



Decision and Reasons for Decision

Citation: *TE66LB and Queensland University of Technology; H9P6ZM (Third Party) & Ors [2019] QICmr 9 (29 March 2019)*

Application Number: 313812

Applicant: TE66LB

Respondent: Queensland University of Technology

Third Party: H9P6ZM

Fourth Party: 65DZCL

Decision Date: 29 March 2019

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF ACCESS APPLICATION - information related to a workplace investigation arising from applicant's complaint - applicant and agency engaged in negotiations to narrow the application scope - whether information falls outside the narrowed scope - whether parts of a document may be deleted on the basis they are irrelevant to the terms of the narrowed application - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - information related to a workplace investigation arising from applicant's complaint - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland University of Technology (**QUT**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to an investigation report relating to a workplace complaint made by him (**Report**) and certain associated correspondence.
2. QUT located 581 pages of responsive information and decided² to refuse access to some of that information. QUT also deleted signatures which appeared within the pages it released to the applicant, on the basis they were irrelevant to the application.

¹ The application was received on 12 December 2017.

² On 18 January 2018.

3. The applicant sought³ internal review of QUT's decision and raised concerns that QUT had not located all requested documents. On internal review, QUT varied its original decision and decided to refuse access to most of the located information, including information it had disclosed to the applicant pursuant to its original decision.⁴
4. The applicant then applied⁵ to the Office of the Information Commissioner (**OIC**) for an external review of the internal review decision and raised concerns that QUT had not located all requested documents.
5. In an attempt to informally resolve aspects of the review,⁶ OIC asked the applicant whether he would accept inspection access to parts of the information in issue, on terms previously offered by QUT.⁷ The applicant did not agree and continued to seek access in the form requested in the application.
6. During the course of the review, the third and fourth parties were joined as participants.⁸
7. For the reasons set out below, I vary QUT's decision and find that:
 - there is no basis under the RTI Act to refuse access to some of the information in issue⁹
 - access to the remaining information in issue¹⁰ may be refused on the ground that its disclosure would, on balance, be contrary to the public interest; and
 - certain information requested by the applicant falls outside the scope of the application.

Background

8. The applicant made a workplace complaint in January 2017.
9. The investigation of the applicant's complaint was undertaken by an investigator appointed by QUT and was conducted in accordance with QUT's procedure titled '*MOPP B/10.1 Grievance resolution procedures for workplace related grievances and bullying*' (**Procedure**).¹¹ The Procedure relevantly provided that, on QUT's receipt of an investigator's investigation report, advice was to be provided to the Vice-Chancellor about whether disciplinary action should be commenced against any person subject to the complaint¹² and, following a decision in this regard by the Vice-Chancellor, written advice was to be provided to all relevant parties.¹³
10. The terms of reference for the investigation of the applicant's complaint (**Terms of Reference**) relevantly provided that a full copy of the complaint had been provided to two individuals (the third and fourth parties in this review) and that a copy of the Report would be provided to the applicant, the third party and the fourth party.

³ On 24 January 2018.

⁴ In the internal review decision, QUT offered inspection of part of the refused information. This offer was subject to the applicant's completion of a nondisclosure agreement. In QUT's submissions dated 25 June 2018, QUT advised that the offered inspection was access '*otherwise than under this Act*', as contemplated by section 4 of the RTI Act.

⁵ On 15 March 2018.

⁶ Under section 90 of the RTI Act, the Information Commissioner is required to identify opportunities and processes for early resolution of an external review.

⁷ As outlined at footnote 4 above.

⁸ Under section 89(3) of the RTI Act.

⁹ Referred to as the Category A Information in this decision.

¹⁰ Referred to as the Category B, C and D Information in this decision.

¹¹ A copy of the Procedure was attached to QUT's original decision. The Procedure is no longer publicly accessible on QUT's website as it was revised and renamed subsequent to the investigation of the applicant's complaint.

¹² Section 10.1.6(a)7. of the Procedure.

¹³ Section 10.1.6(a)8. of the Procedure.

11. By letter dated 31 July 2017, QUT informed the applicant, in accordance with the Procedure, that:
 - 10 of the 11 allegations in the complaint were found to be unsubstantiated
 - the remaining allegation¹⁴ was found to be substantiated; and
 - based on the Report's findings, QUT had decided not to take disciplinary action against any party.
12. In that letter, QUT also notified the applicant that it would not provide a copy of the Report to the applicant (as contemplated in the Terms of Reference), given the applicant was, at that time, no longer employed by QUT.
13. Significant procedural steps taken in the external review are set out in the Appendix.

Reviewable decision

14. The decision under review is QUT's internal review decision dated 6 March 2018.
15. QUT bears the onus in this review of establishing that the decision under review was justified or that the Information Commissioner should give a decision adverse to the applicant.¹⁵

Evidence considered

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

Preliminary issues

17. On external review, the applicant confirmed that he did not seek access to certain information, namely the copy of his complaint and transcript of his interview with the investigator (both of which were attachments to the Report),¹⁶ and the information which QUT released to him in accordance with its original decision.
18. Twenty-two pages and 48 part pages of the Report were released pursuant to QUT's original decision. QUT's internal review decision reconsidered this information and decided to refuse access to some of it. QUT has submitted to OIC that its initial release of the information was in error.¹⁷ The internal reviewer acknowledged that the information had been released to the applicant, but stated that *[t]hose facts notwithstanding, I am required to make my Review Decision under the Act as if the Original Decision had never been made: section 80 (2) of the Act*.
19. Under section 80(1) of the RTI Act, *'a person affected by a **reviewable decision** may apply to have a decision reviewed by the agency ... dealing with [their] application'*. Section 80(2) of the RTI Act provides that *'the reviewer must make a new decision as if the **reviewable decision** had not been made'*. The definition of 'reviewable decision'¹⁸ does not include any reference to a decision **giving** access to information in a document.

¹⁴ Allegation number 7 of the 11 allegations.

¹⁵ Section 87(1) of the RTI Act.

¹⁶ Which would, in any event, be outside the scope of the narrowed application—see paragraphs 33 and 36 below.

¹⁷ Submissions dated 25 June 2018 and 1 February 2019.

¹⁸ Schedule 5 of the RTI Act provides that *'reviewable decision means any of the following decisions in relation to an access application— ... (e) a decision **refusing** access to all or part of a document under section 47'* (my emphasis).

20. Given these provisions, QUT’s decision to give access to 22 pages and 48 part pages was not a “reviewable decision” that could be considered on internal review. It follows that I do not have jurisdiction on external review to consider the internal review decision’s refusal of this already released information. Even if I did, the applicant has, as noted above, advised OIC that he does not wish to pursue access to this information on external review, obviating any need for consideration of it in this formal decision.
21. QUT has, in terms of this information, submitted¹⁹ *‘(a) [t]hat any disclosure in the original decision going beyond disclosure provided for in the Internal Review was in error and obligations of confidence binding on the conscience of the applicant remained and/or revived once the preferable decision ... was made upon the Internal Review; and/or (b) QUT wishes to reserve the right to submit concerning the operation of the Act ... that an applicant bound by obligations of confidence with respect to specific documents is not free to disseminate the once the same documents are disclosed under the Act’*. Insofar as QUT may contend that OIC has failed to address this submission, I consider that such matters extend beyond the merits review of reviewable decisions that the Information Commissioner²⁰ is tasked with performing under the RTI Act.

Information in issue

22. The information remaining for consideration (**Information in Issue**) appears on 554 pages. While I am constrained as to the level of detail that I can provide regarding the Information in Issue,²¹ it generally comprises:

Information	Description
Category A Information	The following types of information: <ul style="list-style-type: none"> (i) restatements of the <i>applicant’s</i> allegations (ii) the investigator’s summaries of the information provided by the <i>applicant</i>; and (iii) the investigator’s reasoning for the finding that the allegations were not substantiated in the parts of the Report regarding the 10 allegations which were found to be unsubstantiated, excluding Category B Information.
Category B Information	Personal information of <i>individuals other than the applicant</i> and small portions of additional information which could reasonably be expected to lead to their identification ²² appearing in: <ul style="list-style-type: none"> (a) the following parts of the Report regarding the 10 allegations which were found to be unsubstantiated <ul style="list-style-type: none"> (i) restatements of the applicant’s allegations (ii) the investigator’s summaries of the information provided by the applicant; and (iii) the investigator’s reasoning for the finding that the allegations were not substantiated (b) some other parts of the Report (for example, the executive summary); and (c) correspondence.

¹⁹ Submission dated 25 June 2018.

²⁰ Or delegate.

²¹ Section 108(3) of the RTI Act provides that the Information Commissioner must not include information that is claimed to be exempt information or contrary to the public interest information in reasons for a decision on external review and the Information in Issue is information which was refused on the ground that its disclosure would, on balance, be contrary to the public interest.

²² Given section 108(3) of the RTI Act, I am unable to further describe this information in these reasons for decision.

Category C Information	The following parts of the Report: (a) sections of the Report containing the investigator’s summaries of information provided by individuals other than the applicant regarding all 11 allegations; and (b) information in the Report’s attachments, being transcripts of interviews with individuals other than the applicant and information provided to the investigation.
Category D Information	Names and signatures of <i>individuals other than the applicant</i> which were refused or deleted in 47 of the pages partially released to the applicant.

23. I will provide QUT with a copy of the Category A Information along with this decision.

Issues for determination

24. The issues to be determined are:

- whether information falls outside the scope of, or is irrelevant to, the access application; and
- whether access to the Information in Issue may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.

25. During the external review, QUT submitted²³ that the internal review decision was ‘*one made under section 47(3)(a) and (b) of the Act to refuse access on public interest grounds as provided for in sections 48 and 49’ and [b]oth section 47(3)(a) and (b) apply, the former in respect of the findings of exemption based on confidence (see clause 8 of Schedule 3) and the latter as to the other grounds discussed in the Internal Review as factors favouring non-disclosure in the public interest’*. The internal review decision applied the public interest test set out in section 49 of the RTI Act and decided that the Information in Issue could be refused on the ground that it was contrary to public interest information under section 47(3)(b) of the RTI Act. However, it did not address schedule 3, section 8(1) of the RTI Act (which provides information is exempt information if its disclosure would found an action for breach of confidence), and did not decide that the Information in Issue could be refused on the ground that it was exempt information under section 47(3)(a) of the RTI Act. Nor have these provisions been addressed on external review by QUT, or the third or fourth parties. In absence of any submissions regarding these provisions, noting that the material before me appears insufficient to establish that disclosure would found an action for breach of confidence, and also noting that the onus is on QUT to establish that its decision was justified,²⁴ I am satisfied that the ground of refusal in section 47(3)(a) and schedule 3, section 8(1) of the RTI Act does not arise for consideration, nor appear reasonably likely to apply, in this review.

Information outside the scope of, or irrelevant to, the access application

26. Prior to issuing the original decision, QUT and the applicant engaged in negotiations regarding the scope of the access application and agreed to a narrowed scope. QUT has submitted that the Category A Information falls outside the narrowed scope,²⁵ while

²³ Submissions dated 25 June 2018. QUT’s submission also made the comments regarding obligations of confidence noted at paragraph 21 above—however, those comments related to information and matters other than those I am required to address in this formal decision.

²⁴ Section 87(1) of the RTI Act.

²⁵ Submissions dated 1 February 2019.

the applicant has submitted that QUT agreed to expand the narrowed scope to include certain information, but then failed to locate that information.²⁶

Relevant law

27. The scope of an access application should not be interpreted in the same manner as the interpretation of a statute or legal document.²⁷ An applicant must, however, give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents.²⁸ This is because the terms of an access application set the parameters for an agency's response and the direction of an agency's search efforts.
28. When narrowing of an access application has occurred, it is not possible for OIC to interpret the narrowed application more broadly than its terms.
29. In practice, if a document does not contain *any* information that is relevant to the terms of the access application, it is referred to as being 'outside scope' and it will not be considered as part of the application under the RTI Act. Where *parts* of a document do not relate to the terms of an application, section 73 of the RTI Act permits an agency to delete information in a document that the agency reasonably considers is not relevant to the access application before giving access to a copy of the document. 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.²⁹
30. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.³⁰

Findings

31. On external review, the applicant raised additional information which he submitted³¹ QUT failed to locate in response to the application. More specifically, the applicant submitted that QUT had agreed to expand the scope of the application to include information about a second complaint he had made and his personnel file.
32. On the material before me, I note that:
 - following discussions between QUT and the applicant, QUT notified³² the applicant that the application had been narrowed to the Report and its attachments (excluding information that the applicant had provided) and certain correspondence created after QUT's receipt of the Report
 - the applicant confirmed³³ his agreement to the scope of the narrowed application
 - in his application for internal review of QUT's original decision, the applicant sought to contest the terms of the narrowed application;³⁴ and
 - in the internal review decision, QUT determined that documents relating to the applicant's second complaint and his personnel file fell outside the scope of the narrowed application.

²⁶ External review application.

²⁷ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] and *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (**O80PCE**) at [33].

²⁸ Section 24(2) of the RTI Act.

²⁹ *Wyeth and Queensland Police Service* [2015] QICmr 26 at [12].

³⁰ **O80PCE** at [52].

³¹ External review application.

³² By email dated 8 January 2018.

³³ By email dated 9 January 2018.

³⁴ In this regard, I note that the internal review decision refers to an email QUT received from the applicant dated 2 February 2018.

33. An agency's determination that a document falls outside the scope of an application is not a "reviewable decision" under the RTI Act.³⁵ Accordingly, once OIC determines that a document is outside the scope of an access application, it cannot further consider the document in an external review arising from that application.³⁶
34. I have carefully considered the material before me concerning the interactions between the applicant and QUT regarding the scope of the application and I find that:
- QUT did not agree to expand the scope of the narrowed application as the applicant contends; and
 - the documents which the applicant submitted were not located by QUT are documents which fall outside the scope of the narrowed application and, on this basis, I am unable to further consider the applicant's request to access these documents.³⁷
35. QUT also submitted³⁸ that, because the narrowed application excluded information provided by the applicant, the Category A Information falls outside the scope of, or is irrelevant to, the application.
36. In this regard, I consider it is relevant to note that:
- In an email exchange between the applicant and QUT prior to QUT's confirmation of the narrowed application—
 - QUT suggested that '[i]t would also be helpful if we excluded from scope any email where you are the sender or recipient, i.e. email correspondence you already have, and any duplicate email correspondence'; and
 - the applicant confirmed that he was not requesting information where he was the 'sender or recipient'.³⁹
 - The QUT officer who engaged in the scope negotiations confirmed to the applicant by email:⁴⁰

This is to confirm that we discussed and agreed to proceed with the application as a request for the following:

- *The ... Report and attachments, including terms of reference of the investigation and excluding any information provided by yourself*
 - *Correspondence containing the recommendation made by the HR Director to the Vice-Chancellor following QUT's receipt of the ... Report.*
- The same QUT officer went on to make the original decision. He excluded from consideration two appendices to the report, comprising the applicant's complaint and the transcript of his interview with the investigator. He proceeded on the basis that the information responsive to the application included the investigator's summaries of information provided by the applicant about all 11 allegations, and

³⁵ As defined in schedule 5 of the RTI Act and discussed at paragraph 19 above. OIC's external review jurisdiction is limited to reviewable decisions.

³⁶ 8RS6ZB and Metro North Hospital and Health Service [2015] QICmr 3 (13 February 2015) at [12].

³⁷ OIC notified the applicant of this on 4 April 2018, 9 August 2018 and 21 November 2018.

³⁸ Submissions dated 1 February 2019.

