



## Decision and Reasons for Decision

---

**Application Number:** 311004

**Applicant:** Kiepe

**Respondent:** The University of Queensland

**Decision Date:** 1 August 2012

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - applicant seeking personal information relating to her university studies - whether information relating to other students, staff and issues unrelated to the applicant is irrelevant to the application - whether agency was entitled to delete information under section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - mobile phone numbers and private email addresses of university and private sector staff - correspondence from private organisations where the applicant undertook practical work experience - whether access may be refused on the basis that disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) and section 67(1) of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENT - application for a marked piece of assessment - whether access may be refused on the basis that the document does not exist - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) and section 67(1) of the *Information Privacy Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to The University of Queensland (**UQ**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information about herself in relation to her studies at UQ, including various categories of emails and a marked item of assessment.
2. UQ located 648 pages and released 528 full pages to the applicant. In relation to the remaining information, UQ decided to delete certain information which it considered did not relate to the applicant, on the basis that it was irrelevant to the access application. For the reasons set out below, UQ was entitled to delete this information under section

88 of the IP Act as it concerns other students/staff and/or issues unrelated to the applicant and her studies.

3. UQ also decided to refuse access to (i) mobile phone numbers and private email addresses of UQ staff and private sector employees and (ii) emails sent to UQ by private organisations where the applicant undertook practical work experience as part of her studies. For the reasons set out below, UQ was entitled to refuse access to this information under section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that its disclosure would, on balance, be contrary to public interest.
4. On external review, the applicant contended that UQ should have located a marked version of a logbook for a particular course she undertook. The information provided by UQ indicates that, while the logbook was assessed and the applicant was provided with feedback on it, it is not the practice of the relevant school to physically mark logbooks and instead, feedback is provided through other channels. On this basis, access to the marked logbook may be refused under section 47(3)(e) of the RTI Act as the document does not exist.

## Background

5. Significant procedural steps relating to the application and external review are set out in the Appendix to these reasons.

## Reviewable decision

6. The decision under review is UQ's decision dated 12 March 2012 to delete information under section 88 of the IP Act and refuse access to information under section 67 of the IP Act and section 47(3)(b) of the RTI Act.<sup>1</sup>

## Evidence considered

7. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

## Issues to be determined

8. On external review, the issues to be determined are:
  - (i) whether UQ was entitled to delete information<sup>2</sup> from email communications on the basis that it is irrelevant to the application (**Category A information**)<sup>3</sup>
  - (ii) whether UQ was entitled to refuse access<sup>4</sup> to mobile phone numbers and private email addresses of UQ staff and private sector employees (**Category B information**)<sup>5</sup> and emails sent to UQ by private organisations where the applicant

---

<sup>1</sup> Section 67 of the *Information Privacy Act 2009* (Qld) (**IP Act**) provides that an agency may refuse access to information in the same way and to the same extent as under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>2</sup> Under section 88 of the IP Act.

<sup>3</sup> Entire pages: 189 – 193, 254, 259, 261, 263 – 264, 267 – 268, 274, 326 – 331, 362 – 367, 408 – 415, 422 – 427, 429, 465 – 466, 503, 508, 510, 532 and 536. Parts of pages: 188, 246, 252 – 253, 255 – 258, 260, 262, 265 – 266, 269, 275, 279, 323 – 324, 359 – 361, 406 – 407, 421, 428, 437, 441, 464, 467, 479, 480, 486, 489, 493, 496, 501 – 502, 507, 509, 512, 518, 526, 528, 531, 535, 611 – 613, 620 – 621 and 627. On the copy of page 257 provided to OIC by UQ, the name of another student was labelled as 'personal information', however, UQ's reasons for decision identified this page as subject to the decision to delete information on the basis that it was irrelevant to the access application. OIC has accepted that the labelling of the information on the page itself was an error.

<sup>4</sup> Under section 47(3)(b) of the RTI Act.

<sup>5</sup> The relevant pages are 242 – 243, 246 – 247, 269, 324 – 325, 334 – 335, 360 – 361, 407, 421, 533, 548 and 551. On the copy of page 269 provided to OIC by UQ, an email address was labelled as 'irrelevant', however, UQ's reasons for decision identified this page as subject to the decision to refuse access on the basis that its disclosure would, on balance, be contrary to public interest. OIC has accepted that the labelling of the information on the page itself was an error.

