaa_stats_yr12_outcomes.pdf).

<sup>19</sup> Decision at [11]-[13].

- the reports published by QCAA, which contain statewide data only regarding the achievements of students completing year 12<sup>20</sup>
  - information about recipients of Certificates of Academic Commendation, which continues to include their name and the senior subjects studied by them, but no longer includes the schools attended by them;<sup>21</sup> and
  - information about recipients of Subject Achievement Commendations (which were first introduced in 2020), which includes their names and the relevant subjects, but not the schools attended by them.<sup>22</sup>
11. There is one exception to QCAA's new approach: QCE Achievement Award winners. The names of the 38 recipients of these awards in 2020, along with the schools attended by each of them, were published.<sup>23</sup> This has continued to date.<sup>24</sup>
12. During the review, QCAA advised<sup>25</sup> that its new approach is to be the subject of an independent evaluation which will examine matters including '[a]vailability and accuracy of data and other information to support schools, schooling sectors, QTAC and other stakeholders; and to ensure transparency and public accountability', the final report for which '*is not expected before 2025*'.

### Reviewable decision

13. The decision under review is the decision of QCAA dated 7 January 2022.

### Evidence considered

14. The evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including footnotes and the Appendix). The significant procedural steps taken are set out in the Appendix.
15. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>26</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act when applying the law prescribed in the RTI Act.<sup>27</sup> I have done so in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>28</sup> '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>29</sup>

<sup>20</sup> See 'Year 12 certification summaries' at <https://www.qcaa.qld.edu.au/news-data/statistics/statistics-from-2020>. Also, see achievements in annual subject reports at <https://www.qcaa.qld.edu.au/senior/senior-subjects> - for example, statewide performance in English at [https://www.qcaa.qld.edu.au/downloads/senior-qce/english/snr\\_english\\_20\\_subj\\_rpt.pdf](https://www.qcaa.qld.edu.au/downloads/senior-qce/english/snr_english_20_subj_rpt.pdf). Note - unlike data about *achievement*, some data about *participation* is still available on a per-school basis: see 'Senior subject participation by school' also at <https://www.qcaa.qld.edu.au/news-data/statistics/statistics-from-2020>.

<sup>21</sup> See <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards>.

<sup>22</sup> Again, see <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards>.

<sup>23</sup> See <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners/2020/graduates>, <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners/2020/stories> and <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners/2020/gallery>.

<sup>24</sup> See <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards>.

<sup>25</sup> Submission dated 5 June 2023.

<sup>26</sup> Section 21 of the HR Act.

<sup>27</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>28</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>29</sup> *XYZ* at [573]. OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (noting that Judicial Member McGill saw '*no reason to differ*' from our position).

## Information in issue

16. QCAA's decision<sup>30</sup> stated as follows regarding the ATAR Information requested by the applicant:<sup>31</sup>

*The function of calculating tertiary entrance ranks was transferred from the QCAA to QTAC after the 2019 certification round. Therefore, the QCAA is not in possession of the information identified above and is unable to calculate it from its existing data sources.*

17. The change noted by QCAA is evident in an amendment to its functions as set out in the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld). While ranking students for entrance to tertiary education was previously a function of QCAA, QCAA is now only responsible for giving information to an 'appropriately qualified entity' to undertake the ranking.<sup>32</sup> That entity is Queensland Tertiary Admissions Centre Ltd (**QTAC**) – a not-for-profit unlisted public company limited by guarantee and registered charity<sup>33</sup> which 'offers a one-stop-shop for 17 higher education providers in Queensland and Northern New South Wales, delivering both undergraduate and postgraduate admissions services'.<sup>34</sup>
18. Given a 'document of an agency' under the RTI Act includes a document which the agency is entitled to access,<sup>35</sup> OIC made enquiries with QCAA regarding whether it was entitled to access the information about ATARs in QTAC's possession. In response, QCAA provided OIC with a copy of a Memorandum of Understanding (**MOU**) between QCAA and QTAC<sup>36</sup> in which the parties agree to a 'data exchange schedule'. Despite using the term 'exchange', the agreed schedule sets out specified types of information for QCAA to provide QTAC during stated periods – but no information for QTAC to provide to QCAA in return.
19. In these circumstances, OIC conveyed a view to the applicant<sup>37</sup> that QCAA is not entitled to access ATAR Information, and therefore this information cannot be considered documents of QCAA for the purpose of the application. This view was accepted by the applicant.<sup>38</sup>
20. Accordingly, the ATAR Information is no longer in issue. It is acknowledged that the transition of tertiary entrance rankings responsibilities from QCAA (an entity subject to the RTI Act) to QTAC (an entity not subject to the RTI Act, nor required to give QCAA access to relevant information under the MOU) may reduce the information available to students pursuing a review of their ranking, or assessing whether they should seek a review. However, the jurisdiction to consider broader issues of this type does not arise in this review.<sup>39</sup>

<sup>30</sup> At [4].

<sup>31</sup> That is, the per-school year 12 achievement data regarding ATARs requested at Part 1, items v.-viii. of the application, as set out at paragraph 6 above.

<sup>32</sup> See section 17 of this Act, prior to and after its amendment by section 138 of the *Education (Overseas Students) Act 2018* No. 1 (Qld), and the Explanatory Notes' explanation regarding the current iteration: 'This provision will allow the QCAA to give information to the Queensland Tertiary Admissions Centre, which will have the responsibility of ranking students for tertiary entrance under the new tertiary entrance system. The provision is drafted in such a way to allow for a change in the entity over time'.

<sup>33</sup> QTAC's website at <https://www.qtac.edu.au/leadership/> and its Financial Report 223 available on the Australian Charities and Not-for-profits Commission's register at <https://www.acnc.gov.au/charity/charities>.

<sup>34</sup> QTAC's website at <https://www.qtac.edu.au/about-us/>.

<sup>35</sup> Section 12(a) of the RTI Act.

<sup>36</sup> Signed by them on 28 February 2020 and 6 March 2020 respectively.

<sup>37</sup> Dated 12 July 2022.

<sup>38</sup> Applicant's submission dated 25 July 2022 and OIC's response, also dated 25 July 2022.

<sup>39</sup> It is acknowledged that QTAC offers an appeal process for ATARs which 'should only be considered in situations where the student has good reason to believe that their ATAR has not been calculated in accordance with QTAC's approved rules, policies, procedures and practices' (see <https://www.qtac.edu.au/atar-appeals/>); and that the rules are set out in a document titled 'Calculating the ATAR in Queensland Technical document' - <https://www.qtac.edu.au/behind-the-atar/>.

21. The rest of the information in the application – that is, the information listed at Part 1, items i. to iv. and ix. to xi., and Parts 2 and 3, as set out at paragraph 6 above – remains in issue and is addressed in this decision.

### Issue for determination

22. The issue for determination is whether access to the information that remains in issue may be refused under the RTI Act because its disclosure would, on balance, be contrary to the public interest. In this decision, I will consider this issue:
- firstly, with respect to the per-school year 12 achievement data for 2020 listed at Part 1, items i. to iv. and ix. to xi. of the application (**Part 1 Information**); and
  - then, with respect to the information about the 2020 recipients of two types of commendations, particularly the schools attended by them, requested at Parts 2 and 3 of the application (**Parts 2 and 3 Information**).
23. Before addressing this issue, I will first address three preliminary matters – a procedural matter raised by QCAA, a proposal made by the applicant, and an issue regarding form of access and charges.

### QCAA's procedural matter

24. The procedural matter raised by QCAA relates to third party consultation. On being advised of a preliminary view<sup>40</sup> that the Part 1 Information and some of the Parts 2 and 3 Information (that is, information regarding award recipients who consented to QCAA's publication of information about them) do not comprise contrary to public interest information and therefore may not be refused, QCAA submitted that *'the judicious use of resources to consult with third parties is now something that QCAA believes should occur to ensure that the final decision on the external review is informed by the insights and concerns of all stakeholders'*.<sup>41</sup>
25. Having carefully considered the decision under review and the submissions and material provided by QCAA throughout the review, it is my understanding that the fundamental concern around the publication of per-school results is the use of tertiary entrance rank information (that is, ATARs)<sup>42</sup> to create school league tables. This is made explicit in the following submission by QCAA:<sup>43</sup>

*The minutes of the 10 February 2021 QCAA Board meeting record the QCAA's reasons for recommending the change to statewide reporting:*

Following consideration of a range of issues associated with the public reporting of outcomes data, the Board considered that the introduction of the new senior assessment system provides a unique opportunity to revise its reporting arrangements to ensure they provide a constructive representation of schools' and students' achievements. **It concluded that any format including tertiary entrance rank information should not be recommended.** As an alternative, the Board considered that the most appropriate reporting format should focus exclusively on statewide information about senior secondary schooling and acknowledge the achievements of individual students. One important justification for the move to a statewide report was the current practice of providing individual schools with rich datasets and other information that would allow them to benchmark the performance of their students with the rest of the state to inform their teaching and learning. **Members considered that**

<sup>40</sup> Dated 12 October 2023.

<sup>41</sup> Submission dated 10 November 2023.

<sup>42</sup> Or National Assessment Program – Literacy and Numeracy (**NAPLAN**) scores.

<sup>43</sup> Dated 5 June 2023. Bold emphasis is mine.



**this was the best way of ensuring that the diverse range of potential ‘success stories’ in schools is not overshadowed by the publication of league tables derived from one outcome alone.** Importantly, it was recommended that this information be provided to the Minister and the Ministerial SATE Taskforce to support decision making.

*Soon after this meeting, a revised reporting format was approved by the QCAA Board out-of-session for recommendation to the Minister and Taskforce. The QCAA was advised of the outcome of the Taskforce’s subsequent discussion in a letter from the Minister for Education dated 19 April 2021 ..., and a brief statement was made in the Queensland Parliament on 22 April 2021.*

26. This fundamental concern about per-school tertiary entrance rank information being used to create school league tables is not, however, relevant in the context of the present considerations. This is because, as set out at paragraphs 16 to 20 above, the applicant has agreed to exclude all ATAR Information from consideration in this review.

27. QCAA acknowledged this but nevertheless submitted:<sup>44</sup>

*The [information remaining in issue] may appear to be somewhat more benign than the tertiary entrance ranking information...also sought by the applicant, but it can still be used to create school league tables. For example, the QCE Achievement Awards data can be used to create an unhelpful rank order of schools, so too can the International Baccalaureate result information and QCE attainment data. It is for this reason that the decision was made to cease publication of this type of information on a school-by-school basis.*

28. In terms of the Part 1 Information, I do not see how the per-school *number* of students who were awarded a SEP, QCE, QCIA, one or more VET qualifications or an IBD, or who completed a university subject while at school (ie items i. to iv., ix. and xi. of the Part 1 Information) could enable the creation of school league tables which had the same visibility and impact as a school league table of the *performance* of students receiving ATAR scores. Further, because the IBD program is separate from the ATAR system, and undertaken by a small number of students<sup>45</sup> in a small number of schools,<sup>46</sup> I do not see how the release of IBD results information (ie item x. of the Part 1 Information) could result in the creation of school league tables which had any real influence.
29. Similarly, in terms of the Parts 2 and 3 Information, while I acknowledge that information regarding the award recipients and the schools attended by them could form the basis for school league tables, I again consider that the small amount of information proposed for release – that is, information about the award recipients who consented to QCAA’s publication of information about them<sup>47</sup> – would significantly limit the authority and relevance of any such tables.
30. I also note that much of this information is already available, albeit in a widely dispersed, less easily accessible form, and could already be collated into a league table – see ‘*What information is publicly available?*’ below.
31. Given these circumstances, I do not consider it reasonable to expect that disclosure of the information my preliminary view proposed be released could reasonably be expected

<sup>44</sup> Submission dated 28 July 2022, repeated in submission dated 5 June 2023.

<sup>45</sup> 634 students in 2020 – see [https://www.qcaa.qld.edu.au/downloads/publications/qcaa\\_stats\\_yr12\\_cert\\_summary\\_2020.pdf](https://www.qcaa.qld.edu.au/downloads/publications/qcaa_stats_yr12_cert_summary_2020.pdf).

<sup>46</sup> As noted in QCAA’s submission dated 5 June 2023. The most recent report under QCAA’s previous reporting arrangements indicates that 12 schools in Queensland offered the IBD at that time: (*Year 12 Outcomes 2019 - All Queensland schools – February 2020*) at [https://www.qcaa.qld.edu.au/downloads/publications/qcaa\\_stats\\_yr12\\_outcomes\\_19\\_all\\_schools.pdf](https://www.qcaa.qld.edu.au/downloads/publications/qcaa_stats_yr12_outcomes_19_all_schools.pdf).

<sup>47</sup> Being 293 of the 1049 recipients of Certificates of Commendation and 129 of the 394 recipients of Subject Achievement Commendations, as noted in more detail at paragraph 33 below.

to be of concern<sup>48</sup> to the stakeholders referred to by QCAA – namely the members of a ministerial Taskforce consisting of representatives from the different schooling sectors, parents, teachers, principals, unions, the tertiary sector, QCAA, and members of two committees,<sup>49</sup> and secondary schools leaders consulted during forums across 2018-20.<sup>50</sup> I therefore do not consider it necessary that the procedures to be undertaken in this review<sup>51</sup> include consultation with any of these parties.