³⁹ Email dated 15 December 2017. This confirmation was provided in response to QUT's suggestion that: '*It would also be helpful if we excluded from scope any email where you are the sender or recipient, i.e. email correspondence you already have, and any duplicate email correspondence*'.

⁴⁰ Dated 8 January 2018.

the investigator's reasoning for findings regarding all 11 allegations. In terms of this information, he decided to partially release the investigator's summary of information provided by the applicant about the allegation which was found to be substantiated, and the investigator's reasoning for finding this allegation was substantiated.

37. I have carefully considered QUT's submissions that it erroneously released such information.⁴¹ Based on the scope discussions between the applicant and the original decision maker, and the steps taken by those parties noted in the above paragraph, I am satisfied that, at the conclusion of the scope negotiations, both QUT and the applicant were of the same understanding regarding the narrowed scope. Specifically, they were both of the understanding that *information provided or received by the applicant* was outside scope; however, the mention of such information *by the investigator* in the Report was not. Assessing the narrowed application scope set out in the above paragraph objectively and without undue technicality, I am also of this understanding.
38. Accordingly, given that the Category A Information comprises the *investigator's restatements and summaries* of information provided to the investigator by the applicant and the *investigator's reference* to such information in his analysis and conclusions about the allegations found to unsubstantiated—not *information provided or received by the applicant* himself—I find that the Category A Information falls within the scope of, and is relevant to, the narrowed application. Therefore, I find that this information cannot be excluded or partially deleted as QUT contends.

Contrary to the public interest information

Relevant law

39. Under the RTI Act, an individual has a right to be given access to documents of an agency,⁴² however, this right of access is subject to a number of exclusions and limitations.
40. One such ground of refusal is where disclosure of information would, on balance, be contrary to the public interest.⁴³ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁴⁴
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
41. The term public interest 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁴¹ Submissions dated 25 June 2018 and 1 February 2019.

⁴² Section 23 of the RTI Act.

⁴³ Sections 47(3)(b) and 49 of the RTI Act.

⁴⁴ Section 49(3) of the RTI Act.

Findings – Category A Information

42. As noted at paragraph 22 above, the Category A Information comprises the following information in the parts of the Report regarding the 10 allegations which were found to be unsubstantiated:
- (i) restatements of the applicant’s allegations
 - (ii) the investigator’s summaries of the information provided by the applicant; and
 - (iii) the investigator’s reasoning for the finding allegations were not substantiated.
43. However, the Category A Information **excludes** parts of (i), (ii) and (iii) that comprise personal information of individuals other than the applicant, and small portions of additional information which could reasonably be expected to lead to their identification. Such information constitutes Category B Information and is addressed below.
44. In summary, QUT submitted that disclosure of the Category A Information would be contrary to the public interest because the factors favouring nondisclosure of that information outweigh relevant factors favouring disclosure. QUT also:
- contended that it is not possible to remove the ‘intertwined’ personal information of individuals other than the applicant from the Category A and Category B Information;⁴⁵ and
 - repeated and relied on the entirety of its internal review decision.⁴⁶
45. QUT’s internal review decision sets out reasoning regarding the Information in Issue as a whole, rather than reasoning regarding the Category A Information in particular. QUT has, throughout the external review, maintained that OIC decisions cited in its internal review decision with respect to the entirety of the Information in Issue apply regarding the Category A Information, and support nondisclosure of the Category A Information. However, on my reading of these earlier OIC decisions, I note that the comments relied on by QUT are largely made in relation to information more akin to the Category C Information (that is, information provided to a workplace investigation by individuals other than the applicant) than the Category A Information (that is, information provided to the investigation by the applicant). I will address this distinction as it arises in relation to the particular public interest factors where QUT’s internal review decision refers to comments made in various OIC decisions.
46. QUT consulted the third and fourth parties to obtain their views about disclosure of parts of the Report which generally correspond to the Category A Information (**Consult Information**). The third and fourth parties objected to disclosure of the Consult Information on the basis that:
- it contains their personal information; and
 - if it is disclosed, this could have a damaging effect on their reputations and professional relationships.

Irrelevant factors

47. The third and fourth parties have raised a number of concerns about what the applicant may do with information that is disclosed to him.⁴⁷ Under the RTI Act, disclosing information that could reasonably be expected to result in mischievous conduct by the

⁴⁵ Submissions dated 14 December 2018 and 1 February 2019.

⁴⁶ Submissions dated 14 December 2018.

⁴⁷ To avoid identifying the applicant and the third and fourth parties, I am unable to provide further details about these concerns.

applicant is an irrelevant factor in deciding the public interest.⁴⁸ While I have given consideration to the personal information and privacy of these individuals, I have not otherwise taken these concerns, or any other irrelevant factor, into account.

Factors favouring disclosure

Applicant's personal information

48. There is a public interest in individuals being able to obtain access to their own personal information held by government. Given that the Category A Information comprises restatements of 10 of the applicant's allegations, the investigator's summaries of the information provided by the applicant with respect to those allegations, and the investigator's reasoning for finding that the allegations were not substantiated, I am satisfied that the Category A Information is the applicant's personal information. Accordingly, a factor favouring disclosure⁴⁹ arises in respect of the Category A Information.
49. Regarding the weight to be afforded to this factor, QUT submitted⁵⁰ that less weight should be afforded to take account 'of the principle (again from an OIC decision) that the fact the information is known to an applicant lessens the weight of this factor'. In support of this submission, QUT relied upon the Information Commissioner's decision of *OZH6SQ and Department of Health*⁵¹ and the following statement in its internal review decision:
- However, it is the case that some of [the applicant's] own personal information is already known to [the applicant]. This lessens the strength of this personal information factor as a factor in favour of disclosure.*
50. The decision of *OZH6SQ* considered an application by a prisoner to access a psychiatric report about him. The information in issue was details of some of the applicant's offences and information about his victims, family and other people known to him,⁵² and the Assistant Information Commissioner observed that 'the applicant presumably knows the content of the Information in Issue as he claims he provided the information to the psychiatrists'.⁵³
51. In contrast, the context of the Category A Information is a workplace complaint, and the Category A Information comprises an investigator's references to the applicant's allegations and information provided by him, and the investigator's analysis of, and conclusions about, that obtained information. On the material before me, I note that:
- the applicant is aware of the substance of all the allegations in his complaint, including the identities of individuals who were the subject of those allegations
 - the applicant participated in the investigation and was notified of the investigation outcome—in particular, the applicant was notified that one of his 11 allegations was found to be substantiated and the remaining 10 were found to be unsubstantiated
 - the applicant was not given a copy of the Report as contemplated in the Terms of Reference; and
 - the information QUT released to the applicant in response to the access application, particularly the information released pursuant to the original decision,

⁴⁸ Schedule 4, part 1, item 3 of the RTI Act.

⁴⁹ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁰ Submissions dated 1 February 2019.

⁵¹ (Unreported, Queensland Information Commissioner, 21 May 2012) (*OZH6SQ*).

⁵² *OZH6SQ* at [8].

⁵³ *OZH6SQ* at [16].

has provided him with some further understanding of how the investigation of his complaint was conducted and the reasoning for the finding that one allegation was substantiated.

52. That is, while the applicant is aware of the allegations he made in the complaint and the information he provided to the investigator in respect of those allegations, he is not aware of how the investigator summarised and took into account his provided information in concluding that various allegations were not substantiated. Given these circumstances, I am satisfied that this matter involves different information and factual circumstances to those considered in *OZH6SQ*, and I do not consider that I am required to follow it in these reasons for decision. In this matter, I consider that the applicant's knowledge about the investigation outcome and the information he provided to the investigation does not diminish, in any significant way, the weight to be attached to this factor favouring disclosure of the Category A Information.
53. QUT also submitted⁵⁴ that *'the weight of this factor is diminished and potentially defeated if that personal information cannot be unbound from the personal information of others'* and that *'[w]here the applicant is well aware of the allegations that he made, the public interest must fall on the side of supporting non-disclosure, for otherwise, the applicant will have a written record of those allegations put in a formal manner to the investigator and be able to use such material to the detriment of the third parties'*.
54. As noted in paragraph 40 above, in assessing whether disclosure of information would, on balance, be contrary to the public interest, I must apply the process specified in section 49(3) of the RTI Act. The prospect that a factor favouring nondisclosure warrants significant weight does not form a basis for awarding factors favouring disclosure less weight than they would otherwise be awarded. Rather, the process requires that I attribute weight to all relevant factors and then balance them against one another. I have therefore dealt with these submissions below, in the context of considering relevant factors favouring nondisclosure and in balancing the public interest.
55. Taking into account the nature of the Category A Information, the context in which it appears and the information within the applicant's knowledge, I afford significant weight to this factor favouring disclosure of the Category A Information.

Accountability and transparency

56. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- enhance the Government's accountability⁵⁵
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by Government in its dealings with members of the community;⁵⁶ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁷
57. It is understandable that the applicant, as the complainant in the workplace investigation, wishes to be more informed about the nature and extent of the investigation. There is a public interest in workplace investigations being conducted with a degree of transparency and accountability which is sufficient to afford the parties to such an investigation (and

⁵⁴ Submissions dated 1 February 2019.

⁵⁵ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁶ Schedule 4, part 2, item 3 of the RTI Act.

⁵⁷ Schedule 4, part 2, item 11 of the RTI Act.

the public generally) with an understanding of the investigation process and its outcome and conclusions.

58. In the circumstances of this matter, I consider that the factors favouring disclosure relating to accountability and transparency apply to the Category A Information because disclosing that information would:

- provide the applicant (and the public generally) with an greater understanding of how the investigator dealt with information provided to the investigation; and
- inform the applicant about how the investigator summarised, and took into account, the information that the applicant provided to the investigator about the allegations that were found to be unsubstantiated.

59. The third and fourth parties submitted⁵⁸ that these factors could have been '*satisfied by inspection*', as offered by QUT. As noted above,⁵⁹ inspection was offered '*otherwise than under the RTI Act*' and was contingent on the applicant completing a nondisclosure agreement. In this matter, the applicant did not request access by inspection and continues to seek access in the form requested in the application. Further, section 68(3) of the RTI Act provides that, subject to deletion of irrelevant, exempt and contrary to the public interest information, access must be given in the form that is requested. In these circumstances, I do not consider any potential advancement of accountability and transparency that could have occurred, had the applicant taken up the offer to be provided with inspection access outside the RTI Act, supports a view that the above factors regarding accountability and transparency do not apply, or apply but should be afforded reduced weight, when considering access under the RTI Act.

60. I note that, in its internal review decision, QUT afforded these factors significant weight when considering the Information in Issue and relevantly noted:

I have given significant weight to these factors. They are at the centre of the objects and purposes to be served by the Act and its administration by officers of agencies. Transparency and accountability of agencies for their conduct and their decisions are weighty public interests in virtually all decisions made under the Act.

61. On external review, QUT submitted⁶⁰ that while these factors '*must be given their usual rational and reasonable weight*', they are outweighed by factors favouring nondisclosure. As I have already noted, in assessing whether disclosure of the Category A Information would, on balance, be contrary to the public interest, I must apply the process specified in section 49(3) of the RTI Act. I acknowledge that, inherent in this process, the accountability and transparency factors will not necessarily be determinative of the public interest. The process I must follow is to identify and attribute weight to all relevant factors favouring disclosure and nondisclosure, and then balance them against one another.

62. On careful examination of the material before me, I consider that, while the applicant was notified of the investigation outcome and is aware of the information he provided to the investigator (particularly as he has a copy of his complaint and the transcript of his interview with the investigator), the applicant is not aware of how the investigator summarised, or took into account, this information in concluding that most of the allegations were not substantiated. On this basis, I consider that each of these factors favouring disclosure applies regarding the Category A Information, and attach significant weight to each of them.

⁵⁸ Submissions dated 22 February 2019.

⁵⁹ In paragraph 5 and footnote 4.

⁶⁰ Submissions dated 1 February 2019.

Deficiencies in the conduct or administration of an agency, official or other person

63. Public interest factors favouring disclosure also arise where disclosure of information could reasonably be expected to:

- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official⁶¹ or another person contracted to perform work for the agency;⁶² and
- reveal or substantiate that an agency or official, or another person contracted to perform work for the agency,⁶³ has engaged in misconduct or negligent, improper or unlawful conduct.⁶⁴

64. The applicant submitted that:

- the complaint allegations concerned serious conduct issues⁶⁵
- his complaint was ‘*ineffectively investigated by QUT in the first instance*’;⁶⁶ and
- the substantial information he provided in support of his complaint was ignored by the investigator.⁶⁷

65. On external review, QUT submitted that little weight should be afforded to these factors favouring disclosure and relied upon the reasoning in the internal review decision, which relevantly stated:

Once again, whilst I have considered these factors, I do not find that they have any particular application, and so I give them little weight. ... Further, no agency misconduct, negligent, improper or unlawful conduct appears in the circumstances, nor does any evidence of deficiencies in the conduct of QUT or any officer or employee of QUT. If this language, however, were to be applied to the one finding in support of the issues [the applicant] raised in [the applicant’s] grievance, [the applicant has] been advised of that outcome.

66. Given the RTI Act does not permit me to reveal the content of the Category A Information in these reasons,⁶⁸ I am unable to address the extent (if any) to which the Category A Information reflects the applicant’s concern that the information provided by him was ignored by the investigator. As I have previously mentioned, the applicant is not aware of what information was considered by the investigator (including what parts of the information provided by him information were considered) in finding that 10 of the 11 allegations were not substantiated, nor is the applicant aware of the reasoning for those findings.

67. In these circumstances, and in the context of the applicant’s submission that information he provided was ignored, I consider that disclosure of the Category A Information would reveal to the applicant (and the public generally) whether or not the investigator’s findings that allegations were unsubstantiated were reached without taking the information

⁶¹ Schedule 4, part 2, item 5 of the RTI Act.

⁶² As indicated by the word ‘including’ in section 49(3)(a), (b) and (c) of the RTI Act regarding irrelevant factors, factors favouring disclosure, and factors favouring nondisclosure (including harm factors) respectively, the list of public interest factors in schedule 4 is non-exhaustive. Consequently, while schedule 4, part, 2, item 5 of the RTI Act refers only to ‘agency or official’, I have also considered this public interest factor with reference to another person contracted to perform work for the agency—in this instance, the investigator.

⁶³ As noted at footnote 62, the public interest factors in schedule 4 are non-exhaustive. Accordingly, while schedule 4, part, 2, item 6 of the RTI Act refers only to ‘agency or official’, I have also considered this public interest factor with reference to another person contracted to perform work for the agency—in this instance, the investigator.

⁶⁴ Schedule 4, part 2, item 6 of the RTI Act.

⁶⁵ External review application and submissions dated 31 January 2019. I am unable in these reasons for decision to further elaborate on the nature of those allegations or the applicant’s characterisation of them.

⁶⁶ Submissions dated 31 January 2019.

⁶⁷ Submissions made in a conversation with OIC on 1 June 2018.

⁶⁸ Section 108(3) of the RTI Act.

provided by the applicant into account. Thus, disclosure of the Category A Information could reasonably be expected to assist the applicant's inquiry into the possible deficiencies he has identified concerning QUT's investigation process.

68. For these reasons, I am satisfied that the factor favouring disclosure which relates to allowing or assisting with inquiry into possible conduct deficiencies⁶⁹ applies to the Category A Information. Taking into consideration the nature of the Category A Information, the information known by the applicant and the possible deficiencies that have been raised by the applicant, I afford moderate weight to this factor.
69. While the applicant submitted that the allegations which were the subject of the workplace investigation were of a serious nature,⁷⁰ he is aware that the investigation found that 10 of the 11 allegations were not substantiated. The applicant has not identified or enunciated how disclosure of the Information in Issue, or the Category A Information in particular, could reveal or substantiate any misconduct or negligent, improper or unlawful conduct by QUT, its staff or the investigator. On careful consideration of the material before me, there is nothing which evidences that there was any such misconduct or negligent, improper or unlawful conduct in QUT's investigation process. Accordingly, I find that the factor relating to revealing or substantiating such conduct⁷¹ does not apply to the Category A Information.