- undertook practical work experience (**Category C information**)<sup>6</sup> on the basis that disclosure would, on balance, be contrary to the public interest; and
- (iii) whether access to a marked version of the applicant's logbook in VETS5013 (**Marked Logbook**) may be refused on the basis that no such document exists.<sup>7</sup>

9. Item (iii) above is the only remaining 'sufficiency of search' issue to be addressed in this review. In her external review application, the applicant also raised concerns about an email between university staff relating to course approval which she submitted should have been located. UQ located the email during the external review and released a full copy of it to the applicant. On this basis, the applicant's concerns regarding the sufficiency of UQ's searches for the email are not addressed in this decision.<sup>8</sup>

## Findings

### ***Can access to the Category A information be refused on the basis that it is irrelevant to the access application?***

10. Yes, for the reasons that follow.
11. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.<sup>9</sup> In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the application.<sup>10</sup>
12. The Category A information comprises email communications between UQ staff and external organisations about university students and assessment in veterinary science courses. Most emails form part of a series of communications and for this reason, contain information about the applicant as well as information about other students and issues relating to their studies and/or general course-related matters.<sup>11</sup>
13. Based on my review of the Category A information, I am satisfied that it concerns other students/staff and/or issues unrelated to the applicant and her studies. Accordingly, I find that UQ was entitled to delete the Category A information under section 88 of the IP Act on the basis that it is irrelevant to the application.

### ***Can access to the Category B and C information be refused on the basis that disclosure would, on balance, be contrary to public interest?***

14. Yes, for the reasons that follow.

---

<sup>6</sup> The relevant pages are 303-304 and 642-648. Folios 642-648 were identified by UQ in its decision as the Veterinary Specialist Services (VSS) documents of particular interest to the applicant.

<sup>7</sup> Under section 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>8</sup> The steps OIC took to investigate and resolve this issue are set out in the Appendix between the dates 2 - 25 July 2012.

<sup>9</sup> Under section 88(3) of the IP Act, the agency may give access to the document if it considers from the terms of the application **or** after consultation with the applicant, that the applicant would accept the copy and it is reasonably practicable to give access to the copy.

<sup>10</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made the context of the equivalent to section 88 of the IP Act, section 27(3) of the repealed *Freedom of Information Act 1992* (Qld).

<sup>11</sup> For example, pages 188-193 form one email 'chain' of communication between various UQ staff members. One email on page 188 contains information relating to the applicant and was released to the applicant, whereas the remaining pages entirely concern other students/issues unrelated to the applicant. As a result, no information on pages 189-193 was released to the applicant.

## Relevant law

15. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information. However, this right is subject to limitations, including grounds for refusal of access.<sup>12</sup> One ground on which access may be refused is where disclosure would, on balance, be contrary to the public interest.<sup>13</sup>
16. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>14</sup> and also explains the steps that a decision-maker must take in deciding the public interest<sup>15</sup> as follows:
  - 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 would, on balance, be contrary to the public interest.
17. I have assessed the public interest factors for and against disclosure which I consider are relevant to the Category B and C information and their relative weight below. I have considered the irrelevant factors in schedule 4, part 1 of the RTI Act and find that none arise in this case.

## Category B information

18. As set out above, UQ refused access to the mobile telephone numbers and private email addresses of UQ staff and private sector employees. I am satisfied that the Category B information comprises the 'personal information'<sup>16</sup> of the relevant individuals and that this raises a factor favouring nondisclosure.<sup>17</sup> Where this factor arises, it is relevant to consider the extent of the harm which may result from disclosure.
19. Generally, information relating to the day-to-day work duties and responsibilities of a public service officer<sup>18</sup> may be disclosed under the RTI Act, despite it falling within the definition of personal information.<sup>19</sup> Disclosing such information may, in some cases, reasonably be expected to enhance the government accountability.<sup>20</sup> However, agency documents can also contain personal information of public servants which is not *routine* work information<sup>21</sup> and which attracts a privacy interest favouring nondisclosure.<sup>22</sup>
20. I acknowledge that agency employees are provided with mobile telephones to perform work associated with their employment. However, I also consider that a mobile telephone number which allows an individual to be contacted directly and potentially

<sup>12</sup> The grounds for refusal are set out in section 47(3) of the RTI Act.

<sup>13</sup> Section 47(3)(b) of the RTI Act.