### ***Applicant's proposal***

32. The applicant submitted that *'no consideration appears to be given to the possible deletion of the anonymous students' subject information from the Part 2 disclosure. ... If this deletion would be enough to tip the balance of the public interest factors, thus leading to disclosure, I submit that reducing the Part 2 information (only) in this way might be acceptable as a compromise'*.<sup>52</sup>
33. In relation to this submission, it is relevant to note:
- In terms of the Part 2 Information, QCAA's website states that a total of 1,049 year 12 graduates received Certificates of Academic Commendation in 2020 and, in a table, publishes:<sup>53</sup>
    - a. for 293 of the 1,049 recipients who consented to QCAA's publication of information about them – the recipients' names, along with the subjects for which they received six or more 'A' grades, but not the schools they attended; and
    - b. for the rest of the 1049 recipients – the subjects for which they received six or more 'A' grades, but not their names (because, as QCAA's website explains *'QCAA is awaiting permission to publish name, or name has been withheld'*) nor the schools they attended.
  - Similarly, in terms of Part 3 Information, QCAA's website states that 394 year 12 graduates received Subject Achievement Commendations in 2020 and publishes:<sup>54</sup>
    - c. for 129 of the 394 recipients who consented to QCAA's publication of information about them – the names of these recipients, along with the subject/s for which they have received their commendation, but not the schools they attended; but
    - d. no information at all about the rest of the 394 recipients.
34. I decided that the procedure<sup>55</sup> on external review need not include putting the applicant's proposal, which relates only to the Part 2 Information at paragraph 33.b, to QCAA as an informal resolution option. I made the same choice regarding the Part 3 Information at paragraph 33.d. Given QCAA's clear concerns about school league tables, I considered it unlikely that QCAA would be receptive to any such informal resolution proposal.

<sup>48</sup> Section 37(1) of the RTI Act.

<sup>49</sup> That is, a senior secondary curriculum, assessment and certification committee and a senior review steering committee – see <https://www.qcaa.qld.edu.au/news-data/reports-papers/qcaa/developing-new-qce-system/background> and Attachment 3 to submission dated 5 June 2023.

<sup>50</sup> Submissions dated 5 June 2023 and 10 November 2023.

<sup>51</sup> Section 95(1) of the RTI Act.

<sup>52</sup> Submission dated 20 October 2023.

<sup>53</sup> By my count of the entries in the table at <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners/2020/certificate-academic-commendation>.

<sup>54</sup> Again, by my count of the entries in the table at <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners/2020/subject-achievement-commendation>.

<sup>55</sup> Section 95(1) of the RTI Act.



35. Also, I have not proceeded on the basis that the applicant's proposal amounts to his agreement to exclude provision of the subject information<sup>56</sup> alongside the names of the schools. I could not comfortably conclude that '*deletion [of subject information] would be enough to tip the balance of the public interest factors*' in the manner the applicant hoped, and I considered that a more detailed consideration of this issue would be required to reach any conclusion.<sup>57</sup> Even if a more detailed consideration supported disclosure of the school information, I could not be assured that the applicant would forgo the subject information, given his relatively equivocal statement that the school information alone '*might be acceptable as a compromise*'.<sup>58</sup>
36. In these circumstances, I decided against spending more resources on this particular proposal.<sup>59</sup> Accordingly, this decision considers the applicant's preferred outcome (that is, receiving both subject information and the school attended by each recipient, whether named or not), as addressed by the applicant in the bulk of his submission containing the proposal, as well as prior submissions.

### **Form of access and charges**

37. During this review, OIC was not provided with copies of documents containing the information remaining in issue and therefore made enquiries with QCAA.<sup>60</sup> In response, QCAA stated:<sup>61</sup>

*In considering the application, I formed a view that because the data that had previously been included in the historical report [that is, the Year 12 Outcomes Reports for 2019 and earlier published by QCAA<sup>62</sup>] continues to be held in our systems, then it satisfied the definition of a 'document' under the RTI Act.*

...

*I appreciate that, in normal circumstances, a decision-maker would identify and gather the documents that are the subject of an RTI application to enable a decision to be made. The novelty with this application is that QCAA staff would need to take some time to do this because there is a significant amount of checking that needs to occur before student achievement data is released into the public domain. It is not as simple as running a query and accepting the output as final. The charges estimate notice was based on the time it would take to do this work.*

*As the decision-maker, I did not need to see the 'document' to make my decision. This is because the historical reports are sufficient for me to determine the nature of what the applicant requested. I am very familiar with the dataset and capable of making the decision without creating a burden for the organisation when it is quite possible that the decision will be to not release the information.*

38. Generally, an access application can only relate to documents in existence on the date that the application is received.<sup>63</sup> However, when an application relates to information that is not in a written document, an agency may give access to a document by creating a written document using equipment that is usually available to it to for retrieving or

<sup>56</sup> That is, the subjects studied by unnamed recipients of Certificates of Academic Commendation at paragraph 33.b, or the subject/s of unlisted recipients of Subject Achievement Commendations at paragraph 33.d.

<sup>57</sup> In this regard, I engaged in some initial thought around whether excluding subject information regarding unnamed or unlisted recipients could reduce privacy considerations. I considered this to be likely, but also noted that it may reduce the weight of accountability and transparency factors favouring disclosure as well (as it would afford less understanding of QCAA's actions regarding the awards, and less visibility of any departmental and State school actions). I concluded that more detailed consideration of weighting and balancing of relevant factors would be necessary to reach a view.

<sup>58</sup> In contrast, the bulk of the applicant's submissions in which this proposal was made, and his earlier submissions in this review, set out his reasoning as to why both the subject information and the school attended by each recipient should be released.

<sup>59</sup> Section 95(1) of the RTI Act.

<sup>60</sup> Letter dated 15 February 2022.

<sup>61</sup> Submission dated 25 February 2022.

<sup>62</sup> See <https://www.qcaa.qld.edu.au/news-data/statistics/statistics-before-2020>.

<sup>63</sup> Section 27(1) of the RTI Act.

collating stored information.<sup>64</sup> I am satisfied that QCAA's above explanation, along with its approach to processing the application and throughout this review, demonstrate its acceptance that access in this form is applicable.

39. In terms of this form of access, I note that QCAA's charges estimate notice<sup>65</sup> included an estimate of 21 hours for searching and retrieving documents, and that the total amount was accepted by the applicant.<sup>66</sup> I also note, however, QCAA's advice that its decision notice did not require payment of the charges estimate notice insofar as it related to these 21 hours, because *[o]nce the decision [to refuse access] was made, [QCAA] did not feel it would be fair to charge the applicant for work that was not done by QCAA to produce the 'document' he requested*.<sup>67</sup> While an external review may consider a decision about whether processing or access charges are payable,<sup>68</sup> there is no right to seek a review of the *amount* of a processing or access charge.<sup>69</sup> In the present circumstances, I consider it clear that charges *are* payable regarding the applicant's application – however, the *amount* payable is not something that I can address on external review. It is a matter for QCAA and the applicant.
40. I will now move to addressing the issues for determination.

### Relevant law

41. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest<sup>70</sup> to give access.<sup>71</sup> The Act must be applied and interpreted to further this primary object,<sup>72</sup> and is to be administered with a pro-disclosure bias.<sup>73</sup>
42. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,<sup>74</sup> including grounds on which access may be refused,<sup>75</sup> which are to be interpreted narrowly.<sup>76</sup> One of these grounds permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.<sup>77</sup>
43. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest, are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:

<sup>64</sup> Section 68(1)(e) of the RTI Act.

<sup>65</sup> Dated 24 December 2021.

<sup>66</sup> By email also dated 24 December 2021.

<sup>67</sup> Letter dated 25 February 2022.

<sup>68</sup> Section 85 and definition of 'reviewable decision' in schedule 5 of the RTI Act.

<sup>69</sup> Sections 81 and 86 of the RTI Act.

<sup>70</sup> *'The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': Director of Public Prosecutions v Smith (1991) 1 VR 63 at 75.* The concept refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

<sup>71</sup> Section 3(1) of the RTI Act.

<sup>72</sup> Section 3(2) of the RTI Act.

<sup>73</sup> Section 44 of the RTI Act.

<sup>74</sup> Section 23(1) of the RTI Act.

<sup>75</sup> Section 47 of the RTI Act.

<sup>76</sup> Section 47(2)(a) of the RTI Act.

<sup>77</sup> Sections 47(3)(b) and 49 of the RTI Act.

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

44. Schedule 4 of the RTI Act contains nonexhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case.<sup>78</sup>

### **Findings – Part 1 Information Per-school year 12 achievement data for 2020**

45. As noted at paragraph 22 above, I will firstly address whether access to the Part 1 Information – that is, the per-school year 12 achievement data for 2020 listed at Part 1, items i. to iv. and ix. to xi. of the application<sup>79</sup> – may be refused under the RTI Act because its disclosure would, on balance, be contrary to the public interest.

#### ***Irrelevant factors***

46. I acknowledge that QCAA has cited policy reasons behind the decision to cease publication of information on a per-school basis.<sup>80</sup> However, to the extent QCAA holds concerns about the accuracy of conclusions that may be drawn from interpreting the Part 1 Information without contextual information – by the applicant, and also by others, assuming dissemination by the applicant – I consider this raises an irrelevant factor and I have not taken this into account.<sup>81</sup>

47. I also note that QCAA has flagged that, now that the new QCE system has been implemented, QCAA intends to ‘review its data holdings to identify data sets and other information that can be made available to the general public’.<sup>82</sup> In this review, I am required to consider whether access to the information in issue can be refused on the basis that disclosure would be contrary to the public interest under the RTI Act. In conducting merits review, I am required to consider the facts at the time of this decision. The potential for future publication of unspecified ‘datasets’ is irrelevant to my assessment of the balance of public interest in the present case.

48. For sake of completeness, I confirm that I have not considered any irrelevant factors in deciding the balance of public interest in relation to the Part 1 Information; including the factors listed in schedule 4, part 1 of the RTI Act.

<sup>78</sup> The phrase ‘could reasonably be expected to’ is contained in many of the factors. Where mentioned, this phrase requires that the relevant expectation must be reasonably based: that is, there must be real and substantial grounds for expecting the relevant occurrence, which can be supported by evidence or reasoning. There cannot be merely an assumption or allegation that the occurrence will take place, nor an expectation of an occurrence that is merely a possibility or that is speculative, conjectural, hypothetical or remote (see *Murphy and Treasury Department* (1995) 2 QAR 744 at [44], citing *Re B and Brisbane North Regional Heath Authority* (1994) 1 QAR 279 at [160]. See also *Attorney-General’s Department and Australian Iron and Steel Pty Ltd v Cockcroft* (1986) 10 FCR 180). Importantly, the expectation must arise as a result of disclosure of the specific information in issue, rather than from other circumstances (*Murphy and Treasury Department* (1995) 2 QAR 744 at [54]).

<sup>79</sup> Set out at paragraph 6 above.

<sup>80</sup> As noted at paragraph 9 above.

<sup>81</sup> Section 49(3)(d) and schedule 4, part 1, item 2 of the RTI Act provides that a decision-maker must not take into account whether disclosure could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document. To the extent QCAA’s concerns regarding use of data to publish school league tables without contextual information may extend beyond misinterpretation of the data, to circumstances which, of themselves, raise public interest factors favouring nondisclosure, these are addressed below under ‘Factors favouring nondisclosure’.

<sup>82</sup> Submission dated 5 June 2023.

### ***What information is publicly available?***

49. In this matter, I consider that information that is publicly available affects the weighting of some applicable public interest factors. Therefore, before discussing the relevant factors, I will first identify this publicly available information.
50. Under the *Australian Education Act 2013* (Cth) (**AE Act**), secondary schools are required to publish (at a minimum) the following senior secondary outcomes information in their annual reports,<sup>83</sup> and do so in accordance with the 'Annual Reporting Policy for all Queensland Schools':<sup>84</sup>
- percentage of year 12 students undertaking vocational training or training in a trade
  - percentage of year 12 students attaining a year 12 certificate or equivalent vocational education and training qualification; and
  - certain contextual and funding information about the school.
51. Having viewed multiple annual reports of Queensland State schools, I note that they use a template which includes a table setting out the following year 12 outcomes:<sup>85</sup>
- number of students who received a Senior Statement at the end of Year 12
  - number of students awarded a QCIA
  - percentage of students awarded a QCE or QCIA at the end of Year 12
  - percentage of Year 12 students who were completing or completed a **SAT**<sup>86</sup> or were awarded one or more of the following: QCE, IBD, VET qualification
  - number of students awarded one or more VET qualifications (including SAT)
  - number of students who were completing/continuing a SAT
  - number of students awarded a VET Certificate I
  - number of students awarded a VET Certificate II
  - number of students awarded a VET Certificate II+
  - number of students awarded a VET Certificate III+
  - number of students awarded an IBD; and
  - percentage of IBD eligible students that were awarded an IBD.
52. Having viewed multiple annual reports of Queensland non-State schools, I am satisfied that they appear to convey the same information, albeit generally presented differently. This is consistent with non-State schools being subject to the same annual reporting requirements, as noted by QCAA.<sup>87</sup>
53. I also note the following information on the MySchool website<sup>88</sup> regarding year 12 results:
- number of students who completed senior secondary school<sup>89</sup>
  - number of students who were awarded a senior secondary certificate; and
  - contextual and funding information about the school.
54. Taking into account this publicly available information, I am satisfied that:

<sup>83</sup> Section 77(2)(f) of the AE Act and section 60(1) of both the repealed *Australian Education Regulation 2013* (Cth) and the current *Australian Education Regulation 2023* (Cth).