Reveal information was incorrect, unfairly subjective etc

70. A public interest factor favouring disclosure will also arise where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.⁷² Given the applicant's submission that his complaint was ineffectively investigated and that the information provided by him to the investigator was ignored, I have considered whether this factor favouring disclosure applies to the Category A Information, although it was not specifically raised by the applicant.⁷³
71. QUT relies on its internal review decision, which relevantly contains the following statement:

I have seen no evidence, nor claim, that the grievance procedure and the investigation produced any incorrect, misleading, irrelevant, out of date or unfairly subjective information. I took into account the following views of the Right to Information Commissioner in Z Toodayan and Metro South Hospital and Health Service [2017] QICmr 34 at 51:

72. I note that the referenced comments by the Right to Information Commissioner in *Z Toodayan and Metro South Hospital and Health Service*⁷⁴ were made concerning witness statements and associated information which identified the witnesses, provided in an investigation about the conduct of the applicant in that matter. While I have given consideration to these comments, I have taken into account that they were expressed about information that is quite different to the Category A Information—specifically, information provided by a range of witnesses other than the applicant. The Category A Information relates to information provided by the applicant.

⁶⁹ As noted at footnotes 61 and 62 above.

⁷⁰ External review application and submissions dated 31 January 2019. I am unable in these reasons for decision to further elaborate on the nature of those allegations or the applicant's characterisation of them.

⁷¹ As noted at footnotes 63 and 64 above.

⁷² Schedule 4, part 2, item 12 of the RTI Act.

⁷³ As part of identifying all relevant factors favouring disclosure, as required by section 49(3)(b) of the RTI Act.

⁷⁴ [2017] QICmr 34 (11 August 2017) (*Z Toodayan*).

73. I have carefully reviewed the Category A Information. Again, I am unable to address the applicant's concern about the information provided by him being ignored.⁷⁵ As the Category A Information summarises, and includes analysis of, the information provided by the applicant, I consider that its disclosure could reasonably be expected to *allow or assist inquiries* by the applicant into any errors, or unfair subjectivity, in the investigator's summaries or understanding of that provided information. In effect, this opportunity is noted and afforded requisite weight at paragraphs 67 and 68 above. However, the factor noted at paragraph 70 above is enlivened where disclosing information could reasonably be expected to *reveal* that the information itself is incorrect or unfairly subjective. The material before me is insufficient for me to conclude that disclosure of the Category A Information could reveal such defects. If I am wrong in this regard, and it is the case that the factor does apply, taking into account the nature of the Category A Information and the information known to, or possessed by, the applicant, I consider it should be afforded low weight.

Administration of justice for the applicant

74. Where disclosing information could reasonably be expected to contribute to the administration of justice for a person, a public interest factor favouring disclosure⁷⁶ will arise. In determining whether this public interest factor in favour of disclosure applies to the Category A Information, I must consider whether:

- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.⁷⁷

75. As I have previously noted, the applicant submitted that there were inadequacies in the investigation. He also submitted⁷⁸ that certain individuals have disclosed matters concerning the investigation and, as he was not provided with a copy of the Report as contemplated by the Terms of Reference, he is unable to counter this and there has been resulting damage to his reputation and career.

76. QUT submitted that:

- this factor favouring disclosure does not apply to the Category A Information because, unlike the circumstances in *Willsford*:⁷⁹
 - *'no possible remedy has ever been adverted to by the applicant in respect of the investigation (or any other dealing with QUT)' and 'QUT ought not to be placed in a position of having to guess at causes of action'; and*
 - *'[i]t is impossible to understand how release to the applicant of the information originally provided by him to the investigation can assist him in pursuing a remedy ...'*
- contrary to the Terms of Reference, an unredacted copy of the Report was only received by persons who required it for the performance of their duties;⁸⁰ and

⁷⁵ Given section 108(3) of the RTI Act.

⁷⁶ Schedule 4, part 2, item 17 of the RTI Act.

⁷⁷ *Willsford and Brisbane City Council* (1996) 3 QAR 368 (*Willsford*) at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

⁷⁸ Submissions made in a conversation with OIC on 1 June 2018.

⁷⁹ Submissions dated 1 February 2019.

⁸⁰ Submissions dated 25 June 2018. QUT identifies those persons as staff in QUT's Human Resources department, the Registrar and the Vice-Chancellor.

- it is not aware of any person involved in the investigation communicating the fact that an investigation was undertaken, the nature of the matters investigated, nor the investigation outcomes to any individual.⁸¹

77. It is my understanding that the applicant has formed his view about inadequacies in the investigation, and its processes, based upon his participation in the investigation process and the information that has been disclosed to him. I acknowledge the applicant's submissions about damage he considers has been caused to his reputation and career; however, the applicant has not specified what type of remedy he seeks in respect of that submitted damage. Further, while the applicant has raised concerns about the investigation process itself, he has not specified what loss, damage or wrong he has suffered as a result and what remedy he seeks in respect of those concerns. I also note that the applicant has had some time to frame any loss, damage or wrong he considers relevant in terms of a potential remedy, as the workplace investigation is complete and its outcome was notified to the applicant approximately 18 months ago. In these circumstances, there is insufficient material before me to conclude that the applicant requires the Category A Information to enable him to evaluate whether a remedy is available and worth pursuing against any entity or individual in respect of the concerns he has raised about the investigation process and outcome, or the damage he submits his reputation and career have sustained.

78. In these circumstances, I am not satisfied that disclosure of the Category A Information could reasonably be expected to contribute to the administration of justice for a person. Accordingly, I find that the factor relating to this aspect of justice does not apply to the Category A Information.

Fair treatment and procedural fairness for the applicant

79. The RTI Act also gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:

- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;⁸² and
- contribute to the administration of justice generally, including procedural fairness.⁸³

80. If disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies, it is relevant to consider the public interest factor relating to advancing the fair treatment of individuals. However, this public interest factor does not require a decision-maker to ensure that an applicant is provided with sufficient information to enable the applicant to be *subjectively* satisfied that he or she received fair treatment.

81. In its internal review decision, which QUT relies upon, QUT relevantly stated:

Whilst I have considered this factor, I do not find that it has any particular application, and so I give it little weight. I have seen no evidence, nor claim, that the grievance procedure and the investigation produced any treatment of [the applicant] (or other persons) that was anything but fair. The investigation spanned a great deal of time, many witnesses were interviewed and a detailed report was produced dealing with eleven allegations upon which the grievance was based.

⁸¹ Submissions dated 25 June 2018.

⁸² Schedule 4, part 2, item 10 of the RTI Act.

⁸³ Schedule 4, part 2, item 16 of the RTI Act.

82. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.⁸⁴ Accordingly, the person who is the subject of a decision must be provided with adequate information about material that is credible, relevant and significant to the adverse finding to be made, so that the person can be given the opportunity to make effective representations to the decision-maker.⁸⁵ In the context of a workplace investigation, procedural fairness generally requires that a person is:

- adequately informed of the allegations made *against* them
- given an opportunity to respond to the allegations; and
- informed of the outcome of the investigation.⁸⁶

83. QUT relies on its internal review decision, in which it afforded little weight to this factor and relevantly stated:

Nor am I aware of any other respect in which the administration of justice would be attracted, such as some form of natural justice/procedural fairness based on action that might be taken against you: see Carter and James Cook University s 210/00, 28 March 2002 at [27]: ... I would distinguish [the applicant's] case from the Carter case above in that [the applicant does] not have continuing contact with the University. I do not find that the administration of justice arises in the present context as a principle or factor in favour of disclosure. In particular, I have had regard to the fact that the purpose of the investigation was not to investigate [the applicant's] conduct, but the conduct of others as set out in the grievance. In such circumstances, it is difficult to see how a requirement that [the applicant] be afforded procedural fairness arises: see F60XCX and Department of Natural Resources and Mines [2017] QICmr 19 at [89]-[92]: ...

84. In respect of the referenced comments of the Information Commissioner in *Carter and James Cook University*,⁸⁷ I note the issue considered in that decision was whether disclosure of a management review report could have a substantial adverse effect on the management or assessment by an agency of the agency's personnel under the now repealed *Freedom of Information Act 1992* (Qld). While the internal review decision seeks to distinguish the decision in *Carter*, I do not consider the reference to this decision is particularly relevant to consideration of the administration of justice factor in the present matter.

85. As to QUT's reliance on the Information Commissioner's referenced findings in *F60XCX and Department of Natural Resources and Mines*,⁸⁸ I note that the information in issue in that matter included 'interview transcripts, precis of interviews, and the personal details and witness statements of other individuals who provided evidence regarding the workplace investigation into Officer X'.⁸⁹ While the referenced findings may be apposite to the Category C Information and some of the Category B Information (that is, the personal information of others, and information provided to the investigation by individuals other than the applicant), I do not consider they are particularly relevant to the Category A Information (that is, information provided to the investigation by the applicant).

⁸⁴ *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J.

⁸⁵ *Kioa* at 629 per Brennan J.

⁸⁶ *Gapsa and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 6 September 2013) and *ODWOPH and Queensland Bulk Water Supply Authority trading as Seqwater* [2017] QICmr 3 (13 February 2017).

⁸⁷ (Unreported, Queensland Information Commissioner, 28 March 2002) (*Carter*).

⁸⁸ [2017] QICmr 19 (9 June 2017) (*F60XCX and DNRM*).

⁸⁹ *F60XCX and DNRM* at footnote 9. See also [49] and [52]-[53], which confirm that the information in issue was provided to the investigation in that matter by other individuals, not that matter's applicant.

86. As I have previously noted, while the applicant was notified of the investigation outcome, he has no knowledge of the investigator's reasoning for finding that most of his allegations were unsubstantiated or the information the investigator took into account in reaching those findings (including what of the information provided by him was taken into account). The Terms of Reference for the investigation contemplated that the applicant would receive a copy of the Report after the investigation was concluded. Further, the applicant has submitted that he was 'given assurances' that he would get a copy of the Report when the investigation was finalised.⁹⁰ The applicant contends that he participated in the investigation on this basis.
87. Given these specific circumstances, I consider that disclosing the Category A Information would provide the applicant with an understanding of how the information provided by him was summarised and taken into account in the Report findings and, in doing so, advance his fair treatment. On this basis, I am satisfied that this factor favouring disclosure⁹¹ applies. Taking into consideration the nature of the Category A Information, I afford this factor moderate weight.
88. In terms of procedural fairness, I note that the applicant was the complainant, not the subject of the complaint allegations. I further note that he was afforded an opportunity to participate in the investigation process and was provided with notification that 10 of his 11 allegations were found to be unsubstantiated.
89. Given these specific circumstances, I do not consider that disclosure of the Category A Information could reasonably be expected to contribute to the administration of justice generally, and therefore this factor⁹² does not apply. If I am wrong, and it is considered that this factor does apply due to some inadequacy in the notification provided to the applicant, taking into account the nature of the Category A Information, I afford low weight to this factor.

Other factors favouring disclosure

90. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the Category A Information. Taking into consideration the nature of the Category A Information, I cannot see how its disclosure could, for example, contribute to a debate on important issues or matters of serious interest,⁹³ ensure the effective oversight of expenditure of public funds⁹⁴ or contribute to the enforcement of the criminal law.⁹⁵

Factors favouring nondisclosure

Personal information of other individuals

91. A public interest factor favouring nondisclosure will arise under the RTI Act where disclosure of information could reasonably be expected to cause a public interest harm because it would disclose personal information of a person, whether living or dead (**personal information harm factor**).⁹⁶

⁹⁰ External review application.

⁹¹ Schedule 4, part 2, item 10 of the RTI Act.

⁹² Schedule 4, part 2, item 16 of the RTI Act.

⁹³ Schedule 4, part 2, item 2 of the RTI Act.

⁹⁴ Schedule 4, part 2, item 4 of the RTI Act.

⁹⁵ Schedule 4, part 2, item 18 of the RTI Act.

⁹⁶ Schedule 4, part 4, item 6(1) of the RTI Act.

92. QUT relies on the following passage from its internal review decision regarding the entirety of the Information in Issue:

... [the applicant's] personal information is inextricably intertwined with that of others. This is a strong factor against disclosure to [the applicant] of the [Report] and all attachments. In this regard, I note that it is very difficult to redact the information so as to effectively de-identify third parties: see F60CXC and Queensland Ombudsman [2014] QICmr 28⁹⁷ at [29]-[30]. As was the case in F60CXC and Queensland Ombudsman [2014] QICmr 28 at [31], the information is sensitive and personal in nature. Moreover, it was given in the sensitive context of an investigation into allegations, as occurred in Z Toodayan: see at [43]: ...

I give significant weight to these factors.

... the intrusion into personal privacy of individuals is all the greater because what would be disclosed to [the applicant] (with the possibility of further dissemination) are allegations which are in essence allegations of misconduct or unlawful, negligent or improper conduct (which I decline to describe further). In this regard, I follow the reasoning in Z Toodayan at [43], and F60CXC and Queensland Ombudsman at [31]-[32]. It is apparent that disclosure of unsubstantiated allegations that are in part a third party's personal information can cause a public interest harm within [schedule 4, part 4, section 6(1) of the RTI Act] above.

93. On external review, QUT submitted:⁹⁸

The three errors in ... [OIC's preliminary view] are the central proposition, the claim that persons cannot be identified in the [Category A Information] ... (while not proposing any legal basis for that conclusion) and the failure to recognise that the personal information of the applicant is inextricably intertwined with personal information of other persons whose identity is reasonably ascertainable.

94. QUT provided detailed submissions regarding these points, which I will outline and address below.

95. The third and fourth parties submitted⁹⁹ that if the Consult Information is disclosed, their identities are still ascertainable by the applicant.

96. Given these submissions, it is necessary that I address:

- whether the exclusion of the Category B Information from the Category A Information means that the Category A Information no longer contains the personal information of individuals other than the applicant; and
- whether it is possible to *disclose* the Category A Information without disclosing the personal information of others.

Personal information

97. The definition of 'personal information' in the RTI Act¹⁰⁰ refers to the definition in the *Information Privacy Act 2009 (Qld) (IP Act)*, which provides that:¹⁰¹

Personal information is 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.

⁹⁷ The citation for this decision, appearing in this excerpt and the excerpt appearing at paragraph 145, incorrectly refers to the applicant as F60CXC rather than F60XCX. The correct citation appears in paragraph 99.

⁹⁸ Submissions dated 14 December 2018.

⁹⁹ Submissions dated 22 February 2019.

¹⁰⁰ Section 10 and schedule 5 of the RTI Act.

¹⁰¹ Section 12 of the IP Act.