<sup>14</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

<sup>15</sup> Section 49(3) of the RTI Act.

<sup>16</sup> Section 12 of the IP Act defines *personal information* as *information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

<sup>17</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>18</sup> I acknowledge that employees of UQ are not employed under the *Public Service Act 2008* (Qld) however, as they are employees of an agency which is subject to the RTI Act, I consider similar principles apply to disclosure of their routine work information.

<sup>19</sup> This includes information such as a work email address, a work phone number, an opinion given in a professional capacity or information about an officer's qualifications required for the position.

<sup>20</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>21</sup> For example, reasons for taking sick leave or opinions about an officer's performance. See *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60] (**Underwood**).

<sup>22</sup> Schedule 4, part 3, item 3 of the RTI Act.

outside of working hours, falls outside the realm of *routine* work information and attracts a certain level of privacy. Similarly, in relation to the personal email addresses of UQ staff, I consider these attract a privacy interest as they are unrelated to the staff member's employment. As for the mobile and email details of the private sector employees, I am satisfied that their personal information attracts a high privacy interest.<sup>23</sup> I do not consider that disclosing any of the Category B information would enhance government accountability and therefore, afford no weight to this factor.

21. I am satisfied that the interest in safeguarding other people's personal information and protecting their privacy carries significant weight in favour of nondisclosure in this case. I find that these factors outweigh the general public interest favouring disclosure of information held by government agencies<sup>24</sup> and therefore, that it would, on balance, be contrary to public interest to disclose the Category B information.

### **Category C information**

#### ***Personal information and privacy***

22. The Category C information comprises *'detailed reports from placement organisations where the applicant performed clinical practice or practical work experience, including the report from Veterinary Specialist Services'*<sup>25</sup>. I am satisfied that all of the Category C information is the applicant's personal information<sup>26</sup> thereby raising a relevant public interest factor favouring disclosure.<sup>27</sup>
23. The Category C information identifies other individuals and contains their personal accounts of events and information which they conveyed to UQ in relation to the applicant and her practical work experience.<sup>28</sup> I am satisfied that this comprises the other individuals' personal information, thereby raising a public interest factor favouring nondisclosure.<sup>29</sup> The nature of this information is such that it is not possible to separate the applicant's personal information from the personal information of others. In other words, the relevant information cannot be disclosed to the applicant without disclosing personal information of other individuals.
24. When considering disclosure of other individuals' personal information, it is relevant to consider the extent of the harm that would flow from disclosure. Given that this information contains the personal views of other individuals and considering the particular context in which it appears, I am satisfied that the extent of the harm that could be anticipated from disclosure is quite significant.
25. If disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy, this raises a factor favouring nondisclosure.<sup>30</sup> Given the sensitive nature of the information and the fact that the authors were representing private sector organisations in their communications, I consider it is reasonable to expect that disclosure would, to an extent, intrude into the individuals' privacy. However, as the views were expressed in a work context and are not in relation to private aspects of the individuals' lives such as health or family, I attribute only moderate weight to this factor.

<sup>23</sup> See also *Underwood* at [67].

<sup>24</sup> In section 64(1) of the IP Act.

<sup>25</sup> Page 7 of UQ's decision dated 12 March 2012. This category includes the VSS documents.

<sup>26</sup> In section 12 of the IP Act. See footnote 16 above.

<sup>27</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>28</sup> The extent to which I can describe the specific nature of the information is limited by the operation of section 121(1)(a) of the IP Act which prohibits OIC from disclosing information which is claimed to be contrary to the public interest to disclose.

<sup>29</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>30</sup> Schedule 4, part 3, item 3 of the RTI Act.

### ***Ability to obtain confidential information***

26. UQ explained that the communications between UQ and the private organisations where the applicant undertook practical work experience are confidential. Based on the information available to OIC, I consider that the private organisations provided the information on the understanding that it would be used to assist UQ in assessing the applicant's performance, and would otherwise be treated confidentially. I consider that disclosing the communications could lead to the private organisations being reluctant to convey such information to UQ in the future.
27. In view of the above, I am satisfied that disclosing the Category C information could reasonably be expected to prejudice UQ's ability to obtain confidential information<sup>31</sup> and cause a public interest harm as:
- the information is of a confidential nature and was communicated in confidence by the private organisations to UQ; and
  - its disclosure could reasonably be expected to prejudice the future supply of such information by private organisations.<sup>32</sup>
28. In the circumstances, I consider the above factors carry significant weight in favour of nondisclosure.