<sup>84</sup> The Department of Education's Annual Reporting Policy for all Queensland Schools requires that schools make their annual reports publicly available on the internet for a minimum of 12 months: <https://education.qld.gov.au/about/Documents/annual-reporting-queensland-schools.pdf>.

<sup>85</sup> Note – the acronyms in this paragraph and below are explained in the footnotes to paragraph 6 above.

<sup>86</sup> School-based apprenticeship or training.

<sup>87</sup> Submission dated 5 June 2023.

<sup>88</sup> At <https://myschool.edu.au>, under the Senior Secondary tab once you have selected a particular high school.

<sup>89</sup> Which appears to equate with 'number of students who received a Senior Statement at the end of Year 12' in Queensland State schools' annual reports (see above).

- It is possible to locate per-school figures in publicly available information which comprise or allow calculation of the number of students who were awarded a SEP, QCE,<sup>90</sup> QCIA, one or more VET qualifications and an IBD (ie items i.-iv. and ix. of the Part 1 Information) – however, these figures are widely dispersed (appearing in the annual reports of each school and on the MySchool website) and are therefore in a less easily accessible form.
- The publicly available information does not appear to extend to the number of students in different bands of IBD results or students who completed a university subject while at school (ie items x.-xi. of the Part 1 Information).

### **Public interest factors favouring disclosure**

55. The applicant submitted<sup>91</sup> that disclosure could reasonably be expected to:

- a. promote open discussion of public affairs and enhance the government's accountability<sup>92</sup>
- b. contribute to positive and informed debate on important issues or matters of serious interest<sup>93</sup>
- c. inform the community of the government's operations<sup>94</sup>
- d. ensure the effective oversight of expenditure of public funds<sup>95</sup>
- e. allow or assist inquiry into, or reveal or substantiate, possible conduct deficiencies within the administration of Queensland State schools<sup>96</sup>
- f. reveal that the information was incorrect, out of date or misleading;<sup>97</sup> and
- g. contribute to the facilitation of research.<sup>98</sup>

### **Accountability and transparency**

56. The factors listed at paragraph 55.a. to e. above relate to the accountability and transparency of government agencies.

57. QCAA's decision<sup>99</sup> – which addressed the ATAR Information as well as the Part 1 Information – afforded moderate weight to these factors because QCAA considered it *'questionable that this dataset is sufficient to promote positive and informed discussion or debate about schools' and education authorities' performance, and ultimately, the effectiveness of government's use of public funds'*. In support of this position, QCAA:<sup>100</sup>

- pointed out background events and research preceding its change in approach, including –
  - a **2019 Declaration** by the Australian, state and territory governments about making reliable and appropriate information about student achievement available to education stakeholders, including parents and families;<sup>101</sup> and

<sup>90</sup> Although the Queensland State school annual reports do not state the number of students awarded a QCE, it is my understanding that this may be calculated by reference to the 'number of students who received a Senior Statement at the end of Year 12', 'number of students awarded a QCIA' and 'percentage of students awarded a QCE or QCIA at the end of Year 12'.

<sup>91</sup> Application for external review dated 31 January 2022 and submissions dated 24 July 2022, 30 January, and 26 May 2023.

<sup>92</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>93</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>94</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>95</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>96</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>97</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>98</sup> Schedule 4, part 2, item 19 of the RTI Act.

<sup>99</sup> Dated 7 January 2022.

<sup>100</sup> Decision dated 7 January 2022 and submission received 9 June 2023.

<sup>101</sup> *Alice Springs (Mparntwe) Education Declaration* (December 2019) at page 18.



- a **2019 NAPLAN Review** which reported *‘the tension that exists between concerns about harms that can come from publishing uncontextualised data in league tables and the desire for transparency and accountability through access to school-level data’*, and recommended schools publish school-level NAPLAN data in ways that reduce the likelihood of third parties producing league tables<sup>102</sup>
  - explained the impetus for its change in approach – see paragraph 9 above; and
  - noted as follows regarding endorsement of its changed approach –
    - in a meeting on 10 February 2021 in which the QCAA Board discussed its reasons for changing its approach, *[m]embers considered that this was the best way of ensuring that the diverse range of potential “success stories” in schools is not overshadowed by the publication of league tables derived from one outcome alone’*,<sup>103</sup> and
    - *[t]his approach was endorsed by the Minister for Education’s Senior Assessment and Tertiary Entrance Implementation Taskforce, which includes representatives from the schooling sectors, parent organisations, principal associations, the tertiary sector, the QCAA and [QTAC]’.*
58. The applicant submitted that the accountability and transparency factors deserve higher than ‘moderate’ weight because:<sup>104</sup>
- the administration and management of schools at both a departmental level and individual State school level is a matter of public oversight
  - the Queensland government is accountable for the effectiveness of spending in the education sector, and there is a *‘need for clear, uniform, detailed per-school outcomes reporting, publicly available and readily useable for discussion, audit, and analysis’*
  - information about year 12 outcomes would positively contribute to debate on *‘an enduring matter of community interest and a popular topic of discussion’*
  - disclosure of per-school information would improve understanding of how well, or otherwise, Queensland State schools are operating and whether public funds are being allocated to achieve the most effective results
  - *‘suppressing academic outcomes information, destroys transparency and creates a shroud of secrecy around matters of efficacy’*; and
  - regular and comprehensive reporting shows the public *‘where the management of Qld state schools might be deficient when measured against a uniform benchmark that is applied consistently across all schools’* and *‘assists in uncovering bias or deficiency by agencies or officials in their recognition of student academic achievements’*.
59. On review, QCAA maintained that higher weight should not be given to the factors at paragraph 55.a. to e. because *‘sufficient school-level information is currently available in school annual reports and on their websites’*.<sup>105</sup> It considered that the publicly available information (see *‘What information is publicly available?’* above), along with other

<sup>102</sup> Professor Bill Loudon, *NAPLAN Reporting Review: Prepared for COAG Education Council* (June 2019), recommendation 5 at page 98. I note that the review did not recommend that school-level data not be published at all.

<sup>103</sup> This approach was subsequently endorsed by the Minister for Education in a letter from Ms Grace Grace MP, Minister for Education dated 19 April 2021 to Mr Brian Short, Chair, QCAA (a copy of which QCAA provided on 10 November 2023), and mentioned in the Queensland Parliament (Queensland, *Parliamentary Debates*, Legislative Assembly, 22 April 2021, 1105).

<sup>104</sup> External review application dated 31 January 2022.

<sup>105</sup> Submission dated 5 June 2023.

information available on the MySchool website,<sup>106</sup> can be used together ‘to develop an informed perspective on a school’s strengths’<sup>107</sup> where student achievement data is published ‘in the context of other information about each school’, which ‘encourages those in the community to engage deeply with all information available on a particular school, rather than rely on a superficial ranking produced from easily obtainable summary information’.<sup>108</sup>

60. The 2019 Declaration cited by QCAA made the following comments about how the release of per-school achievement data promotes accountability and transparency:<sup>109</sup>

*Parents, carers and families should have access to:*

- *data on learner progress and outcomes*
- *data that allows them to assess an education provider’s performance overall and in improving learner progress and outcomes*
- *contextual information about the philosophy and educational approach of education providers, and their facilities, programs and extra-curricular activities*
- *information about an education provider’s enrolment and staffing profile.*

*For schools, Australian Governments provide assessment results that are publicly available at the school, sector and jurisdiction level to ensure accountability and provide sufficient information to parents, carers, families, the broader community, researchers, policy makers and governments to make informed decisions based on evidence... This information provides the community with an understanding of the decisions taken by governments and the status and performance of schooling in Australia, to ensure schools are accountable for the results they achieve with the public funding they receive, and governments are accountable for the decisions they take.*

61. QCAA’s concerns around school league tables prompted me to consider the distinction between ‘what is in the public interest and what is of interest to know’, given a matter ‘which gratifies curiosity or merely provides information or amusement... may or may not be one... which [is] for the benefit of the public’.<sup>110</sup> However, I note the importance of such information to the community, as articulated in the 2019 Declaration in the previous paragraph. I also note that, despite concerns about league tables, QCAA nevertheless considered that the public interest factors related to accountability and transparency still warrant moderate weight with respect to the Part 1 Information. I further note the value of examining and discussing school level performance relative to other variables – such as levels of government funding, measures such as the Index of Community Socio-Educational Advantage (ICSEA), and particular teaching pedagogies used at different schools. On the information before me, it is my view that release of the Part 1 Information could reasonably be expected to contribute to open discussion and informed debate on the administration and management of Queensland secondary schools and enhance the government’s accountability and transparency. I also consider that disclosure could reasonably be expected to ensure effective oversight of expenditure of public funds in the education sector.
62. In the circumstances, with respect to the per-school IBD results and students who completed a university subject,<sup>111</sup> noting that these types of information are not publicly available, I afford high weight to the accountability and transparency factors in favour of disclosure listed at paragraph 55.a. to d. above. However, with respect to the rest of the

<sup>106</sup> The information published at <https://myschool.edu.au> and also at <https://reports.acara.edu.au/> enables comparison of NAPLAN performance data between years 3, 5, 7 and 9 cohorts of 2021 and of pre COVID-19 pandemic schooling years on both a national and per-school basis. I note, however, that ACARA does not publish year 12 performance data.

<sup>107</sup> Decision dated 7 January 2022.

<sup>108</sup> Submission dated 5 June 2023.

<sup>109</sup> 2019 Declaration at page 18.

<sup>110</sup> *DPP v Smith* [1991] 1 VR 63 at pages 73 and 75.

<sup>111</sup> ie items x.-xi. of the Part 1 Information.

Part 1 Information,<sup>112</sup> taking into account *'What information is publicly available?'* (above), I concur with QCAA and consider that the factors should be afforded moderate weight.

63. For the factor at paragraph 55.e., there is no information before me to indicate the existence of any possible conduct deficiencies within the administration of Queensland State schools. Given this, I consider it merely speculative to raise such deficiencies. I am unable to identify any basis for an expectation for which real and substantial grounds exist, to suggest that disclosure of the Part 1 Information could allow or assist inquiry into, or reveal or substantiate, possible conduct deficiencies within the administration of Queensland State schools. Accordingly, I do not consider the factors favouring disclosure listed at paragraph 55.e. apply.

### **Revealing incorrect or misleading information**

64. The factor listed at paragraph 55.f. above relates to revealing incorrect or misleading information.
65. The applicant submitted that disclosure of the Part 1 Information would provide *'an effective means of verifying and detecting errors by cross-checking against school publications'*. The applicant also notes that the information provided by schools is not sufficient, because schools are *'deliberately selective in their sharing of performance and outcome information'*, and *'skew their published information to emphasize good results and downplay or omit bad results'*.<sup>113</sup>
66. I accept that there may be a tendency among some schools to publish their annual reports in a manner that emphasises good results, and perhaps downplays less favourable results. However, as mentioned above, having viewed multiple annual reports, I also note that Queensland State schools use a template for annual reports which includes a table of year 12 outcomes, using a set format, without embellishment. Also, as both the applicant and QCAA have pointed out, under the AE Act schools are required to publish specific year 12 outcomes information.<sup>114</sup> Further, QCAA has also submitted that, for non-State schools, sufficient information is required to enable verification of its marketing claims regarding year 12 results, and there is also a regulator<sup>115</sup> to ensure schools do not *'repeatedly'* misrepresent their achievements.<sup>116</sup>
67. However, the suggestion that disclosure of the information in issue could reveal incorrect information is, in my opinion, mere speculation, rather than an expectation for which real and substantial grounds exist.<sup>117</sup> There is no evidence before me to indicate the existence of any actual or suspected errors that would be revealed by disclosure of the Part 1 Information. In any event, the aggregated nature of the Part 1 Information may render it of limited assistance in terms of enabling comparisons which could reveal misleading information in schools' annual reports. Accordingly, I do not consider this factor favouring disclosure applies.
68. However, if I am wrong in this regard – for example, noting QCAA's above use of the word *'repeatedly'* in its submissions with respect to non-State schools which could be construed as acknowledging at least some instances of misrepresenting achievements – I consider that this factor would warrant no more than low weight, given the likely limited

<sup>112</sup> ie items i.-iv. and ix. of the Part 1 Information.

<sup>113</sup> External review application dated 31 January 2022.

<sup>114</sup> See paragraph 50 above.

<sup>115</sup> The Non-State Schools Accreditation Board.

<sup>116</sup> Submission dated 5 June 2023.

<sup>117</sup> See footnote 78 which discusses the phrase *'could reasonably be expected to'* in further detail.

assistance of aggregated information for the purpose of the comparisons necessary to identify discrepancies.