98. As noted in paragraphs 22 and 42-43 above, the Category A Information **excludes** the Category B Information, which is personal information of individuals other than the applicant, and small portions of additional information which could reasonably be expected to lead to identification¹⁰² of such individuals.
99. I have carefully considered the statement in the internal review decision¹⁰³ that *'it is very difficult to redact the information so as to effectively de-identify third parties'*, and reference to *F60XCX and Queensland Ombudsman*¹⁰⁴ in support of this view. In the referenced comments, the Assistant Information Commissioner observed¹⁰⁵ that:

*The identity of the subject officer, while known to the applicant, could reasonably be ascertained by **other readers** from the information released by the Ombudsman and the remaining Information in Issue [with the subject officer's name redacted].*

*Similarly, it is not possible to **merely delete the name of the witness**. Given the nature of the information provided by the witness, it would be possible for the applicant, and **other readers**, to identify them.*

[my emphasis]

100. These referenced comments consider the redaction of one type of personal information—specifically, the names of the subject of a complaint and a witness. The present situation differs significantly, in that the Category B Information redacted from the Category A Information extends beyond the names of such parties. Here, the redacted information includes all information identified by OIC and/or QUT as personal information of individuals other than the applicant, and all information which could reasonably be expected to lead to their identification. I will address this point further at paragraphs 112-113 below.
101. The abovementioned comments in *F60XCX and Queensland Ombudsman* contemplated that, in the circumstances of that review, disclosure of information with the names of the subject of the complaint and witness deleted could, nevertheless, allow the *applicant* and *other readers* to identify them. In terms of the reference to the *applicant*, it is relevant to note that, in *F60XCX and Queensland Ombudsman*, the information in issue was not provided to the Ombudsman by the applicant,¹⁰⁶ and was therefore not already in the applicant's knowledge. That is not the case regarding the Category A Information.
102. In terms of the reference to *other readers*, QUT has made extensive submissions¹⁰⁷ contending that, for the Category A Information to qualify as personal information, it need only allow the applicant or the individuals to whom the Category B Information relates—not other readers—to identify themselves. For example, QUT submitted:¹⁰⁸

[S]ince the applicant and the persons spoken of in the [Category A Information] can readily, between them (and/or the applicant on his own), ascertain the identity of every person referred to therein, the definition in the Act of "personal information" is satisfied as concerns third parties involved in the investigation.

103. In other words, QUT's position is that the redaction of the Category B Information cannot adequately de-identify the third and fourth parties because their identities remain

¹⁰² Given section 108(3) of the RTI Act, I am unable to further describe this information in these reasons for decision.

¹⁰³ Repeated in QUT's submissions dated 1 February 2019.

¹⁰⁴ [2014] QICmr 28 (13 June 2014) (*F60XCX and Queensland Ombudsman*), in particular [29]-[30].

¹⁰⁵ At [29]-[30].

¹⁰⁶ *F60XCX and Queensland Ombudsman* at [12].

¹⁰⁷ Submissions dated 14 December 2018 and 1 February 2019.

¹⁰⁸ Submissions dated 14 December 2018.

reasonably ascertainable by the applicant and the third and fourth parties, and possibly others who participated in the investigation, and this is sufficient to satisfy the definition of personal information.

104. In this regard, QUT relies primarily on the decision of Justice Smith of the Supreme Court of Western Australia in *Public Transport Authority*.¹⁰⁹ This decision considered a media organisation's request to access pixelated CCTV footage about incidents occurring at train stations or level crossings. In terms of whether this information was 'personal information' as defined in the *Freedom of Information Act 1992 (WA) (WA FOI Act)*,¹¹⁰ Her Honour decided that:¹¹¹

Further, a construction that it is only necessary that one person may have the necessary information to ascertain their identity or the identity of another person is consistent with the exemption in cl 3(2) of sch 1¹¹² that contemplates that unless it is the applicant who is seeking personal information about themselves, the personal information is exempt from disclosure. In this context, cl 3(2) contemplates that personal information may only be information revealed about one person.

...

The issue is whether a person's identity can reasonably be ascertained. The question to be asked is whether, on an objective assessment of all relevant circumstances when examining CCTV footage, it can reasonably be said that at least one or more persons, including the person or persons whose image(s) are shown in CCTV footage, could have the necessary knowledge or contextual information to ascertain the identity of the individual or individuals.

[QUT's emphasis]

105. Given the similarity between the definitions of personal information in the WA FOI Act and Queensland's IP Act, I have taken into account the findings in *Public Transport Authority*. However, I have done so noting that, unlike the pro-disclosure bias in section 44(1) of the RTI Act, the WA FOI Act places the onus on the access applicant¹¹³ to establish, for the purposes of the schedule 1 definitions (including the personal information exemption in clause 3(1) of schedule 1), that disclosure would, on balance, be in the public interest. I have further noted that the WA FOI Act contains no provision similar to the public interest test in section 49(3) of the RTI Act. Also, as will be discussed further below, I have noted that the personal information harm factor is worded 'would **disclose** personal information of a person', whereas the WA FOI Act equivalent is worded 'would **reveal** personal information about an individual' (my emphasis).
106. *Public Transport Authority* did not consider the construction of 'would reveal personal information about an individual'. While there were two grounds of appeal in *Public Transport Authority*¹¹⁴—firstly, the proper construction of the expression 'information about an individual whose identity is apparent or can reasonably be ascertained from the information' in the definition of personal information; and secondly, the question of whether disclosure of the disputed CCTV footage 'would reveal personal information about an individual' as defined in the personal information exemption—Justice Smith

¹⁰⁹ [2018] WASC 47.

¹¹⁰ Personal information is defined in clause 1 of the glossary of the WA FOI Act in similar terms to the definition of personal information in the IP Act, namely 'information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead whose identity is apparent or can reasonably be ascertained from the information or opinion or who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample'.

¹¹¹ At [69] and [72].

¹¹² Clause 3(1) of schedule 1 provides that [m]atter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). Clause 3(2) provides that [m]atter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant', while clause 3(6) provides that [m]atter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest'.

¹¹³ Section 102 of the WA FOI Act.

¹¹⁴ At [5].

only addressed the first ground of the appeal, and did not find it necessary to consider the second ground.¹¹⁵ However, Her Honour subsequently considered the second ground in the decision of *S v Department for Child Protection and Family Support*.¹¹⁶ This decision is discussed below.

107. QUT also referred to two decisions of the Civil and Administrative Tribunal of New South Wales (**NSW Tribunal**)—namely, *Peacock v Commissioner of Police, NSW Police Force*¹¹⁷ and *CCB v Department of Education and Communities*¹¹⁸—in support of its submission that ‘reasonable ascertainment for the purposes of the “personal information” is satisfied if made by as few as one person’.¹¹⁹ Given the similarity between the definitions of personal information in the the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and Queensland’s IP Act,¹²⁰ I have considered each of these decisions below. In doing so I have noted that, similar to the RTI Act, the GIPA Act provides a right to access information unless there is an overriding public interest against its disclosure.¹²¹ I have also noted that, again similar to the RTI Act, the GIPA Act sets out a number of public interest considerations to consider and weigh when determining whether there is an overriding public interest against disclosure. These relevantly include where disclosure of information could reasonably be expected to ‘**reveal an individual’s personal information**’¹²² (my emphasis).
108. In *CCB*, in considering a request for disclosure of a ‘de-identified’ version of workplace health and safety reports, the NSW Tribunal found:¹²³

The character of the WH&S incident reports, as containing personal information, is not changed by de-identification when supplied to the applicant. Alternatively, the mother knows the identity of the support teacher, and knows that she was involved in the incidents, so that the support teacher’s identity could reasonably be ascertained from the de-identified information, with reference to the extraneous information. This means it would retain its character of “personal information”.

...

Accordingly, I find that the disclosure of the WH&S incident forms could reasonably be expected to reveal the support teacher’s personal information.

109. It is relevant to note that *CCB* involved an application by a mother seeking workplace health and safety reports made by a support teacher following incidents involving her child. That is, *CCB* examined the redaction of a witness’ personal information from a statement made by that witness. In contrast, the Category A Information is information the *investigator* recorded about information received *from the applicant* and the investigator’s analysis and conclusions about the applicant’s allegations.
110. *Peacock* involved an application by a mother for information about her deceased daughter, and considered the possibility of redacting ‘*personal details ... recorded by Police officers in the course of exercising their functions, [including] the details of people who have supplied information to police as a witness, and people who have been investigated in relation to suspected criminal activities*’¹²⁴ from documents. Following

¹¹⁵ At [74].

¹¹⁶ [2017] WASC 305 (*S v DCPFS*).

¹¹⁷ [2019] NSWCATAD 20 (*Peacock*).

¹¹⁸ [2015] NSWCATAD 145 (*CCB*).

¹¹⁹ Submissions dated 1 February 2019.

¹²⁰ The GIPA Act defines personal information in schedule 4, section 4 of the GIPA Act in similar terms to the definition of personal information in the IP Act, namely ‘*information or an opinion including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion*’.

¹²¹ Section 9 of the GIPA Act.

¹²² Clause 3(a) in the Table to section 14 of the GIPA Act.

¹²³ At [98] and [103].

¹²⁴ At [38].

CCB, the NSW Tribunal found that the applicant's knowledge of the incidents recorded in the documents meant that the identity of individuals identified in the documents '*could reasonably be ascertained even if their names and contact details were redacted*'.¹²⁵ Again, it is relevant to note that the information which was considered in *Peacock* (namely information about witnesses and suspects recorded by police) is significantly different from that considered in this review.

111. I have carefully considered the Category A Information and the submissions of QUT and the third and fourth parties. I do not agree with QUT's contention that the personal information of other individuals is inextricably intertwined with the personal information of the applicant in these sections of the Report. For the reasons that follow, I am satisfied that the exclusion of the Category B Information enables the Category A Information to be disclosed without disclosing the personal information of those other individuals.

112. The Category B Information was identified and redacted from the Category A Information by the process of:

- providing a redacted version of the Category A Information to QUT,¹²⁶ with redactions of personal information consistent with QUT's redactions to the information regarding the substantiated allegation released to the applicant pursuant to the original decision
- QUT making submissions¹²⁷ regarding certain information about work history, social activities and other information
- my considering the Category A Information in light of QUT's submissions and providing a further redacted version of the Category A Information to QUT¹²⁸ with the names of the particular QUT research area and programs, their physical location and details of the social interactions between the applicant and a witness redacted
- QUT making submissions¹²⁹ that '*there are still a few distinctive elements remaining which would make identification relatively easy for people other than the applicant (who can readily identify them, redaction or not)*' and identifying references to particular locations, a small number of nouns and pronouns, and certain information provided by witnesses
- my considering the Category A Information in light of QUT's submissions and seeking¹³⁰ QUT's view about the incorporation of further minor redactions of references to particular locations and nouns and pronouns; and
- my examining the Category A Information in close detail a further, final time.

113. In terms of the additional information identified in QUT's submissions, QUT submitted that '[t]hese continuing errors support the conclusion that it is difficult to redact information so as to effectively deidentify third parties'.¹³¹ However, the fact that additional information was identified and redacted during the above type of process is not unusual¹³² and does not demonstrate that the final version of the Category A Information still contains more information requiring redaction. During the above process, I identified information that, on its face, constituted the personal information of other individuals, and relied on QUT's agency specific knowledge regarding further information that could reasonably be expected to enable identification of those individuals. By this process—and noting that QUT's second submissions stated that

¹²⁵ At [37].

¹²⁶ On 21 November 2018.

¹²⁷ Dated 14 December 2018 referring to pages 12 and 53 of the Report in particular.

¹²⁸ On 17 January 2019.

¹²⁹ Dated 1 February 2019.

¹³⁰ On 8 February 2019.

¹³¹ Submissions dated 1 February 2019.

¹³² Especially during the informal resolution processes OIC is required to undertake under section 90(1) of the RTI Act.

there were only ‘a few distinctive elements remaining which would make identification relatively easy for people other than the applicant’,¹³³ all of which have been carefully considered by me—I am satisfied that all personal information of individuals other than the applicant (including the third and fourth parties), and all information identified as reasonably leading to their identification, has been redacted from the Category A Information.

114. As noted at paragraph 97 above, the definition of personal information requires that the information be ‘about an individual whose identity is apparent, or can reasonably be ascertained, from the information’.¹³⁴ Given the redaction of all personal information of individuals other than the applicant (including the third and fourth parties) noted above, I am satisfied that the identities of any such individuals are not *apparent* from the Category A Information.
115. However, on an objective assessment of the Category A Information, I accept that the applicant and the third and fourth parties, by reason of their involvement in the investigation process, will always be in a position to identify the individuals about whom the allegations relate or who are otherwise referenced in these sections of the Report. It may also be possible for some other individuals who participated in the investigation to identify themselves in these sections of the Report.
116. According to QUT, this position is sufficient for the Category A Information to qualify as personal information. In this regard, I have carefully considered the decisions raised by QUT. On my reading of these decisions, only *Public Transport Authority* contended that the question is whether one or more person has the necessary knowledge or contextual information to identify other individuals recorded in the document.¹³⁵ In contrast, *CCB* and *Peacock* each turned on the practical question of whether, following some redactions, the applicants in those matters could still identify others. Specifically, *CCB* considered that, despite de-identification of a workplace health and safety incident report completed by a support teacher, the applicant could still identify that teacher;¹³⁶ while *Peacock* considered that, even with names and contact details redacted from information recorded by police about conversations with witnesses and suspects, the applicant could still identify those witnesses and suspects.¹³⁷ Given this, the information in *CCB* and *Peacock* would, in the present decision, be categorised as Category C Information, not Category A Information. Finally, *S v DCPFS* considered information like the Category B Information, which I agree comprises personal information of others. Accordingly, having carefully considered these cases, I am of the view that *Public Transport Authority* is the only case that supports QUT’s contention that, for the Category A Information to amount to personal information, it is only necessary that one person be able to identify themselves, and this one person could be the applicant.
117. As noted at paragraph 104 above, *Public Transport Authority* considered the question of whether identities *could reasonably be ascertained* in relation to pixelated CCTV footage. This issue was also considered by the Right to Information Commissioner in *Seven Network (Operations) Limited and Logan City Council*:¹³⁸

... as noted in the WA Public Transport Case, the determination of whether a person’s identity is apparent, or can ‘reasonably be ascertained’ must be made on an objective assessment of all relevant circumstances, on a case-by-case basis.

¹³³ Submissions dated 1 February 2019.

¹³⁴ Section 12 of the IP Act.

¹³⁵ At [72].

¹³⁶ At [98].

¹³⁷ *Peacock* at [37]-[38].

¹³⁸ [2018] QICmr 21 (11 May 2018) at [38]-[40] (**Seven and Logan CC**) (footnote 40 omitted).

... whether self-identification, or identification by those close to the individual/incident is possible by a cross-referencing process will depend on how available the information is, and how difficult it is to obtain. This includes whether the additional information used for cross-referencing is available by way of general knowledge for a substantial segment of the community within which the relevant footage has been recorded, or whether it is only available through specialist knowledge.

Generally speaking, if certain individuals hold the relevant additional information by virtue of their particular relationship with a person or personal involvement in relevant events, and are able to use this specialist knowledge in order to identify the individual, this information is not sufficiently available, and is difficult to obtain. Accordingly, I do not consider that identification through this specialist knowledge is sufficient to demonstrate that an individual's identity can 'reasonably be ascertained' from the information.