### ***Accountability and administration of justice***

29. The focus of the applicant's submissions is that she requires the information as a matter of natural justice. She also contends that one of the authors is employed by UQ and the practical work experience was organised and assessable by UQ.<sup>33</sup> She further submits that folios 303-304 and 642-648 from the Veterinary Specialist Services (**VSS documents**) are fraudulent.<sup>34</sup> I consider the applicant's submissions raise the following public interest factors:
- enhance the Government's accountability<sup>35</sup>
  - reveal the reason for a government decision and any background or contextual information that informed the decision;<sup>36</sup> and
  - contribute to the administration of justice generally or to the administration of justice for a person, including procedural fairness.<sup>37</sup>
30. I acknowledge that disclosing the Category C information would allow the applicant to view all of the information that was provided to UQ by the private organisations in relation to her practical work experience. To the extent the information was relevant to any decisions UQ made in relation to the applicant's studies, I consider the public interest in revealing background information to a decision carries some weight in favour of disclosure.
31. In its decision, UQ explained that the private organisations:
- participate in the program on a voluntary basis
  - supervise placement students and oversee their work and progress throughout the placement; and
  - do not receive payment for accepting placements.

<sup>31</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>32</sup> Schedule 4, part 4, section 8 of the RTI Act.

<sup>33</sup> Email from the applicant to OIC on 6 July 2012.

<sup>34</sup> Email from the applicant to OIC on 6 July 2012.

<sup>35</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>36</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>37</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

32. UQ explained that it is responsible for conducting assessment and that it has provided the applicant with information about her performance while undertaking practical work experience.<sup>38</sup> It also confirmed that the applicant was given a summary of one of the reports in a released document.<sup>39</sup> The applicant also indicates that she has been given feedback in relation to her performance.<sup>40</sup> In view of the nature of the role of the private organisations in the placement program, UQ's responsibility for conducting assessment and the fact that information about the applicant's performance while undertaking practical work experience has been conveyed to her by UQ, I am satisfied that the public interests in accountability, revealing reasons for a government decision and affording the applicant natural justice would not be significantly advanced through disclosure of the Category C information. Therefore, I afford these factors only limited weight.
33. Based on a careful assessment of the VSS documents, applicant's submissions and documents released to the applicant by UQ, I consider there is no evidence to suggest that the VSS documents are fraudulent. For this reason, I am unable to attribute any further weight to the accountability factor in favour of disclosure.

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

34. As the Category C information is the applicant's personal information, this factor carries significant weight favouring disclosure. I also consider that there is some limited weight to be afforded to the public interests in enhancing accountability and the administration of justice. Balanced against these factors however, is the strong public interest in safeguarding the personal information of private sector employees and the moderate public interest in protecting their privacy. Further, I consider that the public interest in preserving UQ's ability to obtain confidential information from private organisations in the future should be afforded significant weight. On balance, I find that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure in this case.
35. I am therefore satisfied that UQ was entitled to refuse access to the Category C information under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

### ***Can access to the Marked Logbook be refused on the basis that it does not exist?***

36. Yes, for the reasons that follow.
37. The RTI Act provides that access to a document may be refused if the document is nonexistent.<sup>41</sup> To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.<sup>42</sup> Where the nonexistence can be explained by reference to an agency's record keeping practices and/or procedures, searches will not generally be required to support the explanation.
38. The applicant submits that the Marked Logbook exists and in support of her case provided OIC with:
- (i) an email from the UQ staff member who assessed the logbook
  - (ii) the relevant course profile; and

<sup>38</sup> Page 8 of UQ's decision dated 12 March 2012.

<sup>39</sup> Page 384 summarises pages 303-304.

<sup>40</sup> Applicant's letter to the Vice Chancellor of UQ dated 18 January 2012.

<sup>41</sup> Sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>42</sup> *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19] which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr7 (9 February 2009). The key factors include: the administrative arrangements of government; the agency structure; the agency's functions and responsibilities; the agency's practices and procedures and other factors reasonably inferred from information supplied by the applicant including the nature and age of the document/s and the nature of the government activity the request relates to.