### Contributing to the facilitation of research

69. The factor listed at paragraph 55.g. above relates to the facilitation of research.
70. The applicant submitted<sup>118</sup> that the Part 1 Information *'is a key ingredient in a better understanding of Qld secondary schools and their cohorts of academic high achievers'* including, for example, in relation to trends and impacts on school outcomes arising from the COVID-19 pandemic.
71. I accept that access to the Part 1 Information would facilitate research into Queensland secondary schools, including in relation to trends and impacts arising from the COVID-19 pandemic. I consider this factor is, to an extent, already advanced by information currently in the public domain (see *'What information is publicly available?'* above).<sup>119</sup> I do note, however, that a collated version of this information, rather than the current widely dispersed, less easily accessible form, would in a basic sense facilitate this research, in that it would make it easier and quicker for researchers to find relevant data. I also note that the AE Act does not require schools to publish anything in their annual reports about the types of information sought at items x.-xi. of the Part 1 Information (although some schools do this in any event). In these circumstances, I afford moderate weight to this factor favouring disclosure.

### Public interest factors favouring nondisclosure

72. QCAA submitted that disclosure could reasonably be expected to:
- a. cause a public interest harm by prejudicing the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency, and the achievement of the objects of a test, examination or audit conducted by an agency<sup>120</sup>
  - b. prejudice intergovernmental relations; and<sup>121</sup>
  - c. prejudice the protection of individuals' right to privacy and cause a public interest harm by disclosing personal information.<sup>122</sup>

### Tests or examinations

73. In its decision, QCAA found that disclosure of the Part 1 Information (and ATAR Information which is no longer in issue) could reasonably be expected to cause a public interest harm by prejudicing:
- the **effectiveness** of a method or procedure for the conduct of tests, examinations or audits by an agency;<sup>123</sup> and
  - **achievement** of the objects of a test, examination or audit conducted by an agency.<sup>124</sup>

<sup>118</sup> External review application dated 31 January 2022.

<sup>119</sup> This published information enables comparison of some school outcomes between the year 12 cohort of 2020 and those of pre COVID-19 pandemic schooling years.

<sup>120</sup> Schedule 4, part 4, sections 3(a) and (b) of the RTI Act.

<sup>121</sup> Schedule 4, part 3, item 14 of the RTI Act.

<sup>122</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

<sup>123</sup> Schedule 4, part 4, section 3(a) of the RTI Act. As well as considering these harm factors, I will take into consideration the factor favouring nondisclosure related to the former harm factor – that is, schedule 4, part 3, item 21 of the RTI Act.

<sup>124</sup> Schedule 4, part 4, section 3(b) of the RTI Act.

74. Previously, the Information Commissioner has found that the words ‘test’, ‘examination’ and ‘audit’ in this section should be interpreted according to their ordinary and natural meaning,<sup>125</sup> and concluded that the examination papers and marking guides relating to an examination sat by the individual applying for access may be refused.<sup>126</sup> However, here these factors are not being considered in terms of an individual student’s results, or a cohort of students’ results regarding a specific test. Rather, I am required to consider the extent to which these factors apply to the total *number* of students per-school who were awarded a SEP, QCE, QCIA, one or more VET qualifications or an IBD; fell within certain bands of IBD results; and who completed a university subject while at school.
75. QCAA submitted that ‘[i]n summary, disclosure of the [Part 1 Information] *can reasonably be expected to influence participation rates in QCAA’s General subjects*<sup>127</sup> *which would cause a public interest harm by prejudicing the effectiveness and the achievement of the objects of those examinations*’.<sup>128</sup> I have carefully considered QCAA’s submissions, which explain the following connection between disclosure of the Part 1 Information and the prejudices identified in the abovementioned factors:
- Disclosure of per-school achievement data has previously resulted in the publication of ‘league tables’ by the media and/or other third parties.
  - The publication of league tables in the media leads to schools steering students’ subject choices in a way that they consider will reflect more favourably on the school (that is, encouraging more academically inclined students towards certain subjects that are perceived to scale better in terms of a tertiary entrance rank, and encouraging less academically inclined students to do fewer General subjects than necessary to qualify for a tertiary entrance rank).<sup>129</sup> This influence on subject choices has caused enrolment in certain General subjects to decline. The following support this causal link –
    - ‘clear evidence that the official publication of student achievement data from 2006 was a leading factor in the decline in senior students maintaining eligibility to receive a tertiary entrance rank’<sup>130</sup>
    - a review commissioned by the Queensland government<sup>131</sup> noted a decline in student eligibility for a tertiary entrance rank and reported concerns amongst stakeholders ‘that the increasing use of the tertiary entrance rank as a measure of school performance was distorting schools’ practices as they attempted to maximise these results’<sup>132</sup>
    - there is ‘...a great deal of historical evidence’<sup>133</sup> which shows that ‘[i]n the past, students were discouraged from maintaining eligibility for tertiary

<sup>125</sup> *Queensland Law Society Inc. and Legal Ombudsman; Hewitt (Third Party)* (1998) 4 QAR 328 at [158]; *Carmody and Department of Justice and Attorney-General; Seven Network (Operations) Limited (Third Party)* [2016] QICmr 37 (19 September 2016) at [59].

<sup>126</sup> *Tsai and Griffith University* [2014] QICmr 39 (16 October 2014); *Lucas and University of Queensland* [2017] QICmr 14 (7 April 2017).

<sup>127</sup> According to QCAA’s website, ‘General subjects are suited to students who are interested in pathways beyond senior secondary schooling that lead to tertiary studies and to pathways for vocational education and training and work’ and ‘include Extension subjects. Results in General subjects contribute to the award of a QCE and may contribute to an ATAR’ (see <https://www.qcaa.qld.edu.au/senior/senior-subjects/general-subjects>). A student must complete five General subjects, or four General subjects plus a fifth subject of a particular type, to be eligible for an ATAR (see [https://www.qcaa.qld.edu.au/senior/australian-tertiary-admission-rank-atar#:~:text=ATARs%20and%20the%20QCE%20system&text=The%20ATAR%20is%20used%20nationally.Unit%203%20and%204\)%2C%20or](https://www.qcaa.qld.edu.au/senior/australian-tertiary-admission-rank-atar#:~:text=ATARs%20and%20the%20QCE%20system&text=The%20ATAR%20is%20used%20nationally.Unit%203%20and%204)%2C%20or)).

<sup>128</sup> Submission dated 28 July 2022.

<sup>129</sup> Here, QCAA’s concerns regarding use of data to publish school league tables extend beyond misinterpretation of the data (an irrelevant factor), to a particular consequences of such misinterpretation which QCAA contends arises and raises these public interest factors.

<sup>130</sup> QCAA did not cite any sources for this claim in its submission.

<sup>131</sup> Australian Council for Educational Research, *Redesigning the secondary-tertiary interface — Queensland review of senior assessment and tertiary entrance*, October 2014.

<sup>132</sup> *Ibid* at [53].

<sup>133</sup> Submission dated 5 June 2023.



*entrance. If schools consider that, in the future, they will be judged publicly by comparing their academic outcomes to those of other schools using a narrow range of measures, students are likely to be discouraged from enrolling in the more challenging subjects that include assessment programs with examinations and schools will find ways to exempt students from the examination components of subject assessments',<sup>134</sup> and this 'has been documented in various publications and is a view held by many education commentators, stakeholders, administrators and academics'<sup>135</sup>*

- *'[d]ata from the initial few years of the new QCE system suggests there are already fluctuations in enrolment patterns that appear to be the result of perceptions about how well subjects scale and the potential advantages that may come from choosing some subjects over others';<sup>136</sup> and*
  - *'representations from concerned subject specialists about what they perceive as the detrimental impact on their subjects arising from perceptions about how well the subjects will scale'.<sup>137</sup>*
- When there are insufficient participants in a subject, marking quality assurance for that subject becomes harder to conduct, and marking is therefore more prone to error and/or requires more time and resources.<sup>138</sup> Specifically –
    - data collated using statistical methods becomes less useful and reliable, and information about a group of students in that subject diminishes, meaning the statistical reliability is smaller and inter-subject scaling results are prone to instability and reliant on assumptions that there are common aspects of performance across different subjects (which does not work where the subject has a specialised nature)
    - result calculation becomes more reliant on other checks and balances, which is more time consuming; and
    - the cost of quality assurance is disproportionate on a per-student basis, because the same quality assurance is conducted for the creation and marking of papers regardless of cohort size.<sup>139</sup>
  - In addition to providing an internationally recognised senior secondary schooling qualification and evidence of achievements,<sup>140</sup> and preparing students for tertiary study, further education and training work,<sup>141</sup> examinations in QCAA's General subjects advance two further objects that would be prejudiced by disclosure of the Part 1 Information –
    - enabling observations which *'inform the finalisation of results and feed forward to assist in the development of future examinations'* to ensure these future examinations are of a high quality and equitable for students; and

<sup>134</sup> Decision dated 7 January 2022.

<sup>135</sup> Submission dated 5 June 2023. QCAA did not cite any sources for this claim.

<sup>136</sup> Submission dated 5 June 2023.

<sup>137</sup> Submission dated 5 June 2023. In this regard, QCAA referred to an ABC News article which describes this phenomenon: Sally Eeles, 'Education experts concerned Queensland high school students abandoning arts subjects over ATAR result', ABC News (online, 29 May 2022) <https://www.abc.net.au/news/2022-05-29/qld-school-student-enrolment-arts-subjects-decline-over-sciences/101077754>.

<sup>138</sup> In response OIC's query about the minimum number of students required for QCAA to be assured that the objects and effectiveness of its assessments are adequate, QCAA submitted on 5 June 2023 that *'there is no easily identifiable minimum number of subject participants for assessments to be unaffected'*.

<sup>139</sup> Submission dated 5 June 2023. For subjects which currently have small enrolments (as evident in QCAA's Year 12 Certification Summary for 2022 at: [https://www.qcaa.qld.edu.au/downloads/publications/qcaa\\_stats\\_yr12\\_cert\\_summary\\_2022.pdf](https://www.qcaa.qld.edu.au/downloads/publications/qcaa_stats_yr12_cert_summary_2022.pdf)), QCAA advised that it employs additional checks and balances to ensure effectiveness, and that these may be costly in terms of both time and resources. It is reasonable to expect that QCAA would continue to take this approach for any subjects with 'insufficient' participants.

<sup>140</sup> As identified on QCAA's website: <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/about-the-qce>.

<sup>141</sup> As identified on QCAA's website: <https://myqce.qcaa.qld.edu.au/subjects-and-courses/qcaa-subjects-and-courses#:~:text=QCAA%20General%20subjects%20prepare%20you%20for,General%20subjects%20may%20also%20contribute%20to%20an%20ATAR>.

- monitoring '[t]he success of government initiatives, such as the promotion of science, technology, engineering and mathematics (STEM) pathways, or the study of languages other than English' which is only possible when the 'health of the system overall' is ensured by 'sufficiently strong participation rates'.<sup>142</sup>

76. It is my understanding that QCAA does not consider that disclosure of the Part 1 Information would **assist** future students sitting examinations to subvert the examination process. Rather, QCAA's concern is that disclosure of the Part 1 Information could reasonably be expected to **impede** QCAA's performance of its responsibilities by:
- i. reducing the validity of item analysis<sup>143</sup> and, accordingly, the accuracy of performance data that can be 'fed forward' to assist in the development of future examinations
  - ii. reducing statistical reliability and scalability of results, requiring additional steps to manage this reduced reliability and scalability and assure marking quality, and increasing costs due to these additional steps: and
  - iii. to some extent making the monitoring of government initiatives more difficult.
77. The relevant tests/examinations to which QCAA's submissions relate are examinations in QCAA's General subjects.<sup>144</sup> I am satisfied that these constitute tests or examinations conducted by an agency for the purposes of the relevant public interest harm factors and factor favouring nondisclosure.
78. The applicant submitted that an examination remains effective '*even if only a handful of students undertake it*'.<sup>145</sup> I accept this in terms of the particular examination sat by the particular students – but also accept QCAA's submissions regarding the prejudice to the effectiveness of examinations in a cumulative, systemic manner over time. In this regard:
- I am satisfied that using item analysis to assist in the development of future examinations may reasonably be considered an '*identifiable method or procedure*'<sup>146</sup> for the conduct of these tests, and that declines in participation rates in some General subjects could reasonably be expected to prejudice the effectiveness of this method or procedure to at least some extent. Therefore – **if I accepted** that disclosure of the Part 1 Information could reasonably be expected to result in the impediment noted at paragraph 76.i. above – I would be satisfied that the harm factor and factor favouring nondisclosure regarding **effectiveness of examination methods**<sup>147</sup> are applicable in the circumstances of this review.
  - I am also satisfied that providing a credible, internationally respected qualification may reasonably be considered an object of examinations in QCAA's General subjects; and that small participation rates would reduce statistical reliability and scalability to some degree (notwithstanding additional steps and therefore costs to manage these as much as possible) across a broader range of subjects than is

<sup>142</sup> Submission dated 28 July 2022. I note QCAA has not made submissions about the 'objects' of tests or examinations in VET courses, QCIA programs, IBD courses or university subjects.