118. This reasoning was followed in further decisions by the Right to Information Commissioner in *Australian Broadcasting Corporation and Department of Child Safety, Youth and Women*¹³⁹ and *Seven Network (Operations) Limited and Department of Justice and Attorney-General; Department of Child Safety, Youth and Women*.¹⁴⁰ Given the differences between the RTI Act and the WA FOI Act noted at paragraph 105 above, I consider it appropriate to follow the reasoning in *Seven and Logan CC, ABC and DCSYW* and *Seven and DJAG*.
119. Following this reasoning, I have considered whether individuals other than the applicant (including the third and fourth parties) could reasonably be identified by persons who do not hold prior knowledge (that is, by persons other than the applicant, the third and fourth parties and individuals who were involved in QUT's investigation) through additional information. In this regard, I have noted that:
- QUT submitted that only a limited number of staff received the Report, and that all persons involved in the investigation are bound by confidentiality obligations
 - when notifying the applicant of the Report findings, QUT also stated that the applicant was required to '*maintain strict confidentiality in respect of the complaint and the investigation*'; and
 - while the applicant and the third and fourth parties each have a copy of the 2017 complaint which was investigated, QUT submitted that it is not aware of any individual involved in the investigation process communicating with others that the investigation occurred, the nature of matters investigated nor the investigation outcomes.
120. In these circumstances and taking into account the availability and relevance of such additional information,¹⁴¹ I consider it reasonable to conclude that persons without prior knowledge about the identities of persons the subject of, or otherwise involved in, the workplace investigation could not, through additional information, reasonably ascertain the identities of those individuals in the Category A Information.
121. Accordingly, as well as being satisfied that the identities of individuals other than the applicant are not *apparent* from the Category A Information, I am also satisfied that the identities of such individuals cannot *reasonably be ascertained*. On this basis, I am satisfied that the Category A Information is not personal information.

¹³⁹ [2018] QICmr 47 (21 November 2018) (*ABC and DCSYW*) at [107].

¹⁴⁰ [2018] QICmr 48 (29 November 2018) (*Seven and DJAG*) at [44].

¹⁴¹ Reflecting the factors set out in *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [21]—namely, how available the additional information is; how difficult it is to obtain; how many steps are required to identify the individual; how certain the identification will be; whether it will identify one specific individual or a group of people; and whether the individual receiving the information can use it to identify the individual.

“Disclose”

122. Even if I were satisfied that the Category A Information should be characterised as personal information, it is also relevant to note that the personal information harm factor only arises if disclosure would *disclose* the personal information.

123. As noted at paragraph 105 above, the WA FOI Act equivalent is worded ‘*would reveal personal information about an individual*’ (my emphasis). This provision was considered by Justice Smith in *S v DCFPS*. In this case, the appellant sought access to ‘*the personal information that she provided to the Department, about third parties, that has been redacted from the copies of the documents to which she has been given access*’¹⁴²—that is, information provided to her that is akin to the Category B Information that has been redacted from the Category A Information. Notably, it appears that the information akin to the Category A Information was released to the appellant.

124. In terms of the redacted personal information of others, the appellant contended that:¹⁴³

The appellant claims that where the application for access has been explicitly limited to the very information provided by her, cl 3(1) can have no application as this information cannot be said to be ‘revealed’ or ‘disclosed’ by access within the meaning of cl 3(1).

125. Justice Smith was required to consider the construction of the phrase ‘*would reveal personal information about an individual*’. As the word ‘reveal’ was not defined in the WA FOI Act, Her Honour considered previous decisions regarding the phrase ‘*reveal the investigation of any contravention or possible contravention of law*’, which had appeared in a previous iteration of the WA FOI Act, and decided that:¹⁴⁴

... Whilst Anderson J’s observations were made about the statutory context of the words ‘reveal the investigation’, the point of importance raised by his Honour is that those words are to be interpreted without regard to the state of the knowledge of the person seeking access to documents.

It is my opinion that the same point arises in the construction of cl 3(1) of sch 1. There is nothing in cl 3 or in any of the provisions of the FOI Act from which a legislative intention can be inferred that would require a consideration of the knowledge of the person seeking access when determining whether the disclosure of a matter would reveal personal information.

126. As for the WA decisions, the NSW decisions raised by QUT involve consideration of the word ‘reveal’, in the context of the phrase ‘*could reasonably be expected to reveal an individual’s personal information*’. However, unlike the WA FOI Act, which does not define ‘reveal’, the GIPA Act defines ‘reveal’ as ‘*to disclose information that has not already been publicly disclosed (otherwise than by an unlawful disclosure)*’.¹⁴⁵ In relation to this, the NSW Tribunal commented as follows in *CCB*:¹⁴⁶

There is a question as to whether the information in question has been “publicly revealed” (in which case the personal information consideration against disclosure would not apply). The definition of “reveal information” is “to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure)” (GIPA Act, Sch 4, cl 1). Thus, if the information has been publicly disclosed already, further disclosure would not “reveal personal information” within cl 3(a).

...

¹⁴² At [38].

¹⁴³ At [39].

¹⁴⁴ At [43]-[44].

¹⁴⁵ See definition in schedule 4, clause 1 of the GIPA Act.

¹⁴⁶ At [100] and [102].

There is insufficient evidence to conclude there has been any public disclosure of the information contained in the WH&S incident forms and I find that there has not been.

127. In contrast to the WA FOI Act and the GIPA Act, the RTI Act requires consideration of the word ‘disclose’, in the context of the phrase ‘*would disclose personal information of a person*’. In this regard, I note the comments of the Right to Information Commissioner in *ABC and DCSYW* that:¹⁴⁷

While ‘disclose’ as used in the Personal Information Harm Factor is not defined in the RTI Act, the word is defined in section 23 of the IP Act as it relates to the application of the Information Privacy Principles – to ‘disclose personal information’ relevantly means to give that information to an entity who does not otherwise know the information and is not in a position to find it out. Where releasing personal information would not involve conveying to any person or entity information not already known to them, it cannot be said such release would ‘disclose’ personal information within the meaning of the Personal Information Harm Factor, and that factor will therefore not apply. This is consistent with the meaning that the courts have given to the concept of disclosure

128. I further note the Right to Information Commissioner’s reference to case law regarding the concept of disclosure as follows:¹⁴⁸

... the interpretation that the courts have given to the specific concept of disclosure supports the conclusion that a disclosure does not occur where the recipient already knows the information. In Nakhil Nasr v State of New South Wales [2007] NSWCA 101 at [127], the Court said:

... The essence of disclosure of information is making known to a person information that the person to whom the disclosure is made did not previously know: R v Skeen & Freeman (1859) Bell 97; 169 ER 1182 (“uncovering ... discovering ... revealing ... imparting what was secret ... [or] telling that which had been concealed”); Foster v Federal Commissioner of Taxation (1951) 82 CLR 606 at 614-5 (“... a statement of fact by way of disclosure so as to reveal or make apparent that which (so far as the “discloser” knows) was previously unknown to the person to whom the statement was made”); R v Gidlow [1983] 2 Qd R 557 at 559 (“telling that which has been kept concealed”); Dun & Bradstreet (Australia) Pty Ltd v Lyle (1977) 15 SASR 297 at 299; A-G v Associated Newspapers Ltd [1994] 2 AC 238 at 248 (“to open up to the knowledge of others”); Real Estate Opportunities Limited v Aberdeen Asset Managers Jersey Limited [2007] EWCA Civ 197 at [78] (“the revelation of information for the first time”). ...

129. In both *ABC and DCSYW*¹⁴⁹ and *Seven and DJAG*,¹⁵⁰ the Right to Information Commissioner noted that, where releasing personal information would not involve conveying to any person or entity information not already known to them, it cannot be said such release would disclose personal information within the meaning of the personal information harm factor, and that factor will therefore not apply.

130. QUT accepted this interpretation of disclosure within the meaning of the public interest harm factor and submitted that ‘*there can be no satisfaction of the harm test in respect of information provided by the applicant about third parties to the investigator, since the applicant knows that information. ... However, that harm test is satisfied if third party information as appearing in the conclusions of the investigator is given to the applicant because that would amount to disclosure of information not previously known to the applicant*’.¹⁵¹ That is, despite lengthy submissions that the entirety of the Category A Information comprises personal information, QUT recognised that information restating

¹⁴⁷ At [107] (footnote 56 omitted).

¹⁴⁸ *ABC and DCSYW* at [66].

¹⁴⁹ At [107].

¹⁵⁰ At [45].

¹⁵¹ Submissions dated 1 February 2019.

the applicant's allegations regarding the 10 allegations which were found to be unsubstantiated and summarising the information provided by the applicant regarding those allegations cannot be *disclosed* to the applicant, and therefore the personal information harm factor cannot apply to such information.

131. I agree with QUT's statement in the above paragraph. However, in terms of the remaining Category A Information—that is, the investigator's reasoning and conclusions regarding each allegation—as I have noted above, the references to the information provided by individuals other than the applicant in the investigator's analysis and conclusions have been excluded from the Category A Information and, consequently, I am satisfied that the remaining Category A Information does not comprise personal information.
132. For the above reasons, I do not consider the personal information harm factor applies to any of the Category A Information.

Privacy of other individuals

133. A public interest factor favouring nondisclosure will also arise under the RTI Act where disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy (**privacy prejudice factor**).¹⁵²
134. In terms of the privacy prejudice factor, the concept of '*privacy*' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere free from interference by others*'.¹⁵³
135. As I have noted above, I accept that the applicant, the third and fourth parties and other persons who were involved in the workplace investigation would still be able to identify individuals other than the applicant in the Category A Information. To that extent, I consider the privacy prejudice factor applies to some of the Category A Information.
136. In considering the weight to be given to this factor, I have taken into account the matters referred to in paragraph 119. I also note that, in the pages released to the applicant, QUT de-identified individuals who were the subject of the applicant's allegations or certain other individuals referenced in those pages of the Report by using acronyms for their names or refusing access to their names. That is, QUT was of the view at that time that, in releasing information to the applicant, the privacy of these other individuals was adequately protected by the deletion, or de-identification, of their names.
137. I have also noted the following comments of Justice Smith in *S v DCPFS*:¹⁵⁴

I am, however, of the opinion that where this information (that is a record of oral verbatim statements made by the appellant) is not intertwined the Commissioner erred in failing to have regard to the fact that the person seeking the information is the sole and only source of the information. The character of information of this kind is such that the protection of the privacy of third parties is necessarily rendered substantially irrelevant as the release of this information will not of itself constitute an invasion of their privacy, as it is information known to the person who is the sole and only source of the information. I have used the term 'only source' as the information of this class is information that is a record of what the appellant has said and in that sense are statements of perceptions, opinions and other matters stated by her.

¹⁵² Schedule 4, part 3, item 3 of the RTI Act.

¹⁵³ Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice', *Australian Law Reform Commission Report No. 108*, released 12 August 2008, at [1.56]. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

¹⁵⁴ At [70].

138. In the circumstances of this matter and taking into consideration the limited number of individuals who would be able to ascertain the identity of individuals other than the applicant in the Category A Information, I consider that the intrusion into the privacy of those individuals would be limited. On this basis, I consider that the privacy prejudice factor is relevant but afford it low weight in respect of the Category A Information.

Preliminary comments about other factors

139. QUT submitted¹⁵⁵ that other factors favouring nondisclosure do not have less significance due to the ‘*supposed de-identification*’ and that those factors ‘*must be assessed by reference to their own language and conclusions reached about appropriate weight, not diminished by reliance on the central proposition*’¹⁵⁶’.

140. In this part of the decision, I am applying the public interest test in section 49(3) of the RTI Act regarding the Category A Information.¹⁵⁷ Consequently, the Category A Information is the information that I must consider when identifying and affording weight to relevant factors—not the Information in Issue as a whole, nor the Category B Information in conjunction with the Category A Information.

Fair treatment of other individuals

141. A public interest factor favouring nondisclosure arises where disclosure of information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.¹⁵⁸

142. Comprising, as it does, summaries of and references to information provided by the applicant in respect of the allegations found to be unsubstantiated, I am satisfied that the Category A Information comprises information about unsubstantiated conduct allegations.

143. The third and fourth parties submitted¹⁵⁹ that if the Consult Information is disclosed, their identities are still ascertainable by the applicant and the applicant would be at liberty to disseminate information about the unsubstantiated allegations, thus causing damage their reputations and professional relationships.

144. QUT submitted that:

- the Category A Information relates to ‘*unsubstantiated and potentially defamatory allegations*’¹⁶⁰
- prejudice, for the purpose of this factor, can take the form of reputational damage¹⁶¹
- high weight should be given to this factor favouring disclosure¹⁶²
- the Category A Information is ‘*a written record of those allegations put in a formal manner to the investigator*’ and the applicant will be able to use such material to the detriment of the third parties;¹⁶³ and

¹⁵⁵ Submissions dated 14 December 2018.

¹⁵⁶ The “central proposition” referred to by QUT is the position that the redaction of the Category B Information successfully deidentifies other individuals—point 2. of QUT’s submissions dated 14 December 2018.

¹⁵⁷ In subsequent parts of this decision I apply that test regarding the Category B, C and D Information.

¹⁵⁸ Schedule 4, part 3, item 6 of the RTI Act.

¹⁵⁹ Submissions dated 22 February 2019.

¹⁶⁰ Submissions dated 14 December 2018.

¹⁶¹ Submissions dated 14 December 2018.

¹⁶² Submissions dated 1 February 2019.

¹⁶³ Submissions dated 1 February 2019.

- if disclosed, the fact that the Category A Information relates to unsubstantiated allegations will not prevent the applicant from stating that those allegations ought to have been substantiated and complaining in that regard.¹⁶⁴

145. QUT also relies on the following finding in its internal review decision:

In terms of prejudicing the fair treatment of individuals, I adopt the view that such prejudice can be to the reputation of individuals: see F60CXC and Queensland Ombudsman [2014] QICmr 28¹⁶⁵ at [34]-[41] and Troiani and Queensland Police Service 310967 21 Aug 2012 at [29]: ...

146. Further, QUT's references to the decision of *Z Toodayan* in its internal review decision, noted at paragraph 92 above, also require consideration in the context of the fair treatment factor.

147. I accept that damage to reputation could constitute 'prejudice' for the purposes of this factor favouring disclosure. However, in this matter, I note that:

- the complaint was made over two years ago and the applicant was notified of the investigation finding approximately 18 months ago
- the applicant knows the details of all the allegations he made, including those which were found to be unsubstantiated, and information he provided to the investigator in support of those allegations
- the applicant also possesses a copy of his complaint and transcript of his interview with the investigator; and
- there is no evidence before me that, already possessing information about the substantiated and unsubstantiated allegations, the applicant has disseminated that information (or any part of it) to any individual in the manner that QUT and the third and fourth parties submitted he would disseminate any further information that is released to him.

148. In respect of the Information Commissioner's prior decisions that are referenced by QUT, the information considered in, and the circumstances of, those matters are different to the Category A Information and the circumstances of this matter. In *F60XCX and Queensland Ombudsman*, the information sought by the applicant was information provided by, and correspondence with, individuals other than the applicant, and some internal documents. The Assistant Information Commissioner noted that the redaction of the names of the subject of the complaint and a witness would not de-identify the information, and that the Ombudsman's investigation did not proceed to a point where any findings were made on the substance of the allegations. It was in these specific circumstances that it was considered that disclosure of the information could adversely affect the reputation of the subject officer.

149. As noted at paragraph 72 above, in *Z Toodayan*, the referenced comments were made regarding witness statements and associated information which identified the witnesses, provided in an investigation about the conduct of the applicant in that matter. Again, these comments relate to information that is quite different to the Category A Information—specifically, information provided by a range of witnesses other than the applicant.

150. In *Troiani and Queensland Police Service*,¹⁶⁶ the Information Commissioner did find that the public interest weighed strongly against disclosure of the personal information of

¹⁶⁴ Submissions dated 1 February 2019.

¹⁶⁵ See footnote 97 above.

¹⁶⁶ (Unreported, Queensland Information Commissioner, 21 August 2012) (*Troiani*).

individuals within a complaint investigation report, because it related to unsubstantiated allegations and had the potential to adversely affect the reputation of those individuals. However, in making these findings the Information Commissioner also noted that, in contrast to the circumstances in this review, the majority of investigation report was released to the applicant. This released information was described by the Information Commissioner in *Troiani* as including ‘*the substance of actions taken in the investigation and the reasons why it was finalised*’ (being that there was no evidence of the alleged fraud and criminal activity was discovered).