(iii) an email from UQ's decision-maker to the applicant on this issue which provides further information from the UQ staff member who assessed the logbook.

39. I have closely examined the above evidence submitted by the applicant. While (i) indicates the logbook was assessed and (ii) identifies the logbook submission requirements, I am not satisfied that either supports the existence of the Marked Logbook. Item (iii) includes the following statement by the UQ staff member who assessed the logbook:

*A marked WAEC log book for [the relevant subject] does not exist for this student or for any other student in her year. I have read her WAEC logbook and provided her with feedback which I have already provided to this student when requested earlier.*<sup>43</sup>

40. I consider that the above explanation provided by the relevant UQ staff member indicates that it is not the practice of the relevant school to mark logbooks for any students and instead, feedback is provided through other channels. For this reason, I consider there is a reasonable basis to be satisfied that the Marked Logbook does not exist<sup>44</sup> and I therefore find that access to it may be refused on this basis.<sup>45</sup>

## **DECISION**

41. For the reasons set out above, I affirm UQ's decision to:

- delete information relating to other students, staff and issues unrelated to the applicant, under section 88 of the IP Act, on the basis that it is irrelevant to the access application; and
- refuse access to personal information of other individuals, including information provided to UQ by private organisations in relation to the applicant's practical work experience, under section 47(3)(b) of the RTI Act, on the basis that disclosure would, on balance, be contrary to the public interest.

42. I also find that access to the Marked Logbook may be refused under section 47(3)(e) of the RTI Act as the document does not exist.

43. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

---

**K Shepherd**  
**Assistant Information Commissioner**

**Date: 1 August 2012**

---

<sup>43</sup> Email from UQ's decision-maker to the applicant dated 23 March 2012.

<sup>44</sup> Section 52(1)(a) of the RTI Act.

<sup>45</sup> Section 47(3)(e) of the RTI Act.



## APPENDIX

### Significant procedural steps

Date	Event
13 January 2012	UQ received the access application.
12 March 2012	UQ issued its decision on the application under the IP Act.
29 March 2012	OIC received the external review application and supporting submissions.
19 April 2012	OIC notified the applicant and UQ that the external review application had been accepted. OIC asked UQ to provide a copy of the documents to which access had been refused and any third party consultation details.
26 and 30 April 2012	OIC received submissions from the applicant.
2 May 2012	OIC received further submissions from the applicant and the requested information from UQ.
3 May 2012	OIC confirmed receipt of the applicant's submissions and provided her with an update on the status of the review.
8 May 2012	OIC received further submissions from the applicant.
9 May 2012	OIC confirmed receipt of the applicant's submissions and provided her with an update on the status of the review.
11 May 2012	OIC received further submissions from the applicant.
25 June 2012	The applicant asked OIC to advise when the review would be completed.
27 June 2012	OIC provided the applicant with information on external review timeframes.
28 June 2012	OIC received further submissions from the applicant. OIC confirmed receipt of the submissions and responded to a procedural concern raised by the applicant.
29 June 2012	OIC received further submissions from the applicant.
2 July 2012	OIC asked UQ to make further enquiries about the existence of an email which the applicant submitted should have been located ( <b>Further Email</b> ).
3 July 2012	UQ advised OIC that it had located the Further Email and agreed to release a copy to the applicant. UQ provided OIC with a copy of the Further Email.
5 July 2012	OIC asked UQ to release a copy of the Further Email to the applicant. OIC conveyed a preliminary view to the applicant and invited her to provide submissions by 20 July 2012 if she did not accept the preliminary view.
6 July 2012	The applicant advised OIC that she did not accept the preliminary view and provided submissions supporting her case. The applicant requested information about the tracking 'properties' of the Further Email.
9 and 10 July 2012	OIC received further submissions from the applicant.
12 July 2012	OIC received further submissions from the applicant. OIC confirmed receipt of the submissions and provided the applicant with an update on the status of the review. UQ confirmed that a copy of the Further Email had been sent to the applicant.
17 July 2012	OIC received further submissions from the applicant.
19 July 2012	OIC sought UQ's agreement to release the 'properties' information to the applicant. UQ agreed and provided OIC with a copy of the information.
20 July 2012	OIC asked UQ to release the 'properties' information to the applicant. OIC provided the applicant with an update on the status of the external review.
25 July 2012	UQ confirmed that it had sent the 'properties' information to the applicant.