<sup>143</sup> In its submission dated 28 July 2022, QCAA explained item analysis as follows: '*The performance information of other students (not only in the examination in question, but possibly also in their other studies, depending on the purpose) is needed to accurately assess how well the examination itself has performed. Perhaps some items yielded inconsistent responses or were clearly too difficult, while others were too easy. This form of review or reflection is known as "item analysis". It is an important tool for evaluating the overall quality of an examination by assessing whether the difficulty level of each item is appropriate, whether they usefully discriminate between students, whether their distractors are effective and how they relate to each other. It relies on the accumulation of sufficient student performance data to enable statistical analysis and expert judgment*'.

<sup>144</sup> See footnote 1277 above.

<sup>145</sup> External review application dated 31 January 2022.

<sup>146</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 at [96]-[107].

<sup>147</sup> Schedule 4, part 3, item 21 and part 4, section 3(a) of the RTI Act.

presently the case, and thereby prejudice achievement of this object over time. I further accept that monitoring the success or otherwise of government initiatives may also reasonably be considered an object of these tests, and that this may be more difficult when subject participation rates decline (while also noting that reduced participation rates may, of themselves, point to a lack of success). In the circumstances – **if I accepted** that disclosure of the Part 1 Information could reasonably be expected to cause the impediments noted at paragraph 76.ii. and iii. above – I would be satisfied that the harm factor regarding **achieving the objects of examinations**<sup>148</sup> is applicable in the circumstances of this review.

79. However, **I am unable to accept** that disclosure of the Part 1 Information could reasonably be expected to result in the impediments noted at paragraph 76.i.-iii.above. *this*. I am not satisfied QCAA has met its onus in this review<sup>149</sup> of establishing a connection between disclosure of the Part 1 Information and the impediments posited by QCAA. The causal link between disclosure and these impediments is the publication of league tables, which QCAA contends will influence students' subject choices and lead to declines in participate rates in some General subjects.
80. Having carefully considered QCAA's submissions in this regard, I am satisfied that QCAA's expectation is based on previous publication of tertiary entrance ranks (that is, OP ranks under the previous system). I do not consider that there are real and substantial grounds for the same expectation with respect to the Part 1 Information. In this regard, I note that the ATAR Information (including ATAR ranks) is no longer in issue and does not form part of the Part 1 Information.
81. While much of the Part 1 Information is already available, albeit in a widely dispersed, less easily accessible form, and could already be collated into a league table – see '*What information is publicly available?*' above – I accept that disclosure of the Part 1 Information could possibly increase the ease of creating league tables for the 2020 year 12 schooling year, and therefore increase the likelihood of league tables being published.
82. However, I do not see how league tables of the total *number* of students per-school who were awarded a SEP, QCE, QCIA, one or more VET qualifications or an IBD; and/or who completed a university subject while at school could enable league tables that could reasonably be expected to influence students' subject choices as envisaged by QCAA. Knowledge of the *number* of students per-school in these categories would not reveal any information about the *performance* of students within General subjects that contribute credits towards a QCE and may contribute to an ATAR.
83. Further, while the number of students per-school who fell within certain bands of IBD results is somewhat telling of *performance*, I cannot see how this information could influence subject selection within QCAA's General subjects towards subjects that are perceived to scale higher for the ATAR. Even if it were the case that such a prejudice could arise, it would necessarily be limited, because of the small number of Queensland schools who offer the IBD qualification to a proportionately low number of students.
84. Given this, I do not see how league tables drawing on any of these types of data could influence students' General subject choices in the manner envisaged by QCAA. Further, even if I were to find that the publication of league tables using the Part 1 Information

<sup>148</sup> Schedule 4, part 4, section 3(b) of the RTI Act.

<sup>149</sup> Section 87(1) of the RTI Act.

could result in some schools influencing General subject choices, I am not satisfied that there aren't other factors at play which are also influencing students' subject choices.<sup>150</sup>

85. Accordingly, I am not satisfied that there is a sufficient nexus between the prejudices claimed and disclosure of the Part 1 Information for the harm factor and factor favouring disclosure regarding **effectiveness of examination methods**<sup>151</sup> or the harm factor regarding **achieving the objects of examinations**<sup>152</sup> to apply to the Part 1 Information. If I am wrong and these factors do arise, I consider that any prejudices occurring would be confined and of relatively little impact, given the nature of the Part 1 Information, and would therefore give the factors only limited weight.

### Intergovernmental relations

86. QCAA found that disclosure of the Part 1 Information (and ATAR Information which is no longer in issue) could reasonably be expected to prejudice intergovernmental relations.<sup>153</sup>
87. In its decision, QCAA stated that its Board discontinued publication of per-school achievement data to *'bring its approach to reporting student achievement into line with the national protocols'*. The national protocols referred to by QCAA are the *Principles and protocols for reporting on schooling in Australia*, June 2009 (**2009 National Protocols**)<sup>154</sup> agreed by all Australian governments and published by the Australian Curriculum, Assessment and Reporting Authority (**ACARA**). The Board's decision to discontinue per-school achievement data occurred after the Director-General of the Department of Education received a letter from the Chief Executive Officer of ACARA in 2019 which expressed *'concern about the publication of league tables in the media using NAPLAN data obtained from Queensland's NAPLAN Outcomes report' (2019 ACARA Letter)*. This letter referred to a commitment, as recorded in the 2009 National Protocols, by Federal, State and Territory Ministers with responsibility for school education, to ensuring that *'governments will not publish simplistic league tables or rankings, and will put in place strategies to manage the risk that third parties may seek to produce such tables or rankings'*.<sup>155</sup> QCAA decided that *'any decision to release school-by-school achievement information in the form requested in this application has real potential to affect relations between the Queensland and Australian governments on this matter'*.
88. ACARA is an independent statutory authority established by the *Australian Curriculum, Assessment and Reporting Authority Act 2008* (Cth), with the ability to exercise functions and powers on behalf of the Commonwealth Government. ACARA was established to provide independent, authoritative and credible governance of a high quality national information resource, including monitoring the release and use of national data on school performance.<sup>156</sup> I consider dealings between a Commonwealth authority like ACARA and a State agency like QCAA comprise *'intergovernmental relations'* or relations between the Commonwealth and State governments within the meaning of the factors.<sup>157</sup>

<sup>150</sup> For example, the recent Federal government overhaul of fees for certain university courses, job opportunities in certain fields, students' own desires to study subjects that will scale higher in the ATAR system and schools' motivations (independent of how this is reflected in a league table) to encourage students to do the same.

<sup>151</sup> Schedule 4, part 3, item 21 and part 4, section 3(a) of the RTI Act.

<sup>152</sup> Schedule 4, part 4, section 3(b) of the RTI Act.

<sup>153</sup> Schedule 4, part 3, item 14 of the RTI Act. As well as considering this factor favouring disclosure, I will take into consideration the harm factor related to the former harm factor – that is, schedule 4, part 4, section 1(1)(a) of the RTI Act.

<sup>154</sup> At [https://www.acara.edu.au/docs/default-source/corporate-publications/principles-and-protocols-for-reporting-on-schooling-in-australia.pdf?sfvrsn=57674d07\\_0](https://www.acara.edu.au/docs/default-source/corporate-publications/principles-and-protocols-for-reporting-on-schooling-in-australia.pdf?sfvrsn=57674d07_0).

<sup>155</sup> 2009 National Protocols at page 8.

<sup>156</sup> 2009 National Protocols at page 8.

<sup>157</sup> Schedule 4, part 3, item 14 and part 4, section 1(1)(a) of the RTI Act – see *Greenpeace Australia Pacific and Queensland Treasury; Northern Australia Infrastructure Facility (Third Party)* [2018] QICmr 9 (1 March 2018) at [45]-[48].

89. In support of its nondisclosure position, QCAA referred to *Diamond and ACARA*<sup>158</sup> in which the Commonwealth's Freedom of Information Commissioner refused access to publicly reported NAPLAN and non-NAPLAN data for each Australian school, in an electronic tabulated format, for the 2008, 2009, and 2010 schooling years. In that matter, third party stakeholders (including state and territory education departments) had submitted that they provided NAPLAN data to ACARA on the understanding it would be presented on the My School website in accordance with 2009 National Protocols. The Freedom of Information Commissioner found that disclosure of the requested data would damage Commonwealth-State relations<sup>159</sup> in the following four ways:<sup>160</sup>
- *adversely affecting the administration of a continuing Commonwealth-State program*
  - *substantially impairing a continuing Commonwealth-State program*
  - *adversely affecting the continued level of trust or cooperation in existing inter-office relationships; and*
  - *impairing or prejudicing the flow of information to and from the Commonwealth.*
90. Further, QCAA referred<sup>161</sup> to the 2019 NAPLAN Review<sup>162</sup> in which Professor Bill Louden recommended school systems '*publish school-level NAPLAN data in ways that reduce the likelihood that third-party NAPLAN-based school league tables will be produced*'.<sup>163</sup>
91. The applicant submitted that QCAA's position does not specify the severity of the prejudice or specifics of the public interest harm that would result from disclosure, and is vague and unsubstantiated. The applicant also points out that the 2019 ACARA Letter expressed concerns in relation to NAPLAN data; not year 12 outcomes information,<sup>164</sup> and submitted that interpreting ACARA's concerns broadly as relating to year 12 outcomes data '*goes well beyond the facts at hand*'.<sup>165</sup>
92. In terms of the four ways in which *Diamond* found that disclosure would cause damage to Commonwealth-State relations noted at paragraph 89 above:
- I am not aware of any arrangements between QCAA (or other Queensland government agencies) and Commonwealth or other state or territory governments which involve the provision of year 12 outcomes data in the same way as ACARA collects NAPLAN data. Accordingly, on the information before me, I do not consider that releasing the Part 1 Information would adversely affect the administration of, or impair, a Commonwealth-State program, or prejudice the flow of information between governments, in the manner contemplated in *Diamond*.
  - In terms of whether disclosure of the information in issue could reasonably be expected to '*adversely affect the continued level of trust or cooperation*' between Queensland and other government agencies, in that release of this information would be inconsistent with ACARA's recommended approach, I note that QCAA has confirmed<sup>166</sup> that the 2019 ACARA Letter is the only example, of which it is aware, of the nature and extent to the prejudice to intergovernmental relations

<sup>158</sup> *Diamond and Australian Curriculum, Assessment and Reporting Authority* [2013] AICmr 57 (22 May 2013) (***Diamond***), affirmed in *Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority* [2014] AATA 707 (29 September 2014).

<sup>159</sup> Under section 47B(a) of the *Freedom of Information Act 1982* (Cth).

<sup>160</sup> At [35], footnotes omitted. I note also the Freedom of Information Commissioner's comments at [36]: '*The States provide the Commonwealth with the data upon which My School relies. I consider that there is a real risk that the States will withdraw from the program, making the My School program untenable, if that data is released in the form sought...*'.

<sup>161</sup> Submission received 9 June 2023.

<sup>162</sup> See footnote 1022 above.

<sup>163</sup> Recommendation 5 at page 98.

<sup>164</sup> Submission dated 25 July 2022.

<sup>165</sup> Submission dated 30 January 2023.

<sup>166</sup> Submission dated 5 June 2023.



suffered from 2009 to 2019 (ie. the period following agreement to the 2009 National Protocols over which QCAA continued to publish year 12 outcomes on a per-school basis).

93. My understanding from reviewing QCAA's submissions, the 2009 National Protocols,<sup>167</sup> 2019 Declaration,<sup>168</sup> 2019 NAPLAN Review,<sup>169</sup> and 2019 ACARA Letter itself, is that the concern described by ACARA is not about the publication of *any* per-school outcomes information, but the publishing of this information without appropriate contextual data or mechanisms in place to prevent the publication of league tables.
94. In response to OIC's preliminary view,<sup>170</sup> the applicant submitted that this general interpretation of ACARA's concerns raises factors which the RTI Act states are irrelevant to deciding the public interest.<sup>171</sup> While I agree that, in applying the public interest test, I cannot have regard to the inappropriateness, or otherwise, of publishing league tables as a factor in and of itself,<sup>172</sup> I *can* consider the impact on intergovernmental relations that may result from QCAA acting in a manner that is inconsistent with ACARA's recommendations.
95. I consider the broader concerns the 2019 ACARA Letter raised with the Department of Education about the impacts of publishing per-school outcomes data would also apply to the publication of year 12 outcome results. While ACARA is not involved in the publication of year 12 outcomes data, in circumstances where the rationale for ACARA's recommended approach is avoiding publication of simplistic school league tables, I consider that releasing the Part 1 Information in the format sought would be directly inconsistent with that recommended approach.
96. Additionally, while ACARA's approach to releasing NAPLAN data on its 'My School' website *does* involve publishing per-school data, it does not provide lists of comparative performance, and it has taken actions to prevent this data being used in the publishing of simplistic league tables.<sup>173</sup> ACARA also puts data into context by publishing school NAPLAN results alongside ICSEA information '*to encourage taking socio-educational advantage into account when comparing school achievement*'.<sup>174</sup> While I consider that publication of the Part 1 Information in a similar manner to ACARA's approach may remove (or, at least, substantially reduce) the need to consider this factor, it is not within my power to direct QCAA to create new documents, or disclose data additional to Part 1 Information.
97. As well as considering ACARA's approach, I have considered the extent of year 12 results information published by the other state and territory equivalents of QCAA and note that:

<sup>167</sup> The 2009 National Protocols (at page 8) acknowledge a commitment that '*information approved for publication on schools contains accurate and verified data, contextual information and a range of indicators to provide a more reliable and complete view of performance*'.