151. I have carefully considered the information before me, including submissions received from QUT and the third and fourth parties. There is nothing before me which gives rise to a reasonable expectation that disclosing the Category A Information would lead to the dissemination of that information (or parts of it) by the applicant in the manner submitted by QUT and the third and fourth parties. Accordingly, I do not consider that this factor applies to the Category A Information. Even if I am wrong, and it is considered that this factor should apply, I consider that it would warrant only low weight, given the nature of the majority of the Category A Information, on its face, clearly comprises the investigator’s restatements and summaries of the unsubstantiated allegations as such, rather than statements of fact, and the remaining information sets out clear conclusions that those allegations are unsubstantiated.

Future ability to obtain confidential information

152. The RTI Act also gives rise to a factor favouring nondisclosure where disclosing information could reasonably be expected to prejudice an agency’s ability to obtain confidential information.¹⁶⁷ Additionally, the RTI Act recognises that disclosure of information could reasonably be expected to cause a public interest harm if the information consists of information of a confidential nature that was communicated in confidence and disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.¹⁶⁸
153. QUT submitted¹⁶⁹ that a ‘*cocoon of confidentiality*’ exists with respect to the investigation and the Report and that it is reasonable to expect that third parties who were the subject of the unsubstantiated allegations would be ‘*alarmed by a failure by QUT to adhere to the very clearly expressed confidentiality attaching to the whole process*’. More specifically, QUT submitted¹⁷⁰ that ‘*[s]taff expect compliance by management with promises of confidentiality and with following laid-down procedure, and, in particular, in relation to promises underpinned by written codes of the University*’.
154. QUT also relied upon the following passage in its internal review decision:

I find that the whole of the grievance investigation and resolution process is contained within a cocoon of confidentiality, applicable to not only the investigator and witnesses, but also to the complainant, the subjects of the complaint and any persons having materials and/or knowledge concerning the complaint and the procedure in general.

...

Accordingly, I am of the view that factors [in schedule 4, part 3, item 16 and schedule 4, part 4, section 8(1) of the RTI Act] are potentially applicable. I regard the information as a whole, including witness statements and the Report and attachments as confidential information provided in confidence, for the purposes of [schedule 4, part 4, section 8(1) of the RTI Act]. Further, I am of the view that disclosure of the Report and the attachments would prejudice the ability of QUT to obtain confidential information in the future from those presently assured

¹⁶⁷ Schedule 4, part 3, item 16 of the RTI Act.

¹⁶⁸ Schedule 4, part 4, item 8(1) of the RTI Act.

¹⁶⁹ Submissions dated 14 December 2018.

¹⁷⁰ Submissions dated 14 December 2018.

*of confidentiality: namely, the investigator, witnesses, the complainant, the subjects of the complaint and any persons having materials and/or knowledge concerning the complaint and the procedure in general. This was held to be a significant factor in Z Toodayan at [44] and N Toodayan and Metro South Hospital and Health Service [2017] QICmr 33 (11 August 2017) Application Numbers: 312978, 313109, 313190 and 313228 at [43]: ...
These are factors to which I give significant weight.*

155. The third and fourth parties submitted¹⁷¹ that all parties to the investigation, including the applicant, are bound by the confidentiality of the process and that this confidentiality is not ‘preserved’ by removing their personal information from any summary of or references to the information the applicant provided to the investigation ‘*given the knowledge that [the applicant] has*’.
156. Regarding QUT’s reliance on the prior decisions of *Z Toodayan* and *N Toodayan and Metro South Hospital and Health Service*,¹⁷² the referenced findings by the Information Commissioner in those decisions relate to information described as ‘mostly’ comprising witness statements obtained in the context of workplace allegations made about the applicants in those matters. By contrast, the Category A Information comprises summaries of, or references to, information the applicant, as a complainant, provided to a workplace investigation.
157. In respect of QUT’s investigation, I note that:
- The Procedure relevantly required that, in dealing with workplace related grievances, confidentiality was to be respected and maintained at all times within the constraints of the need to fully investigate the matter and within the principles of natural justice.¹⁷³
 - The Terms of Reference required the investigator to inform witnesses of the confidential nature of the investigation but also contemplated that the Report would be provided to the applicant, the third party and the fourth party.
 - When notifying the applicant of the investigation outcome, QUT advised the applicant that he was ‘*required to maintain strict confidentiality in respect of the complaint and the investigation process*’. QUT submitted that this notification confirms its view that the applicant is bound to a continuing obligation of confidentiality.¹⁷⁴
158. The Terms of Reference required the investigator to inform witnesses of the confidential nature of the investigation. QUT submitted¹⁷⁵ that it considered certain statements made by the investigator in informing participants about the confidential nature of the investigation were not relevant ‘*to any issue*’ in this review and that, in any event, those statements were not made by QUT. I do not agree. While I am prevented from providing any detail about the terms in which the investigator informed the various investigation participants of the confidential nature of the investigation, I consider those terms are relevant in the context of QUT’s submissions regarding confidentiality and to properly determine what expectations of confidentiality those individuals could reasonably be expected to hold. I have therefore given consideration to the investigator’s statements on that basis.
159. I have carefully considered the submissions of QUT and the third and fourth parties. I acknowledge that the Procedure required confidentiality in dealing with the applicant’s

¹⁷¹ Submissions dated 22 February 2019.

¹⁷² [2017] QICmr 33 (11 August 2017) (*N Toodayan*).

¹⁷³ Section 10.1.2(g) of the Procedure.

¹⁷⁴ Submissions dated 14 December 2018.

¹⁷⁵ Submissions dated 1 February 2019.

complaint and that it only required 'written advice' to be provided to the parties following the Vice-Chancellor's decision about whether disciplinary action should be taken. I also accept that information provided by witnesses to a workplace investigation is ordinarily treated confidentially, except to the extent that procedural fairness requires otherwise.¹⁷⁶ However, the Terms of Reference governed the process upon which individuals participated in this particular investigation and, as previously noted, those terms specifically contemplated that the applicant, the third party and the fourth party would each receive a copy of the Report. Most of the Category A Information summarises or references information the applicant, as the complainant, provided to the investigation to support his allegations and I do not consider that disclosure of that type of information to a complainant gives rise to a reasonable expectation that the supply of similar information by complainants would be prejudiced in future investigation processes.

160. Accordingly, I consider that these factors do not apply. However, if I am wrong in this regard, and it is considered that these factors should apply, I am satisfied that they should be afforded very low weight, given the low likelihood that future complainants may be more circumspect in the information they provide to an investigation because of the prospect that they themselves may access that information under the RTI Act at a later date.

Management function

161. Where disclosure of information could reasonably be expected to prejudice an agency's management function, a factor favouring nondisclosure arises.¹⁷⁷ Where disclosure could have a substantial adverse effect on the management or assessment by an agency of the agency's staff, the RTI Act recognises that a public interest harm arises.¹⁷⁸
162. QUT submitted¹⁷⁹ that the free flow of information would be affected by disclosure of the Category A Information and there would be the 'relevant prejudice' to management functions as a result. In respect of these factors, QUT also relies upon its internal review decision, which states:

Disclosure could reasonably be expected to damage the reputation of management, particularly in terms of being able to give and maintain assurances of confidentiality in sensitive staff management areas. For that reason, I find that disclosure of the Report and attachments other than as proposed in this Review Decision (having weighed up the contending public interests) could reasonably be expected to have a substantial adverse effect on the management or assessment by the University of its staff: 'LSN' and Department of Main Roads (S 42/00, 21 January 2002) at [35]

Disclosure could reasonably be expected to have a detrimental effect on QUT's management function as it may deter witnesses from providing full and frank accounts to investigators in future workplace investigations, thereby prejudicing investigation processes and outcomes: Z Toodayan at [44]; N Toodayan at [43].

163. As noted above, I consider that the Information Commissioner's findings in *Z Toodayan* and *N Toodayan* are more relevant to the Category C Information. I also consider the Information Commissioner's decision in *LSN and Department of Main Roads*¹⁸⁰ is not particularly relevant to the circumstances of this review, as it concerned whether an

¹⁷⁶ *Z Toodayan* at [44].

¹⁷⁷ Schedule 4, part 3, item 19 of the RTI Act.

¹⁷⁸ Schedule 4, part 4, item 3(c) of the RTI Act.

¹⁷⁹ Submissions dated 1 February 2019.

¹⁸⁰ (Unreported, Queensland Information Commissioner, 21 January 2002) (**LSM**).

exemption provision in the Qld FOI Act¹⁸¹ applied to statements and notes (or summaries of those) obtained from individuals other than the applicant (being a complainant and other witnesses), in circumstances where the information previously released to the applicant included ‘a significant amount’ of the investigation report.¹⁸² The information considered in *LSN* has more similarities to the Category C Information; however, the circumstances of that matter (in particular, the noted ‘*abusive and intimidating behaviour*’ of the applicant) are also significantly different to the circumstances in this review.

164. On the information before me, and notwithstanding the confidentiality of the investigation process, I am not satisfied that disclosure to a complainant of the parts of a workplace report which summarise the information they provided in support of their workplace complaint could reasonably be expected to have a substantial adverse effect on an agency’s management or assessment of its staff. On this basis, I do not consider that these factors arise in respect of the Category A Information. Even if I am wrong in this regard and it is the case that these factors do apply, for the same reasons set out at paragraph 159 above, I consider that these factors should be afforded low weight.

Other factors favouring nondisclosure

165. Having carefully considered all factors listed in schedule 4, parts 3 and 4 of the RTI Act, I can identify no other public interest considerations telling in favour of nondisclosure of the Category A Information. Taking into consideration the nature of the Category A Information and the fact the investigation of the applicant’s complaint has been completed and its outcome was notified to the applicant, I cannot see how its disclosure could, for example, prejudice a deliberative process of government.¹⁸³

Balancing the public interest

166. I acknowledge the pro-disclosure bias of the RTI Act.¹⁸⁴ To the extent the Category A Information includes the applicant’s personal information, I am satisfied that significant weight should be afforded to the factor favouring disclosure of an applicant’s personal information.¹⁸⁵ On the other hand, I am satisfied that the information excluded from the Category A Information means that the Category A Information no longer contains or could disclose the personal information of the of individuals other than the applicant and therefore consider that the nondisclosure factor relating to personal information¹⁸⁶ does not apply. In terms of the privacy nondisclosure factor,¹⁸⁷ I consider that this factor warrants low weight.¹⁸⁸
167. I am satisfied that the factors favouring disclosure which relate to QUT’s accountability and transparency deserve significant weight.¹⁸⁹ As set out above, I consider that the factors about allowing or assisting the identification of conduct deficiencies and advancing fair treatment¹⁹⁰ warrant moderate weight. I do not consider that the factors regarding revealing incorrect or unfairly subjective information and procedural fairness

¹⁸¹ The wording of the exemption in section 40(c) of the Qld FOI Act is in similar terms to the factor favouring nondisclosure in schedule 4, part 4, section 3(c) of the RTI Act, in that it provided that matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the management or assessment by an agency of the agency’s personnel, unless its disclosure would, on balance, be in the public interest.

¹⁸² *LSN* at [34].

¹⁸³ Schedule 4, part 3, item 20 of the RTI Act.

¹⁸⁴ Section 44(1) of the RTI Act.

¹⁸⁵ Schedule 4, part 2, item 7 of the RTI Act.

¹⁸⁶ Schedule 4, part 4, item 6(1) of the RTI Act.

¹⁸⁷ Schedule 4, part 3, item 3 of the RTI Act.

¹⁸⁸ Combined, these considerations address QUT’s submission noted at paragraph 53 above.

¹⁸⁹ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁹⁰ Schedule 4, part 2, items 5 and 10 of the RTI Act.

apply,¹⁹¹ however, if it were accepted that they do, I consider that they would be deserving of low weight. I have also considered nondisclosure factors relating to protecting an agency's ability to obtain confidential information and manage its staff,¹⁹² and am satisfied that each of these warrant low to no weight.

168. Given these considerations, on balancing the factors against one another, I consider that disclosing the Category A Information would not be contrary to the public interest and this information should be released to the applicant.

Findings – Category B Information

169. As noted at paragraph 22 above, the Category B Information comprises the personal information of individuals other than the applicant, and small portions of additional information which could reasonably be expected to lead to their identification,¹⁹³ appearing in:

- (a) the following parts of the Report regarding the 10 allegations which were found to be unsubstantiated—
 - (i) restatements of the applicant's allegations
 - (ii) the investigator's summaries of the information provided by the applicant; and
 - (iii) the investigator's reasoning for the finding that the allegations were not substantiated
- (b) some other parts of the Report (for example, the executive summary); and
- (c) correspondence.

170. The applicant's submissions¹⁹⁴ confirm that he seeks access to information including the Category B Information.

Irrelevant factors

171. I do not consider that any irrelevant factors arise in respect of the Category B Information and the circumstances of this matter and I have taken none into account.

Factors favouring disclosure

Applicant's personal information

172. The applicant submitted¹⁹⁵ that '*the vast majority*' of the information he requested '*relates to his personal information*' and this '*gives rise to clear presumption that this information will be disclosed to [him]*'. As I have previously noted, I must apply the process specified in section 49(3) of the RTI Act. The fact that information may contain the applicant's personal information is just one matter that is to be taken into account and is not necessarily determinative of the public interest.

173. Much of the Category B Information appears in the investigator's restatements of the applicant's allegations and summaries of information provided by him. This information, and the parts of the investigator's reasoning for finding that the allegations were not substantiated that refer to this information, constitute the applicant's personal

¹⁹¹ Schedule 4, part 2, items 12 and 16 of the RTI Act.

¹⁹² Schedule 4, part 3, items 6, 16 and 19 and schedule 4, part 4, items 3(c) and 8(1) of the RTI Act.

¹⁹³ Given section 108(3) of the RTI Act, I am unable to further describe this information in these reasons for decision.

¹⁹⁴ Submissions dated 31 January 2019.

¹⁹⁵ Submissions dated 31 January 2019.

information. This gives rise to a factor favouring disclosure¹⁹⁶ of such information, which I consider deserves high weight.

Accountability and transparency

174. I consider that the information provided to the applicant about the investigation has advanced, to some extent, the public interest factors relating to accountability and transparency of QUT's investigation process. Taking into account that most of the Category B Information appears in restatements of the applicant's allegations and summaries of information that he provided to the investigation, I consider that its disclosure may provide the applicant with only marginally more detail about the investigation process, if at all. I also consider it is likely that the applicant, by virtue of his participation in the investigation and his knowledge of who the complaint allegations were made about, may be aware of some of the Category B Information.
175. Taking into account the nature of the Category B Information and the information the applicant has received (or otherwise possesses), I consider that disclosing the Category B Information would only marginally enhance QUT's transparency or accountability in relation to the workplace investigation. Accordingly, while I consider these factors favouring disclosure¹⁹⁷ apply, I afford them low weight.