<sup>168</sup> See footnote 101 above.

<sup>169</sup> The 2019 NAPLAN Review recommended '*[t]hat school systems publish school-level NAPLAN data in ways that reduce the likelihood that third-party NAPLAN-based school league tables will be produced*'; see recommendation 5, pages 10 and 98.

<sup>170</sup> Dated 5 December 2022.

<sup>171</sup> Namely, schedule 4, part 1, item 3 of the RTI Act.

<sup>172</sup> Noting that section 49(3)(d) and schedule 4, part 1, item 3 of the RTI Act provide that a decision-maker must disregard whether disclosure could reasonably be expected to result in mischievous conduct by the applicant.

<sup>173</sup> Include updating their terms of use for the My School website and enabling users to '*only search five schools in one sitting before needing to confirm, via a 'captcha' screen, that the user is not a robot, to reduce opportunities for data-scraping*'; ACARA, 'New terms of use for My School', ACARA News (28 September 2020) previously at <https://acara.edu.au/news-and-media/news-details?section=202009250700>, still available via <https://archive.org/web/>.

<sup>174</sup> ACARA, 'Media Release: My School updated for 2022 – NAPLAN data returns', ACARA Media Releases (16 March 2022) at <https://www.acara.edu.au/docs/default-source/media-releases/my-school-update-2022.pdf>.

- some of these publish year 12 outcomes information – specifically –
  - the Victorian Curriculum and Assessment Authority publishes per-school data regarding students who achieved a Certificate of Education, VET qualification completion, availability of IBD at schools and some information about VCE study scores in a table format, without contextual socio-economic information<sup>175</sup>
  - the Western Australian School Curriculum and Standards Authority publishes per-school data regarding Certificate of Education attainment, ATAR course completion and VET qualification completion, in a searchable format (similar to My School), but without contextual socio-economic information, since 2021<sup>176</sup>
  - Tasmanian Assessment, Standards and Certification publishes per-school data regarding students who achieved a Certificate of Education, an ATAR, IBD and VET qualification, in a searchable format and alongside ICSEA contextual data (similar to information on ACARA's My School website)<sup>177</sup>
- however, the New South Wales Education Standards Authority, Northern Territory Board of Studies, Certificate of Education Board of South Australia, and Australian Capital Territory Board of Senior Secondary Studies do *not* publish year 12 outcomes information.

98. It is my view that release of the Part 1 Information in the format sought by the applicant under the RTI Act, where there is no further restriction on its dissemination or use, would be inconsistent with ACARA's recommended approach to releasing per-school data and, to an extent, undermines ACARA's efforts to implement the 2009 National Protocols.<sup>178</sup> Accordingly, I consider that releasing the information in issue could reasonably be expected to prejudice or cause damage to intergovernmental relations. However, I consider the fact that some other jurisdictions publish per-school data similar in nature to the Part 1 Information without contextual socio-economic information and/or controls reduces the weight that should be afforded to this factor to some extent. For that reason, I afford this factor favouring nondisclosure moderate weight.

99. For the sake of completeness, I will address the applicant's reference to a preliminary view issued by OIC in a previous external review in which he sought similar information,<sup>179</sup> which did not consider the prejudice to intergovernmental relations factor favouring nondisclosure. The applicant contended that the fact of QCAA having received the 2019 ACARA Letter does not change the balance of public interest, and that the previous preliminary view is a '*valid and binding*' precedent in accordance with which I should make findings in this external review.<sup>180</sup> The previous external review to which the applicant refers was resolved informally, without a formal decision, as a result of the parties' agreement based on OIC's preliminary view. Regardless, I must consider each case on the merits, having regard to the submissions and information before me in each review. In the present case, the information and submissions before me include submissions from the QCAA that the release of the information in issue would prejudice intergovernmental relations, and other information supporting that position (which I have considered above).

<sup>175</sup> <https://www.vcaa.vic.edu.au/administration/research-and-statistics/Pages/SeniorSecondaryCompletion.aspx>.

<sup>176</sup> <https://senior-secondary.scsa.wa.edu.au/certification/student-achievement-data-by-school>.

<sup>177</sup> <https://www.tasc.tas.gov.au/about/data/attainment-profiles-direct-continuation-data/?highlight=school%20attainment%20profiles>. This page includes the following note: '*Reflecting that the reports cannot provide meaningful comparisons, schools are requested to not use the report content to make comparisons of their individual school performance compared to another individual school in any marketing or public materials.*'

<sup>178</sup> In *Diamond*, the Freedom of Information Commissioner found that '*the publication of "simplistic" league tables would cause damage to Commonwealth-State relations*' (at [37]).

<sup>179</sup> Preliminary view dated 16 December 2016 in external review 313070.

<sup>180</sup> Submission dated 30 January 2023.

## Privacy and personal information

100. QCAA submitted that, by disclosing information which would enable publication of league tables, and the anticipated resulting decline in certain subject enrolments, it becomes easier to identify individual students and their results.<sup>181</sup> Accordingly, I have considered whether the factor favouring nondisclosure relating to protecting privacy and the harm factor regarding personal information apply.<sup>182</sup>

101. QCAA submitted that:<sup>183</sup>

*Identification of individual students, and their results, becomes increasingly easier as the number of students is reduced. This is obvious once, for example, an average of 10 students that includes only one female might include all males [sic]. It is possible to impute the individual result for that one student.*

102. In response to this, I indicated to QCAA that, if it were to provide a submission evidencing a minimum number of year 12 students at a particular school which would allow certain students' data to be identified among the Part 1 Information, I may be amenable to concluding that the factors relating to protecting individuals' personal information and privacy warrant high weight with respect to the Part 1 Information regarding these particular schools.<sup>184</sup> However, QCAA's response<sup>185</sup> did not address this.

103. In absence of a response, the material before me is insufficient to conclude that the above factors favouring nondisclosure apply to any of the Part 1 Information.

## Other matters

104. I have considered the further factors in schedule 4, parts 3 and 4 of the RTI Act and am satisfied that no others apply.

105. Also, noting that the public interest factors listed in the RTI Act are not exhaustive, I have considered QCAA's submissions regarding other prejudices and public interest harms it submits could result from disclosure of the Part 1 Information. I have considered whether disclosure and subsequent use of the Part 1 Information by the media to publish school league tables could result in schools:

- discouraging lower performing students from taking on more challenging academic programs
- devoting more time to students at the margins of reporting benchmarks at the expense of both low and high performing students; and/or
- diverting school time from curriculum experiences that do not involve examinations.<sup>186</sup>

106. For the reasons set out above (regarding 'Tests or examinations'), I am not satisfied QCAA has met its onus in this review of establishing that publication of league tables with the Part 1 Information could lead to schools behaving in the above ways.

<sup>181</sup> Submission received 9 June 2023.

<sup>182</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act. 'Personal information' is defined in section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**) as information about an individual whose identity is apparent, or can reasonably be ascertained, from the information.

<sup>183</sup> Submission dated 5 June 2023.

<sup>184</sup> Preliminary view dated 12 October 2023.

<sup>185</sup> Dated 10 November 2023.

<sup>186</sup> As mentioned in QCAA's decision dated 7 January 2022.

107. I have also considered the public interest surrounding what I consider may be the crux of QCAA's concerns – that publication may lead to league tables which are relied on by the 'marketplace' of students and their parents/guardians despite their simplistic, uncontextualised nature, and that this less informed marketplace would unfairly inflate or degrade the reputations of some schools and, as a result, unfairly inflate or degrade perceptions of graduates of those schools, and skew enrolments towards and away from particular schools (resulting in additional time and costs to 'police' enrolments at some schools). However, I am not satisfied that QCAA has established the nexus between publication of the Part 1 Information in particular and such outcomes.
108. In these circumstances, I do not consider there are any other public interest factors favouring nondisclosure to which I must give weight.

### ***Balancing the public interest***

109. In reaching my decision with respect to the Part 1 Information, I have taken into account the pro-disclosure bias of the RTI Act.<sup>187</sup> As set out above, among the factors favouring disclosure, I have given high weight to accountability and transparency factors for per-school IBD results and students who completed a university subject,<sup>188</sup> and moderate weight to these factors for the rest of the Part 1 Information. I have also given moderate weight to the factor about facilitation of research. I do not, on the material before me, accept that deficiency of conduct factors apply. Similarly, I do not consider that the factor about revealing incorrect or misleading information applies – but if I am wrong in that regard, I would afford it low weight.
110. On the other hand, for factors favouring nondisclosure and harm factors, I consider that the factors about tests and examinations do not apply – but if I am wrong in that regard, I would afford them limited weight. I consider that the factor about prejudice to intergovernmental relations warrants moderate weight. There is nothing before me to suggest that the prejudice to privacy and personal information factors apply, and I have not identified any further applicable factors.
111. After evaluating and balancing the weight I have attributed to each of the relevant public interest factors against one another, I am satisfied that the factors favouring disclosure of the Part 1 Information outweigh those favouring nondisclosure. Accordingly, I have determined there is no basis under the RTI Act to refuse access to the Part 1 Information, and it should be released.

### **Findings – Parts 2 and 3 Information Information about the 2020 award recipients**

112. As stated at paragraph 22 above, I will now address whether access to the Parts 2 and 3 Information – that is, the information about the 2020 recipients of two types of commendations, particularly the schools attended by them requested at Parts 2 and 3 of the application<sup>189</sup> – may be refused under the RTI Act because its disclosure would, on balance, be contrary to the public interest.
113. My above comments about irrelevant factors, made regarding the Part 1 Information, are apposite regarding the Parts 2 and 3 Information. I therefore repeat and rely on those comments.<sup>190</sup>

<sup>187</sup> Section 44 of the RTI Act. I have also taken into account that section 47(2)(a) of the RTI Act requires me to interpret grounds for refusal of access narrowly.

<sup>188</sup> ie items x.-xi. of the Part 1 Information.

<sup>189</sup> Set out at paragraph 6 above.

<sup>190</sup> Set out at paragraphs 46-48.

## Factors favouring disclosure

### Contributing to the facilitation of research

114. With respect to the Parts 2 and 3 Information specifically, the applicant submitted that:<sup>191</sup>

*These students are of special significance, being the top 2%-3% of all Qld year 12 students. As a cohort, their participation and choices in the Qld education system deserve special attention.*

*Publication of the requested Part 2 & 3 data will give us, the public, benefits and knowledge that is not otherwise obtainable. For example:*

- a. The relationships between awards won and the set of Qld schools.*
- b. The number and prevalence of awards in a given subject at a given school, if any.*
- c. The relationships between 6+ A grade subject combinations and the Qld schools.*
- d. The patterns and popularity of 6+ A grade subject combinations, if any, amongst the awardees.*
- e. Trends in all of the above over time.*

*This list is not exhaustive. The point is that access to the requested information can allow new insights to be uncovered, without undue harm, and is therefore a favourable outcome for all.*

115. I am satisfied that the information already published on QCAA's website is sufficient for the purposes of revealing the patterns and popularity of six or more 'A' grade subject combinations amongst the 1,049 recipients of Certificates of Commendation.<sup>192</sup> Otherwise, I accept that the contributing to the facilitation of research factor<sup>193</sup> does apply to the Parts 2 and 3 Information for the reasons asserted by the applicant.

116. The applicant submitted<sup>194</sup> that:

- where innovation and research efforts are focused on the cohort of academic high achievers, 'the proportional size of that cohort as a subset, 2%-3%, is irrelevant and its size in no way devalues the information or the importance of the factor'; and
- disclosure of the Parts 2 and 3 Information 'would assist in uncovering bias or deficiency by agencies or officials in their recognition of student academic outcomes', for example, if a school with a history of academic high achievement was awarded an unusually high or low number of awards in a given year compared to previous years.

117. I accept that the Parts 2 and 3 Information would have value for the purposes of innovation or research focused on the cohort of academic high-achievers. For this reason, I afford moderate weight to this factor favouring disclosure.

### Accountability and transparency

118. I also find that the Parts 2 and 3 Information would enhance QCAA's transparency and inform a public debate on any relationships between awards won, schools attended, and subjects undertaken at those schools to some degree. Taking into account the small dataset, I consider that these factors<sup>195</sup> also deserve moderate weight.

<sup>191</sup> Submission dated 25 July 2022.

<sup>192</sup> See information shown at: <https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce/qce-achievement-awards/past-winners/2020/certificate-academic-commendation>.

<sup>193</sup> Schedule 4, part 2, item 19 of the RTI Act.

<sup>194</sup> Dated 30 January 2023.

<sup>195</sup> Schedule 4, part 2, items 1, 2, and 3 of the RTI Act.