Deficiencies in the conduct or administration of an agency, official or other person

176. As noted in paragraphs 64 and 65:
- the applicant submitted that his complaint was ineffectively managed and his provided information was ignored; and
 - QUT submitted that little weight should be afforded to these factors favouring disclosure.
177. The Category B Information appears in the parts of the Report which deal with allegations that were found to be unsubstantiated. Taking this and the nature of the Category B Information into account, I am satisfied that disclosing it could not reasonably be expected to reveal or substantiate any deficiencies in the conduct of QUT, any of its officers or the investigator.
178. While I consider disclosure of the Category A Information could allow or assist the applicant's inquiry into the possible investigation deficiencies he has identified, I do not consider disclosing the Category B Information could reasonably be expected to have the same result. The applicant, as the complainant, is aware of the nature of the allegations he made and the individuals about whom those allegations relate. Therefore, it is reasonable to conclude that the applicant is largely aware of the nature of the Category B Information which appears in the Report sections restating his allegations or summarising the information he provided in support of those allegations. The remaining parts of the Category B Information summarise information provided by other individuals in the investigator's analysis of the allegations. In relation to both types of information, it is the surrounding information—that is, the Category A Information—which is indicative of the investigative process. Given the nature of the Category B Information, it advances understanding of the investigative process only a little further. In these circumstances, I do not consider that disclosure of the Category B Information could reasonably be expected to allow or assist the applicant's inquiry into the investigation deficiencies he has identified.

¹⁹⁶ Schedule 4, part 2, item 7 of the RTI Act.

¹⁹⁷ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

179. On this basis, I am satisfied the factors favouring disclosure relating to allowing or assisting with inquiries regarding possible conduct deficiencies and reveal or substantiating such deficiencies¹⁹⁸ do not apply to the Category B Information.

Reveal information was incorrect, unfairly subjective etc

180. For the reasons set out in paragraph 73 in respect of the Category A Information, and also noting the nature of the Category B Information, there is nothing before me to suggest that disclosure of the Category B Information could reasonably be expected to reveal that the Category B Information itself is incorrect or unfairly subjective. Accordingly, I consider that this factor¹⁹⁹ does not apply. If I am wrong in this regard, and it is considered that this factor does apply, taking into account the nature of the Category B Information and the information known to the applicant, I consider it warrants low weight.

Administration of justice for the applicant

181. Similarly, for the reasons specified in paragraphs 74-78 in respect of the Category A Information, I am not satisfied that disclosure of the Category B Information could reasonably be expected to contribute to the administration of justice for a person, and therefore find that the factor²⁰⁰ does not apply to the Category B Information.

Fair treatment and procedural fairness for the applicant

182. As noted in respect of the Category A Information, while the applicant participated in and was notified of the investigation outcome, he has no knowledge of what, or how, information provided to the investigation was taken into account by the investigator in finding most allegations could not be substantiated. However, as I have noted above, it is reasonable to expect that the applicant is aware of the Category B Information which appears in the Report sections restating the applicant's allegations or summarising the information provided by the applicant in support of those allegations. In these circumstances, I consider that the factor favouring disclosure regarding fair treatment²⁰¹ applies to such Category B Information, but warrants only low weight.
183. In terms of the rest of the Category B Information, while the applicant does not agree with the investigation outcome and considers it has been '*ineffectively investigated*', I do not consider that the notions of fair treatment in this case entitle the applicant to personal information about other individuals appearing in the context of the investigator's discussions regarding information they provided to the investigation. In the case of such Category B Information, I do consider that the factor favouring disclosure regarding fair treatment applies. Even if I am wrong in this regard, and the factor does apply, I consider that it warrants only low weight.
184. Noting that the applicant was the complainant, not the subject of the complaint allegations, that he was afforded an opportunity to participate in the investigation, and that he was provided with notification that 10 of his 11 allegations were found to be unsubstantiated, I do not consider that disclosure of the Category B Information could reasonably be expected to contribute to procedural fairness. I am therefore satisfied that

¹⁹⁸ Schedule 4, part 2, items 5 and 6 of the RTI Act. While schedule 4, part 2, items 5 and 6 of the RTI Act refer only to 'agency or official', I have also considered these public interest factors with reference to another person contracted to perform work for the agency—in this instance, the investigator. I have done so because, as noted at footnote 62, the public interest factors in schedule 4 are non-exhaustive.

¹⁹⁹ Schedule 4, part 2, item 12 of the RTI Act.

²⁰⁰ Schedule 4, part 2, item 17 of the RTI Act.

²⁰¹ Schedule 4, part 2, item 10 of the RTI Act.

the factor regarding procedural fairness does not apply.²⁰² If I am wrong in this regard, and it is the case that this factor does apply, taking into account the nature of the Category B Information, I afford low weight to this factor.

Other factors

185. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations in favour of disclosure of the Category B Information. Taking into consideration the nature of the Category B Information and the context in which it appears, I cannot see how its disclosure could, for example, contribute to a debate on important issue or matters of serious interest²⁰³ or ensure effective oversight of expenditure of public funds.²⁰⁴

Factors favouring nondisclosure

Personal information and privacy of other individuals

186. The Category B Information comprises information about individuals other than the applicant, or information which could reasonably be expected to lead to their identification, appearing in restatements of the applicant's allegations, summaries of information that he provided in support of his allegations, and the investigator's analysis of and conclusions about those allegations. I consider that the Category B Information is sensitive in nature, as it appears in a report arising from a workplace investigation.
187. Given the nature of the Category B Information, I am satisfied that its disclosure would be a significant intrusion into the privacy of these individuals. For this reason, I afford significant weight to the privacy prejudice factor. I also consider the extent of the harm that could be anticipated from disclosing the Category B Information, which includes the names, personal circumstances, observations and opinions of (or about) these individuals, under the RTI Act would be significant. Accordingly, I afford the personal information harm factor significant weight in respect of the Category B Information.

Fair treatment of other individuals

188. The Category B Information appears in parts of the Report relating to allegations which were found to be unsubstantiated. As the Category B Information comprises information that identifies the individuals about whom those unsubstantiated allegations were made or could reasonably be expected to enable their identification, I am satisfied that disclosing the Category B Information could reasonably be expected to prejudice the fair treatment of those individuals.
189. On this basis, I afford significant weight to this factor favouring nondisclosure of the Category B Information.²⁰⁵

Management function and future ability to obtain confidential information

190. As noted in respect of the Category A Information, the Procedure and the Terms of Reference generally required confidentiality in dealing with the complaint and the investigation. While the Terms of Reference contemplate the disclosure of the Report to the applicant, this did not occur.

²⁰² Schedule 4, part 2, item 16 of the RTI Act.

²⁰³ Schedule 4, part 2, item 2 of the RTI Act.

²⁰⁴ Schedule 4, part 2, item 4 of the RTI Act.

²⁰⁵ Schedule 4, part 3, item 6 of the RTI Act.

191. The Category B Information includes details about the nature of the applicant's allegations found to be unsubstantiated, and the identities of the individuals about whom those allegations relate. It also discloses the identities of individuals other than the applicant and the subjects of the complaint who provided information to the investigator—in effect acting as witnesses in the investigation. I consider that routinely disclosing information such as the Category B Information, outside of the investigation process and under the RTI Act, could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of confidential information to such investigators. This, in turn, could reasonably be expected to adversely impact QUT's ability to conduct workplace investigations and manage staff.
192. For these reasons, I consider that the factors favouring nondisclosure regarding an agency's management function and future ability to obtain confidential information²⁰⁶ are relevant and afford them significant weight.

Balancing the public interest

193. I acknowledge that the RTI Act is to be administered with a pro-disclosure bias.²⁰⁷ For the reasons set out above, I am satisfied that the nondisclosure factors relating to protection of personal information and privacy, fair treatment of individuals regarding unsubstantiated allegations, and the protection of QUT's ability to obtain confidential information and manage its staff²⁰⁸ each warrant significant weight.
194. On the other hand, I consider that the personal information factor favouring disclosure warrants high weight insofar as the Category B Information comprises the applicant's personal information;²⁰⁹ while other relevant factors favouring disclosure warrant low weight.²¹⁰ In these circumstances, I am satisfied that the factors favouring nondisclosure of the Category B Information outweigh those favouring disclosure.
195. Accordingly, I find that disclosing the Category B Information would, on balance, be contrary to the public interest and access to the Category B Information may be refused.²¹¹

Findings – Category C Information

196. As noted at paragraph 22 above, the Category C Information comprises the following parts of the Report:
- (a) sections of the Report containing the investigator's summaries of information provided by *individuals other than the applicant* regarding all 11 allegations; and
 - (b) information in the Report's attachments, being transcripts of interviews with *individuals other than the applicant* and information provided to the investigation.

²⁰⁶ Schedule 4, part 3, items 16 and 19 and schedule 4, part 4, items 3(c) and 8(1) of the RTI Act.

²⁰⁷ Section 44(1) of the RTI Act.

²⁰⁸ Schedule 4, part 3, items 3, 6, 16 and 19 and schedule 4, part 4, items 3(c), 6(1) and 8(1) of the RTI Act.

²⁰⁹ Schedule 4, part 2, item 7 of the RTI Act.

²¹⁰ Schedule 4, part 2, items 1, 3, and 11 of the RTI Act and, if I am wrong in considering that schedule 4, part 2, items 12 and 16 of the RTI Act do not apply, those items as well. Also, schedule 4, part 2, item 10 of the RTI Act regarding the Category B Information appearing in restatements and summaries of information provided by the applicant and, if I am wrong in considering that item 10 does not apply to the rest of the Category B Information, in relation to such information as well. I am satisfied that schedule 4, part 2, items 5, 6 and 17 of the RTI Act do not apply.

²¹¹ Under section 47(3)(b) of the RTI Act.

Irrelevant factors

197. I do not consider that any irrelevant factors arise in respect of the Category C Information and the circumstances of this matter and I have taken none into account.

Factors favouring disclosure

Applicant's personal information

198. Having carefully considered the Category C Information, I am satisfied that some, but not all, of it identifies the applicant or contains information from which his identity could reasonably be ascertained. Such information comprises the applicant's personal information. In terms of this information, a factor favouring disclosure applies.²¹² Insofar as the Category C Information comprise the applicant's personal information, given the nature of this personal information, I consider that this factor deserves high weight.

Accountability and transparency

199. Disclosure of the Category C Information would provide the applicant with a more comprehensive understanding of the information that the investigator obtained from other individuals, and which of this information was taken into account by the investigator in dealing with his complaint. It may also further the applicant's understanding, to some extent, of how the investigation was conducted. Accordingly, I consider these factors favouring disclosure²¹³ apply to the Category C Information.
200. While there is a general requirement for agencies such as QUT to be transparent and accountable in how they deal with workplace complaints, there are circumstances in which disclosure of some, but not all, information in an agency's records will achieve accountability and transparency in Government. I also consider that the requirement for accountability and transparency in workplace investigations does not extend to affording complainants a right to reinvestigate such investigations because they perceive there were investigative inadequacies.
201. As I have previously noted, the applicant participated in the investigation and was notified of the investigation findings and QUT's decision not to take any disciplinary action concerning his complaint. The applicant also received further information from QUT in response to the access application, which included information the investigator obtained about the allegation found to be substantiated and the investigator's reasons for that finding. In these circumstances, while I consider it likely that the applicant is aware of at least some of the other individuals who participated in, and provided information to, the investigation process, I am satisfied that he is not aware of the content of the information provided to the investigator by those individuals.
202. I acknowledge that the applicant does not agree with the investigation outcome and contends there were inadequacies in the investigation. However, the requirement for QUT to be accountable and transparent in the conduct of workplace investigations does not, in my view, oblige QUT to disclose the entire Report, nor reveal all of the information it gathered from other individuals in dealing with the investigation of the applicant's complaint. Taking into consideration the information which has been provided to the applicant about the investigation and its outcome, I find that these factors favouring disclosure are relevant and attach moderate weight to them.

²¹² Schedule 4, part 2, item 7 of the RTI Act.

²¹³ Schedule 4, part 2, items 1,3 and 11 of the RTI Act.

Deficiencies in the conduct or administration of an agency, official or other person

203. As I have previously noted at paragraph 64, the applicant has submitted that the complaint allegations concerned serious conduct issues,²¹⁴ his complaint was ineffectively investigated²¹⁵ and the substantial information he provided in support of his complaint was ignored by the investigator.²¹⁶ Beyond this, the applicant has not identified how disclosure of the Category C Information in particular would allow or assist inquiry into, or reveal or substantiate, the conduct deficiencies of QUT or its officers. QUT considers that little weight should be afforded to the factors favouring disclosure regarding deficiencies in conduct.
204. I note that 10 of the 11 allegations by the applicant were found to be unsubstantiated. It follows that I am unable to identify how disclosing the Category C Information (being primarily the information provided by other individuals about those unsubstantiated allegations) would allow or assist enquiry into, or reveal or substantiate, the conduct deficiencies of the individuals who were the subject of the applicant's complaint.
205. Given the nature of the Category C Information (that is, information provided by other individuals), I am satisfied that its disclosure would not allow or assist the applicant's inquiry into the only specific investigation deficiency that he has enunciated—that is, his view that the information he provided to the investigator in support of his complaint was ignored. Otherwise, regarding the applicant's general assertion that his complaint was ineffectively investigated, there is nothing before me which evidences any conduct deficiencies in that investigation or its processes.
206. Taking into consideration the nature of the Category C Information and the notified investigation outcomes, I do not consider that there is any reasonable expectation that disclosure of that information would allow or assist inquiry into any deficiencies in the conduct of QUT or its officers or reveal or substantiate that there was any misconduct or negligent, improper or unlawful conduct in QUT's investigation process. On this basis, I consider that these factors favouring disclosure²¹⁷ do not arise in respect of the Category C Information.

Reveal information was incorrect, unfairly subjective etc

207. The Category C Information generally records information QUT's investigator obtained from individuals other than the applicant during the investigation process.
208. Such information is, by its very nature:
- the opinions and versions of events expressed by those other individuals, which are shaped by factors such as the individuals' memories of relevant events and subjective impressions; and
 - the investigator's summaries of matters within that provided information which the investigator considered relevant in making his findings about the complaint allegations.

²¹⁴ External review application and submissions dated 31 January 2019. I am unable in these reasons for decision to further elaborate on the nature of those allegations or the applicant's characterisation of them.

²¹⁵ Submissions dated 31 January 2019.

²¹⁶ Submissions made in a conversation with OIC on 1 June 2018.

²¹⁷ Schedule 4, part 2, items 5 and 6 of the RTI Act. While schedule 4, part 2, items 5 and 6 of the RTI Act refer only to 'agency or official', I have also considered these public interest factors with reference to another person contracted to perform work for the agency—in this instance, the investigator. I have done so because, as noted at footnote 62, the public interest factors in schedule 4 are non-exhaustive.

209. This inherent subjectivity does not itself mean that the Category C Information is necessarily incorrect or unfairly subjective.²¹⁸
210. I have carefully reviewed the Category C Information. There is nothing within it, nor in any other information before me, to suggest that the Category C Information is not correct. In these circumstances, I do not consider that its disclosure could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
211. On this basis, I do not consider that this factor favouring disclosure applies to the Category C Information.

Administration of justice, fair treatment and procedural fairness for the applicant

212. As I have previously noted, the applicant was afforded an opportunity to participate in the investigation of the complaint he made about other individuals and QUT notified the applicant of the investigation findings. While the applicant does not agree with the investigation outcome and considers it has been '*ineffectively investigated*', I do not consider that the notions of fair treatment and procedural fairness in this case entitle the applicant to the information provided by other individuals who participated in the investigation process or to the investigator's summaries of such information.
213. For these reasons, I do not consider that the factors relating to fair treatment and the administration of justice²¹⁹ apply to the Category C Information.

Other factors

214. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations in favour of disclosure of the Category C Information. Taking into consideration the nature of the Category C Information, I cannot see how its disclosure could, for example, contribute to a debate on important issues or matters of serious interest²²⁰ or ensure the effective oversight of expenditure of public funds.²²¹

Factors favouring nondisclosure

Personal information and privacy of other individuals

215. In contrast to the Category A Information, I am satisfied that the Category C Information *primarily* comprises the personal information of individuals other than the applicant.
216. The personal information of university officers appears within the Information in Issue (including the Category C Information). I note that information relating to the day-to-day work duties and responsibilities of a university officer may generally be disclosed under the RTI Act, despite it falling within the definition of personal information. However, agency documents can also contain personal information of officers which is not *routine* work information.²²²

²¹⁸ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20].