119. As for the Part 1 Information, I consider that the applicant's submission that disclosure of the Parts 2 and 3 Information would assist in uncovering any bias or deficiency by agencies is speculative, or a mere possibility, rather than an expectation for which real or substantial grounds exist. It is my view that the public interest factors relating to allowing or assisting inquiry into possible deficiencies in the conduct or administration of an agency, and revealing or substantiating misconduct or negligent, improper or unlawful conduct, do not apply.<sup>196</sup>
120. It also remains my view that releasing the Parts 2 and 3 Information could not reasonably be expected to ensure the *effective* oversight of expenditure of public funds, given the limited nature of this information.<sup>197</sup> I acknowledge, however, that disclosure would allow for some oversight – perhaps relatively ineffective in nature – and afford limited weight in this regard.

### Revealing incorrect or misleading information

121. The applicant also submitted that disclosure of the Parts 2 and 3 Information would provide '*an effective means of verifying and detecting errors by cross-checking against school publications*'. The applicant submitted this is important because '*[c]ertain schools are known for selectively proclaiming or distorting their achievements to enhance their reputation*'.<sup>198</sup> As mentioned above for the Part 1 Information, I accept that there may be a tendency among some schools to publish student achievements in a way that emphasises good results. However, on the information before me, I cannot see how disclosure of the Parts 2 and 3 Information would reveal misleading claims made by schools. To the extent it is the applicant's argument that cross-checking the Parts 2 and 3 Information may reveal that schools have, in fact, published incorrect information about awards received by year 12 students, I consider this is speculative, rather than an expectation for which real and substantial grounds exist. Accordingly, I do not consider the public interest factor favouring disclosure regarding revealing incorrect or misleading information<sup>199</sup> applies.

### Factors favouring nondisclosure

#### Privacy and personal information

122. It is necessary to consider the application of the factor favouring nondisclosure relating to protecting privacy and the harm factor regarding personal information<sup>200</sup> to the Parts 2 and 3 Information. In order to do this, it is relevant to note the distinction between **Named Award Recipients** – as previously noted at paragraph 33a. and c. above, and **Anonymous Award Recipients** – as previously noted at paragraph 33b. and d. above.

#### Named Award Recipients

123. For the Named Award Recipients, the applicant seeks the school attended by each award recipient alongside the already published information (that is, their name and the subject/s studied by them).
124. At OIC's request, QCAA provided a copy of a template online form sent to award recipients<sup>201</sup> seeking consent to publication of the students' names, subjects studied and

<sup>196</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>197</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>198</sup> Submission dated 30 January 2023.

<sup>199</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>200</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

<sup>201</sup> Or their parents/guardians for students under the age of 18 years.



personal information (including association with a school). While the form received by OIC was for 2022 year 12 award recipients, I understand that it was provided by QCAA because it differed in no material respect to the form for the 2020 year 12 award recipients whose information comprises the Parts 2 and 3 Information.

125. I have carefully considered the form. I note that some parts of it indicate that the permission relates only to the student's name and the subjects they studied. However, other parts of the form include references to the student's school – for example, stage two of the form asks the student to check that their personal details – including, notably, their school – are correct. Further, the legal statement requiring acceptance in stage three of the form includes the following:<sup>202</sup>

*'Personal information' may include an individual's name, **their association with a school**, or their image, voice, or voice recording.*

126. I consider that these aspects of the form are sufficient to indicate that, where award recipients provided consent, it is reasonable to proceed on the basis that this consent to publication related to the schools they attended, as well as their names and the subjects they studied. Accordingly, I consider the personal information and privacy factors favouring nondisclosure<sup>203</sup> deserve only low weight **for the Named Award Recipients**.

### **Anonymous Award Recipients**

127. For the Anonymous Award Recipients, the applicant seeks the school attended by each award recipient alongside relevant subject information. He does not seek access to recipients' names. For the Part 2 Information, the subjects for which Anonymous Award Recipients received six or more 'A' grades have already been published. For the Part 3 Information, no information at all has been published about Anonymous Award Recipients.
128. The applicant has made several submissions regarding disclosure of the schools attended by Anonymous Award Recipients.<sup>204</sup> The following submissions summarise the primary focus of the applicant's submissions:

- *In all scenarios, disclosing an anonymous student's school name does not allow the student's identity to be ascertained as new knowledge – in some scenarios, any inferences are inconclusive, while in others, the student's identity is already known anyway.*<sup>205</sup>
- *... [I]n all scenarios, the aggregated information fails to reveal an anonymous student's identity as new knowledge – the identities of individuals are not apparent, and nor can they reasonably be ascertained, from the disclosure of the information when combined with other sources of information. I note that this quoted wording matches the definition of personal information under the IP Act (Information Privacy Act Qld, 2009, sec 12).*

*Furthermore, concerning the distinction between information that is known and thought to be known, I agree that as a general principle, disclosed information can sometimes confirm other related facts. However, I submit that the specifics of the information at hand in this case mean that its disclosure cannot provide any such confirmation or strengthening of other uncertain information. This is because the disclosed information is both anonymous and very simple.*<sup>206</sup>

<sup>202</sup> Bold emphasis is mine.

<sup>203</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

<sup>204</sup> Submissions dated 30 January 2023, 26 May 2023, and 20 October 2023.

<sup>205</sup> Submission dated 30 January 2023. See also submissions dated 26 May 2023.

<sup>206</sup> Submission dated 20 October 2023, applicant's footnotes omitted.

129. I understand that the applicant considers that the personal information harm factor and the prejudice to privacy factor favouring nondisclosure do not apply, and bases this contention on his view that disclosing the school attended by each Anonymous Award Recipient, alongside the subject/s studied by them, would not allow their identity to be ascertained as “new knowledge”, nor confirm or strengthen other uncertain information.
130. I have carefully considered all of the applicant’s submissions in this regard, including the 14 scenarios and inferences discussed in his submissions.<sup>207</sup> These scenarios comprise 14 permutations of ‘additional statements’,<sup>208</sup> each of which combines variables regarding the extent of other available information about the identity of the recipient, the school attended by them, the suites of subjects they studied, and the subjects for which they received ‘A’ grades.
131. When considering whether information qualifies as personal information, it is necessary to determine if an individual’s identity is either ‘apparent’ or ‘can reasonably be ascertained’.<sup>209</sup> The relevant term in the circumstances of this matter is ‘reasonably ascertained’, which contemplates the information in question being compared or cross-referenced with *other information* to identify the individual in question.
132. Here, the 14 scenarios comprise the *other information*, as suggested by the applicant. Such information constitutes what, in data analytics, is termed auxiliary information.<sup>210</sup> In the context of the present review, it appears that this information may be either publicly available or private knowledge.<sup>211</sup> When combined with a de-identified dataset, auxiliary information may, depending on its nature and that of the dataset, result in an Anonymous Award Recipient being re-identified (also known as identity disclosure) or in attribute disclosure (where certain information is narrowed to a discrete unit of the population covered by the dataset, including the Anonymous Award Recipient).<sup>212</sup> While attribute disclosure may not, of itself, constitute re-identification, it *‘will likely have an impact on the risk of re-identification, and so ... must be considered and protected against as part of the de-identification process’*.
133. I acknowledge the computational exercise undertaken by the applicant, but consider that his scenarios involve some auxiliary information that is unlikely to arise in reality<sup>213</sup> and some artificial combinations or absences of auxiliary information.<sup>214</sup> I also question the applicant’s conclusions that no inferences, inconclusive inferences, or no new inferences can be drawn regarding the identity of award recipients. These conclusions appear to disregard comparisons or cross-checks between available auxiliary information and the

<sup>207</sup> Submissions dated 30 January 2023, 26 May 2023, and 20 October 2023. The applicant also referred to submissions he previously made in another external review in support of the position that, in all scenarios, the requested information combined with other available data does not enable conclusive or new inferences to be made as to individuals’ personal information, and I have considered these submissions.

<sup>208</sup> Scenarios numbered 3. to 16. in Appendix A attached to the applicant’s submission dated 20 October 2023.

<sup>209</sup> Section 12 of the IP Act.

<sup>210</sup> Office of the Information Commissioner (Qld), *Privacy and Public Data: Managing re-identification risk*, Report No. 1 to the Queensland Legislative Assembly for 2020-21 tabled on 14 July 2020 at <https://documents.parliament.qld.gov.au/tp/2020/5620T1124.pdf>.

<sup>211</sup> Australian Bureau of Statistics, *Data confidentiality guide: Understanding re-identification*, 8 November 2021 at <https://www.abs.gov.au/about/data-services/data-confidentiality-guide/understanding-re-identification>.

<sup>212</sup> See OAIC and CSIRO, *The De-identification Decision-Making Framework*, 18 September 2017 at <https://publications.csiro.au/publications/publication/Plcsi:EP173122> at pages 9-10.

<sup>213</sup> For example, the variables regarding suites of subjects studied, and subjects for which ‘A’ grades were awarded, comprise types of information and a level of detail that is unlikely to reflect the nature of actual auxiliary information.

<sup>214</sup> For example, scenarios 3., 8. and 10. proceed on the basis that the student is known, but their school is not, while scenarios 12.-14. and 16. proceed on the basis that there were only one or three year 12 students at a particular school – yet their names are not known. In both instances, I consider that, if one is known, it is reasonably likely the other will be as well.

Parts 2 or 3 Information in question<sup>215</sup> that, in my opinion, could reasonably be expected to occur.

134. In short, I consider that auxiliary information most likely to be available for comparison or cross-checking with the Parts 2 or 3 Information would be the names of students at a particular school (ie both name and school) who are known among their peers for excelling academically across a number of subjects or achieving the highest results in particular subjects, who likely come to the attention of the broader school community via school awards ceremonies or in school newsletters, and then perhaps the wider community in media coverage or social media (ie higher level information than that contemplated by the applicant's variables).
135. This type of auxiliary information aligns somewhat closely with the applicant's scenario 11. – *Student "Smith" achieved 'A' grades in subjects s1, s2, s3, s4, s5, s6 at school XYZ* – regarding which he concluded:

*Nothing new. This statement by itself provides more information than the disclosure of [the school attended by each Anonymous Award Recipient alongside the subject/s for which they received a Certificates of Academic Commendation], thus making [that] disclosure ... irrelevant.*

136. In contrast to the applicant's conclusion, I consider that comparison or cross-checking between the disclosed Part 2 Information and this auxiliary information would, depending on the particular circumstances, either enable "Smith's" identity as an award recipient to be reasonably ascertained (thereby re-identifying "Smith"); or confirm that one individual, among a small group of possible recipients including "Smith", received the award (attribute disclosure).
137. The type of auxiliary information I have noted at paragraph 134 above also aligns quite closely with the following illustration provided by the applicant:<sup>216</sup>

*To illustrate – suppose that school "A" is widely known to have a talented student in, say, Biology Studies, and that public social media posts suggest that student's name might be "C". In this case disclosure of the bare fact that an anonymous student at school "A" won a QCAA award in Biology clearly does not confirm nor strengthen the hearsay about the student's identity. The supposition that the student's identity is "C" is unchanged. Anonymity is preserved.*

138. Again, I consider that comparison or cross-checking between the between the disclosed Part 3 Information and this auxiliary information would, depending on the particular circumstances, either enable identification of "C" as an award recipient; or confirm that, among a small pool of individuals including "C", one individual was the award recipient.
139. Taking into account this type of comparison or cross-checking between the disclosed Parts 2 and 3 Information and auxiliary information, I consider it is reasonable to expect that, in many instances, particularly within their own communities, the identities of Anonymous Award Recipients could reasonably be ascertained. Otherwise, I consider it is reasonable to expect that, in many instances, the possible identities of Anonymous Award Recipients could reasonably be narrowed to a small number of individuals, resulting in attribute disclosure and an increased risk of re-identification.<sup>217</sup> I consider that the latter outcome raises the personal interest harm factor, while both outcomes raise the prejudice to privacy factor favouring nondisclosure.

<sup>215</sup> That is, the information identifying the school attended by an award recipient alongside the already published information regarding the subject/s studied by them.

<sup>216</sup> Submission dated 20 October 2023, applicant's footnotes omitted.

<sup>217</sup> Above footnote 212 at page 10.