²¹⁹ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

²²⁰ Schedule 4, part 2, item 2 of the RTI Act.

²²¹ Schedule 4, part 2, item 4 of the RTI Act.

²²² *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60].

217. In this regard, I also note that the Information Commissioner has previously found that information of a similar nature to the Category C Information was not routine personal work information—see, for example, the decisions of *BFU12E* and *Metro North Hospital and Health Service*²²³ and *F60XCX and DNRM*.

218. The applicant submitted²²⁴ that the decisions in *BFU12E* and *F60XCX and DNRM* do not support a finding in this review that the Category C Information is not routine personal work information. More particularly, the applicant submitted that:

These matters turned on their own particular facts, and while they may supply general precedents, they are not determinative of the matters in issue with my application. They are a mere starting point and the particular circumstances of my matter are very different to the circumstances applying in the decisions relied upon by you. I note further that these decisions that you have relied upon are not binding precedents within the Queensland court system. Accordingly, I submit that your reliance on these cases as determinative of this issue is misplaced.

219. As a decision-maker, the Information Commissioner applies the doctrine of precedent.²²⁵ In this regard, I consider the Category C Information—being information (and the investigator’s summaries of information) provided by individuals other than the applicant to a workplace investigation—is similar to the information considered in *BFU12E* and *F60XCX and DNRM*, and the findings in those decisions are therefore relevant in considering the application of these factors favouring nondisclosure to the Category C Information.

220. Based upon my careful consideration of the Category C Information, I am satisfied that this particular personal information of university officers includes the opinions, observations and experiences of other people in the form of witness testimony and other information given in the context of a workplace investigation. Given its nature, I am satisfied that the Category C Information is not wholly related to the routine day-to-day work activities of university officers and it is therefore *not* routine personal work information.

221. As noted in paragraph 198, some of the Category C Information comprises personal information of the applicant, in that it records other individuals’ comments relating to him. In terms of this information, the applicant submitted²²⁶ that:

- finding that his personal information is intertwined with the personal information of others is ‘*nonsensical*’ and ‘*an attempt to circumvent the intent of the RTI Act*’
- information which is not his personal information could be removed from the Category C Information to facilitate release of information to him; and
- this finding must be ‘*viewed in light of, and weighed against, Parliament’s clear intention that the RTI Act facilitate access to personal, and non-exempt public agency information*’.

222. Unlike the Category A Information, which is a summary of information the applicant provided in support of his allegations and references to that information in the investigator’s analysis of the allegations, the Category C Information is essentially information obtained from other individuals which either responds to, or provides further context about, those allegations. While the applicant may be aware of some of the

²²³ [2015] QICmr 21 (31 August 2015) (*BFU12E*).

²²⁴ Submissions dated 31 January 2019.

²²⁵ Under the doctrine of precedent, a lower court is bound to follow decisions that have been made by higher courts on similar facts and issues. This ensures that cases of a similar nature (for example, with similar facts or similar questions of law) are decided using the same principles as previous similar cases.

²²⁶ Submissions dated 31 January 2019.

individuals who participated in the investigation, he is not aware of the information those individuals provided, particularly in respect of the allegations found to be unsubstantiated.

223. On careful consideration of the Category C Information, I am satisfied that it is not possible to separate the applicant's personal information from the personal information of those other individuals and, as a result, it is not possible to simply redact the personal information of other individuals and provide the applicant with his personal information. That is, disclosing the personal information of the applicant within the Category C Information *would* necessarily also disclose the personal information of individuals other than the applicant.
224. The applicant does not accept this and has queried²²⁷ what objective test is applied to the assessment of the Category C Information. While I appreciate the applicant is unaware of how his personal information appears within information that other individuals provided to the investigation and the investigator's summaries of that information, I am constrained about the level of detail I can provide in these reasons about the Category C Information.²²⁸ However, in conducting this merits review, I have concluded that, after careful consideration of the Category C Information, it is not possible to redact that information—which, in its entirety, comprises information provided by individuals other than the applicant—to an extent which would mean its remaining components are no longer the personal information of those individuals.
225. On this basis, I am satisfied that disclosing the Category C Information could reasonably be expected to prejudice the protection of the other individuals' right to privacy and cause a public interest harm, and therefore consider that both factors apply.
226. As to the weight to be afforded to these factors, I consider that the Category C Information is sensitive and personal in nature, comprising the personal circumstances, opinions, recollections, observations and experiences of the relevant individuals obtained in the context of a workplace investigation. For this reason I afford significant weight to the privacy factor favouring nondisclosure.²²⁹ I also consider that the extent of the harm that could be anticipated from disclosing this information, which includes transcripts of interviews conducted during a workplace investigation, under the RTI Act would be significant. Accordingly, I afford the harm factor favouring nondisclosure²³⁰ significant weight.

Management function and future ability to obtain confidential information

227. As noted in respect of the Category A Information, the Procedure required confidentiality in dealing with the complaint and the investigation Terms of Reference required the investigator to inform witnesses of the confidential nature of the investigation. As the Category C Information records information that individuals other than the applicant provided to a workplace investigation, I have also given consideration to the way in which those other individuals were informed about the confidential nature of the investigation.
228. The applicant accepted²³¹ that public sector officers, '*in instances of lower level workplace investigations*', usually supply information to workplace investigators on the

²²⁷ Submissions dated 6 March 2019.

²²⁸ As this information was refused on the basis that its disclosure would, on balance, be contrary to the public interest—section 108(3) of the RTI Act.

²²⁹ Schedule 4, part 3, item 3 of the RTI Act.

²³⁰ Schedule 4, part 4, item 6(1) of the RTI Act.

²³¹ Submissions dated 31 January 2019.

understanding that it will only be used for the investigation or any subsequent disciplinary action. However, the applicant submitted²³² that:

- in this case, as his complaint was '*ineffectively investigated by QUT in the first instance*' and related to serious conduct issues, and '*these are factors that support the release of the requested information and clearly satisfy the public interest test*';²³³ and
- there was no '*blanket confidentiality*' surrounding information provided as part of the QUT workplace investigation.

229. I have previously noted that, in following the steps specified in section 49(3) of the RTI Act, factors which the applicant identified as favouring disclosure will not necessarily be determinative of the public interest.

230. I have carefully considered the applicant's submissions. I acknowledge the confidentiality requirements of the Procedure and the Terms of Reference, including that it was contemplated that a copy of the Report would be provided to the applicant and the third and fourth parties. I consider that disclosing the Category C Information—which is effectively witness information—outside of the investigation process and under the RTI Act could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the ability of QUT to obtain witness information in future investigations. This, in turn, could reasonably be expected to adversely impact QUT's ability to conduct workplace investigations and manage staff. For these reasons, I find that the factors favouring nondisclosure related to an agency's management function and future ability to obtain confidential information²³⁴ apply and deserve significant weight.

Balancing the public interest

231. Again, I acknowledge that the RTI Act is to be administered with a pro disclosure bias.²³⁵ For the reasons set out above, accountability and transparency considerations favouring disclosure should be afforded moderate weight.²³⁶ In relation to those parts of the Category C Information that comprise the applicant's personal information, high weight in favour of disclosure applies;²³⁷ however, as the applicant's personal information is intertwined with the information of other individuals, releasing the applicant's personal information would also disclose the personal information of other individuals.

232. In terms of the personal information of other individuals, considerations related to the protection of privacy and personal information of other individuals apply regarding the entirety of the Category C Information and warrant significant weight.²³⁸ Further, the anticipated prejudice to QUT's management function and its ability to obtain confidential information in future workplace investigations warrant significant weight.²³⁹

233. In these circumstances, I find that, on balance, the factors favouring nondisclosure are determinative in respect of the Category C Information, and therefore access to that

²³² Submissions dated 31 January 2019.

²³³ Again, I am unable in these reasons for decision to further elaborate on the nature of those allegations or the applicant's characterisation of them.

²³⁴ Schedule 4, part 3, items 16 and 19 and schedule 4, part 4, items 3(c) and 8(1) of the RTI Act.

²³⁵ Section 44(1) of the RTI Act.

²³⁶ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²³⁷ Schedule 4, part 2, item 7 of the RTI Act.

²³⁸ Schedule 4, part 3, item 3 and schedule 4, part 4, item 6(1) of the RTI Act.

²³⁹ Schedule 4, part 3, items 6 and 16 and schedule 4, part 4, item 8(1) of the RTI Act.

information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.²⁴⁰

Findings – Category D Information

234. The applicant submitted²⁴¹ that he did not wish '*identifying particulars of any person to be released*'. During the review, the applicant was asked²⁴² if he wished to access the Category D Information, given the names and signatures of individuals could be categorised as 'identifying particulars'. As the applicant did not respond to this request, I have taken this to mean that he continues to seek access to the Category D Information. However, apart from generally submitting that access should be given to all requested information, the applicant has made no specific submissions in respect of the Category D Information.

Irrelevant factors

235. I do not consider that any irrelevant factors arise in respect of the Category D Information and the circumstances of this matter and I have taken none into account.

Factors favouring disclosure

Accountability and transparency

236. The information provided to the applicant about the investigation has advanced, to some extent, the public interest factors relating to accountability and transparency of QUT's investigation process. Given the nature of the Category D Information, I consider that its disclosure may, if at all, provide the applicant with only marginally more detail about the investigation process. Given the applicant's participation in the investigation and his knowledge of who the complaint allegations were made about, it is likely that he may be aware of at least some of the Category D Information. Taking into account the nature of the Category D Information and the information the applicant already possesses, I consider that disclosing the Category D Information would only marginally enhance QUT's transparency or accountability in relation to the workplace investigation. Accordingly, while I consider these factors favouring disclosure²⁴³ apply, I afford them low weight.

Other factors

237. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations in favour of disclosure of the Category D Information. Taking into consideration the nature of the Category D Information and the surrounding information QUT released to the applicant in the pages on which the Category D Information appears, I cannot see how its disclosure could, for example:

- disclose any information that is the applicant's personal information²⁴⁴
- contribute to a debate on important issues or matters of serious interest²⁴⁵
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct²⁴⁶

²⁴⁰ Section 47(3)(b) of the RTI Act.

²⁴¹ Submissions dated 31 January 2019.

²⁴² On 8 February 2019.

²⁴³ Schedule 4, part 2, items 1 and 11 of the RTI Act.

²⁴⁴ Schedule 4, part 2, item 7 of the RTI Act.

²⁴⁵ Schedule 4, part 2, item 2 of the RTI Act.

²⁴⁶ Schedule 4, part 2, items 5 and 6 of the RTI Act.

- advance the applicant's fair treatment²⁴⁷
- contribute to the administration of justice, generally or for the applicant;²⁴⁸ or
- ensure the effective oversight of expenditure of public funds.²⁴⁹

Factors favouring nondisclosure

Personal information and privacy of other individuals

238. I am satisfied that the Category D Information, being the names and signatures of individuals, comprises the personal information of those individuals.
239. Given the context in which the Category D Information appears—being a workplace investigation—I am satisfied that disclosing the Category D Information could reasonably be expected to prejudice the protection of these individuals' right to privacy and cause a public interest harm.
240. I accept that the applicant is aware of the identity of the individuals who were the subject of his complaint and may also be aware of other individuals who participated in the investigation. However, I do not consider that this awareness negates the prejudice or public interest harm that could be expected to arise from disclosure of Category D Information.
241. In the circumstances, I consider that both the privacy prejudice factor and the personal information harm factor are relevant and warrant significant weight.

Fair treatment of other individuals

242. The Category D Information is not information about unsubstantiated allegations. It comprises names and signatures appearing in the context of general information about the investigation process and information about an allegation found to be substantiated. Accordingly, I do not consider that this factor favouring nondisclosure²⁵⁰ applies to the Category D Information.

Management function and future ability to obtain confidential information

243. I consider that routinely disclosing the names and signatures of these individuals outside of the investigation process and under the RTI Act could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of confidential information to such investigators. This, in turn, could reasonably be expected to adversely impact QUT's ability to conduct workplace investigations and manage staff. For these reasons, I consider that the factors regarding an agency's management function and future ability to obtain confidential information²⁵¹ are relevant and should be afforded significant weight.

Balancing the public interest

244. For the reasons set out above, I am satisfied that the significant weight afforded to the nondisclosure factors relating to protection of personal information, privacy and protection of QUT's ability to obtain confidential information and manage its staff²⁵²

²⁴⁷ Schedule 4, part 2, item 10 of the RTI Act.

²⁴⁸ Schedule 4, part 2, items 16 and 17 of the RTI Act.

²⁴⁹ Schedule 4, part 2, item 4 of the RTI Act.

²⁵⁰ Schedule 4, part 3, item 6 of the RTI Act.

²⁵¹ Schedule 4, part 3, items 16 and 19 and schedule 4, part 4, items 3(c) and 8(1) of the RTI Act.

²⁵² Schedule 4, part 3, items 3, 16 and 19 and schedule 4, part 4, items 3(c), 6(1) and 8(1) of the RTI Act

outweighs the relevant factors favouring disclosure of the Category D Information.²⁵³ Accordingly, I consider that disclosing the Category D Information would, on balance, be contrary to the public interest and access to the Category D Information may be refused.²⁵⁴

DECISION

245. For the reasons set out above, I vary QUT's decision and find that:

- disclosure of Category A Information would not, on balance, be contrary to the public interest and, accordingly, there are no grounds upon which access to that information may be refused under the RTI Act; and
- access to the remaining Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

I also find that certain information requested by the applicant falls outside the scope of the applicant.

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

A Rickard
Assistant Information Commissioner

Date: 29 March 2019

²⁵³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²⁵⁴ Under section 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
15 March 2018	OIC received the external review application.
4 April 2018	OIC notified the applicant and QUT that it had accepted the external review application and asked QUT to provide information.
5 April 2018	OIC received the requested information from QUT.
10 April 2018	OIC received the applicant's submissions.
20 April 2018	OIC wrote to the applicant about the external review.
1 June 2018	OIC asked the applicant whether he would accept inspection access to parts of the Information in Issue on the basis previously offered by QUT. The applicant declined and OIC outlined its preliminary assessment of the issues in the review.
5 June 2018 and 7 June 2018	OIC asked QUT to provide further information and submissions.
13 June 2018	OIC received the requested information from QUT.
14 June 2018	OIC discussed with the applicant the information he wished to access.
25 June 2018	OIC received QUT's submissions.
9 August 2018	OIC provided an update to the applicant.
21 November 2018	OIC conveyed a preliminary view to both the applicant and QUT. OIC invited the applicant and QUT to provide submissions if they did not accept the preliminary view.
14 December 2018	OIC received QUT's further submissions.
17 January 2019	OIC conveyed a further preliminary view to QUT.
31 January 2019	OIC received the applicant's submissions.
1 February 2019	OIC received QUT's further submissions and notification that two third parties consulted during QUT's processing of the access application wished to participate in the external review.
8 February 2019	OIC conveyed a further preliminary view to both the applicant and QUT and invited them to make further submissions if they did not accept the preliminary view. OIC conveyed a preliminary view to the third and fourth parties and invited them to make submissions if they did not accept the preliminary view.
15 February 2019	OIC wrote to the third and fourth parties to confirm they were invited to provide submissions if they did not accept the preliminary view.
20 February 2019	OIC received QUT's further submissions.
22 February 2019	OIC received submissions from the third and fourth parties.
6 March 2019	OIC received the applicant's further submissions.