140. I acknowledge that in most cases the student's name, attendance at a particular school and/or participation in particular subjects is likely to be already known by persons in a position to make these deductions. I also note the distinction between what is known, and what may be thought to be known (on the basis of general awareness, suspicion, hearsay, the community 'grapevine' etc), and observe that, in such circumstances, disclosure would provide additional information, in the sense of confirmation.
141. I consider it pertinent to note that, whether by choice or oversight, the Anonymous Award Recipients did *not* consent to QCAA publishing their personal information. I also consider the interference in the private sphere of the students would be significant, whether they were re-identified as an award recipient, or identified as one of a small number of students likely to be an award recipient. I also note that, even where information is widely known in a certain community, there are no controls when information is released under the RTI Act, and it therefore becomes possible for such information to be disseminated much more broadly, which necessarily diminishes privacy. Given this, for all Parts 2 and 3 Information, I consider the prejudice to privacy factor favouring nondisclosure warrants high weight.
142. Further, for the Parts 2 and 3 Information that would, in combination with reasonably available auxiliary information, allow the identity of Anonymous Award Recipients to be ascertained, I consider that personal information of this nature is, in general, moderately sensitive; however, its sensitivity is heightened in circumstances where the individuals concerned have been approached to consent to publication and have not provided this. Given these circumstances, I consider that the personal information harm factor also warrants high weight.
143. I will now address the other submissions made by the applicant regarding information of the Anonymous Award Recipients:<sup>218</sup>
- Furthermore, on the point that a broad dissemination of anonymous information leads to a diminution of privacy, I note there is a subtle but important distinction between privacy and secrecy. Privacy refers to an individual's right to be free from unsolicited intrusion or scrutiny. Secrecy, on the other hand, involves the intentional concealment of information from others. Secrecy can be used by a person as a tool to enhance their privacy. The more widely something is known, the less secret it is. However, a loss of secrecy does not automatically imply a loss of privacy. I submit that in fact, it is secrecy that is diminished through the broad dissemination of anonymous information, not privacy.*
- Lastly, amongst the other Australian jurisdictions, I note that the Tasmanian TASC, the Western Australian SCSA, and, to a lesser extent the Victorian VCAA all currently publish award information for anonymous recipients.*
144. I have carefully considered the applicant's submission that '*there is a subtle but important distinction between privacy and secrecy*' and that '*it is secrecy that is diminished through the broad dissemination of [the Anonymous Award Recipients'] information, not privacy*'. In acknowledging that disclosure of the information about the Anonymous Award Recipients would diminish the secrecy of that information, the applicant seemingly recognises that disclosure would entail a broader awareness of the information. Yet, at the same time, he considers that privacy is not impacted. I cannot agree with the logic of this particular distinction drawn by the applicant as I understand it.
145. Finally, in terms of the applicant's submission about the publication of similar information in some other states, this publication does not, in my opinion, have any bearing on the nature of the information itself, and whether personal information and privacy

<sup>218</sup> Submission dated 20 October 2023, applicant's footnotes omitted.

considerations apply to it. It does, however, provide some indication of those states' approaches to and risk appetites regarding such information, and is therefore relevant to my consideration of prejudice to intergovernmental relations (discussed below).

### Safety

146. Noting the factor favouring nondisclosure regarding '*prejudice to ... public safety*',<sup>219</sup> I have considered the possibility that knowledge of the school attended by a particular recipient could potentially assist a third party of ill intent to identify the suburb/s in which they are likely to live, if not the location of their residence. QCAA's decision and submissions throughout this review did not mention this factor, and there is no information available to me relating to the pre-2020 position, where schools attended were published as a matter of course, to indicate that such prejudice has previously arisen. Consequently, there is no material at all before me to support that this prejudice could reasonably be expected<sup>220</sup> to arise.

### Tests or examinations

147. I have also considered whether the harm factor and factor favouring nondisclosure regarding ***effectiveness of examination methods***<sup>221</sup> or the harm factor regarding ***achieving the objects of examinations***<sup>222</sup> to apply to the Parts 2 and 3 Information.
148. I accept QCAA's submission that '*the QCE Achievement Awards data can still be used to create ... [a] rank order of schools*'.<sup>223</sup> However, as the Parts 2 and 3 Information relates only to a specific subset of students (i.e. academic high achievers), and as the very nature of the information relates to the success of such students in a range of wide and varied subjects, it is unclear to me how a published league table of this kind of information would influence future students' selection of General subjects. As such, I am unable to see how participation rates in particular subjects could be expected to decline in the manner necessary to result in the prejudices discussed in relation to the Part 1 Information above. Accordingly, I do not consider that these public interest harm factors apply with respect to the Parts 2 and 3 Information. If I am wrong, and the public interest harm factor at schedule 4, part 4, section 3(b) of the RTI Act does apply, I consider it deserves only limited weight.

### Intergovernmental relations

149. For the same reasons as discussed above<sup>224</sup> with respect to the Part 1 Information, it is my view that disclosure of the Parts 2 and 3 Information would be inconsistent with ACARA's recommended approach to publishing school data. In terms of intergovernmental relations prejudice, the applicant submitted that '*five other Australian States and Territories regularly publish year 12 award information to the public*', including schools attended,<sup>225</sup> and that '*the volume of awards information from these jurisdictions is well over 20 times larger than that of the QCAA awards*'.<sup>226</sup> The applicant also pointed to examples of similar information being published by other Queensland government agencies.<sup>227</sup>

<sup>219</sup> Schedule 4, part 3, item 7 of the RTI Act.

<sup>220</sup> See footnote 78 which discusses the phrase '*could reasonably be expected to*' in further detail.

<sup>221</sup> Schedule 4, part 3, item 21 and part 4, section 3(a) of the RTI Act.

<sup>222</sup> Schedule 4, part 4, section 3(b) of the RTI Act.

<sup>223</sup> Submission dated 28 July 2022.

<sup>224</sup> Paragraphs 86 to 99.

<sup>225</sup> Submission dated 30 January 2023.

<sup>226</sup> Submission dated 26 May 2023.

<sup>227</sup> Submission dated 26 May 2023: '*The Qld Dept. of Education routinely publishes such information about winners of the T.J. Ryan Memorial Medal awards*' (at <https://education.qld.gov.au/about-us/budgets-funding-grants/scholarships/tj-ryan-memorial->

150. I have considered the year 12 awards information published by other jurisdictions' equivalents of QCAA:

- the Victorian Curriculum and Assessment Authority publishes student names, schools attended, subjects studied and scores<sup>228</sup>
- the New South Wales Education Standards Authority publishes student names, schools, subjects and, in some cases, gender<sup>229</sup>
- the Northern Territory Board of Studies publishes student names, schools and subjects<sup>230</sup>
- the Western Australian School Curriculum and Standards Authority publishes student names and schools attended<sup>231</sup>
- Tasmanian Assessment, Standards and Certification publishes student names and schools attended<sup>232</sup>
- the Certificate of Education Board of South Australia publishes student names and subjects studied for some award recipients, but not schools attended for year 12 awards;<sup>233</sup> and
- the Australian Capital Territory Board of Senior Secondary Studies does not publish awards information.

151. Given the extent to which information similar in nature to the Parts 2 and 3 Information is published in other jurisdictions, I do not consider disclosure of this information could reasonably be expected to cause any substantial prejudice to intergovernmental relations between QCAA and ACARA.<sup>234</sup> Accordingly, I afford low weight to these factors.<sup>235</sup>

### ***Balancing the public interest***

152. In reaching my decision with respect to the Parts 2 and 3 Information, I have taken into account the pro-disclosure bias of the RTI Act.<sup>236</sup> As set out above, for the factors favouring disclosure, I consider that disclosure would allow some oversight of expenditure of public funds, and afford this limited weight. For the other accountability and transparency factors, I consider that these warrant moderate weight. I also consider that the facilitation of research factor warrants moderate weight. I do not consider that the factors about assisting inquiry into possible conduct deficiencies, or revealing incorrect or misleading information are applicable.

153. Conversely, for the factors favouring nondisclosure and harm factors, I consider that the factors about tests and examinations do not apply – but, if I am wrong in that regard, I

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[medal-scholarships](https://learningplace.eq.edu.au/cx/resources/file/5da759ed-285d-4132-b8e8-58198109fb03/1/html/doherty-awards.html)) and the Peter Doherty Awards for Excellence in STEM Education (at <https://learningplace.eq.edu.au/cx/resources/file/5da759ed-285d-4132-b8e8-58198109fb03/1/html/doherty-awards.html>).

<sup>228</sup> <https://www.vcaa.vic.edu.au/students/support/Pages/Index.aspx> and <https://www.vic.gov.au/premiers-vce-awards>.

<sup>229</sup> <https://www.nsw.gov.au/education-and-training/nesa/awards-and-events/hsc-merit-lists>.

<sup>230</sup> <https://education.nt.gov.au/education-events-and-awards/academic-excellence-awards> and

<https://education.nt.gov.au/education-events-and-awards/ntbos-awards>.

<sup>231</sup> <https://senior-secondary.scsa.wa.edu.au/certification/2022-exhibitions-and-awards-recipients-search-page>. I note that some student names are listed as 'not for publication' next to their school names.

<sup>232</sup> <https://www.tasc.tas.gov.au/2023/01/tasc-outstanding-achievement-awards-2022/> and <https://www.tasc.tas.gov.au/wp-content/uploads/2022/12/2022-Top-101-TES-students-For-Public-Release-.pdf>. I note that some students' names have been withheld from public release at the student's request.

<sup>233</sup> <https://www.sace.sa.edu.au/events/merit-ceremony>. The applicant notes that school details are published in the media (for example, <https://www.adelaidenow.com.au/education-south-australia/sace-merits-and-commendations-2021-and-young-people-tell-us-whats-next/news-story/2814c529aeb000f27a469165df57660>). I do not consider the fact that school information has been published by the media is relevant for my assessment of the information that is published by other jurisdictions' equivalents of QCAA, for the purposes of considering the prejudice to intergovernmental relations which would occur by QCAA disclosing the Parts 2 and 3 Information.

<sup>234</sup> Schedule 4, part 3, item 14 of the RTI Act.

<sup>235</sup> Schedule 4, part 3, item 14 and part 4, section 1(1)(a) of the RTI Act.

<sup>236</sup> Section 44 of the RTI Act.

would afford them limited weight. I also give the factors about prejudice to intergovernmental relations low weight.

154. The key difference arises with respect to the prejudice to privacy and personal information factors. For the Named Award Recipients, for the reasons discussed above, I find that these factors should be given only low weight. In contrast, for the Anonymous Award Recipients, I am satisfied that they warrant high weight.
155. It is this difference which is determinative for my conclusions regarding the Parts 2 and 3 Information. For the Named Award Recipients, I am satisfied that the factors favouring nondisclosure do not outweigh those favouring disclosure. Accordingly, I find that there is no basis under the RTI Act to refuse access to the Parts 2 and 3 Information, insofar as it relates to the Named Award Recipients.
156. However, for the Anonymous Award Recipients, while I acknowledge that the competing public interest factors are balanced relatively finely, I am satisfied that the high weight of both the prejudice to privacy and personal information factors leads to the position where the weight of the factors favouring nondisclosure exceeds that of the factors favouring disclosure. Accordingly, I find that disclosure of the Parts 2 and 3 Information, insofar as it relates to Anonymous Award Recipients would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>237</sup>

## DECISION

157. I vary QCAA's decision and find that:

- for the **Part 1 Information** (that is, the per-school year 12 achievement data for 2020 listed at Part 1, items i. to iv. and ix. to xi. of the application) – no grounds for refusing access apply to this information<sup>238</sup> and therefore the applicant must be given access to it<sup>239</sup>
- similarly, for the **Parts 2 and 3 Information about Named Award Recipients** (that is, recipients who consented to QCAA's publication of information about them) – no grounds for refusing access apply to this information and therefore the applicant must be given access to it;
- however, for the **Parts 2 and 3 Information about Anonymous Award Recipients** (that is, recipients who did not consent to QCAA's publication of information about them) – this information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.<sup>240</sup>

158. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**A Rickard**  
**Acting Right to Information Commissioner**  
**Date: 22 March 2024**

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<sup>237</sup> Section 47(3)(b) of the RTI Act.

<sup>238</sup> Under section 47 of the RTI Act.

<sup>239</sup> Sections 44(1) and 49(1) of the RTI Act.

<sup>240</sup> Under section 47(3)(b) of the RTI Act.



## Appendix

### Significant procedural steps

Date	Event
31 January 2022	The applicant applied for external review.
15 February 2022	OIC advised the applicant and QCAA that the application for external review had been accepted. OIC requested submissions from QCAA regarding whether it held documents containing the requested information or could create a written document containing the information using equipment usually available to it for retrieving and collating stored information.
24 February 2022	QCAA advised OIC that it was able to collate information except for that relating to ATARs as QTAC rather than QCAA holds ATAR Information.
25 February 2022	QCAA provided a submission to OIC that QTAC rather than QCAA possesses and controls ATAR Information, and QCAA is not entitled to access it.
28 April 2022	QCAA provided OIC with a copy of its Memorandum of Understanding with QTAC.
12 July 2022	OIC conveyed a preliminary view to the applicant. OIC requested further information from QCAA regarding the remaining information sought by the applicant.
25 July 2022	The applicant provided a submission to OIC. OIC wrote to the applicant to confirm that the applicant's acceptance of OIC's view that the ATAR Information sought by him was nonexistent as documents of QCAA for the purpose of access applications under the RTI Act.
28 July 2022	QCAA provided a submission to OIC.
14 November 2022	OIC provided an update to the applicant.
5 December 2022	OIC conveyed a preliminary view to the applicant.
30 January 2023	The applicant provided a submission to OIC.
13 April 2023	OIC requested further information from the applicant.
20 April 2023	OIC requested further information from QCAA.
26 May 2023	The applicant provided a submission to OIC.
5 and 9 June 2023	QCAA provided a submission to OIC.
7 September 2023	OIC provided an update to the applicant.
12 October 2023	OIC conveyed a preliminary view to the applicant and QCAA.
20 October 2023	The applicant provided a response to OIC's preliminary view.
10 November 2023	QCAA provided a response to OIC's preliminary view.
22 December 2023	OIC provided an update to the applicant and QCAA.
19 February 2024	OIC provided an update to the applicant and QCAA.