



Decision and Reasons for Decision

Citation: *E56 and Griffith University* [2026] QICmr 74 (13 May 2026)

Application Number: 318791

Applicant: E56

Respondent: Griffith University

Decision Date: 13 May 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DELETION OF IRRELEVANT INFORMATION - whether information is irrelevant to the access application - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications between lawyer and client - whether communications attract privilege - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - complaint information - accountability and transparency - procedural fairness - personal information and privacy - prejudice to management function - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - request for information stored in student email accounts - whether requested information is prescribed information - whether existence of requested information may be neither confirmed nor denied under section 69 of the *Information Privacy Act 2009* (Qld)

DECISION

1. Under section 123(1)(a) of the *Information Privacy Act 2009* (Qld) (**IP Act**), I affirm the decision under review by finding that:
 - some information may be deleted under section 88 of the IP Act
 - access to some information may be refused under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld) (**RTI Act**)
 - access to some information may be refused under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act; and
 - the existence of some information may be neither confirmed nor denied under section 69 of the IP Act.

2. My reasons for the decision follow.



R Moss
Principal Review Officer

Date: 13 May 2026

REASONS FOR DECISION

Summary

3. The applicant applied¹ to Griffith University (**University**) under the IP Act² for access to all documents between 18 March 2023 and 24 April 2025 containing his personal information, *'created by, or edited by, or sent by, or sent to [a list of named individuals] with access to Griffith University systems...'*. The listed individuals provided by the applicant included three persons *'whether in [their] capacity as a student or employee'*.
4. The University decided³ to release 24 pages in full; to give partial access to 95 pages; and to refuse access in full to 496 pages. Some information was deleted on the ground of irrelevance. Access to other information was refused on the basis that it was exempt information or because its disclosure would, on balance, be contrary to the public interest. In respect of student email accounts, the University declined to search such accounts on the basis that any information contained in them would not comprise the applicant's personal information and would therefore fall outside the scope of the IP Act.
5. The applicant applied⁴ for internal review of the University's decision on various grounds. On internal review, the University decided⁵ to vary its initial decision in certain respects. In respect of the request for responsive information contained in student email accounts, the University decided to neither confirm nor deny the existence of such information under section 69 of the IP Act on the basis that if it did exist, it would comprise prescribed information. In respect of a significant volume of information that had previously been decided to be exempt on the ground of legal professional privilege, the University decided that the bulk of that information was, in fact, irrelevant to the scope of the application and therefore could be deleted under section 88 of the IP Act. The University also decided that some information to which it initially had refused access on public interest grounds, was exempt information.
6. The applicant applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of the University's decision, raising numerous issues concerning most of the categories of information in issue.

Background

7. The applicant is aggrieved both by complaints received by the University in connection with his social media activity, as well as the University's handling of those complaints. At the time of the complaints, the applicant was a student at the University.

¹ The application was initially dated 24 April 2025. However, it became compliant on 12 May 2025 following discussions between the applicant and the University regarding the scope of the application, and the provision by the applicant of a copy of his identification.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and RTI Act. As the applicant's application was made before this change, the IP Act and RTI Act as in force prior to 1 July 2025 remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts as in force prior to 1 July 2025.

These may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> respectively.

³ Decision dated 20 June 2025.

⁴ On 22 June 2025.

⁵ Decision dated 16 July 2025.

⁶ On 21 July 2025.

Reviewable decision

8. The decision under review is the internal review decision of the University dated 16 July 2025.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).⁷
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information and the right to privacy and reputation.⁸ I consider a decision-maker will be '*respecting and acting compatibly with*' those rights and others prescribed in the HR Act when applying the law prescribed in the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**).⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Information in issue

11. Some additional information was disclosed to the applicant during the course of the external review.¹⁰
12. The remaining information in issue¹¹ may be categorised as follows, as per the decision under review:
- information deleted on the grounds of irrelevance
 - information refused on exemption grounds (legal professional privilege); and
 - information refused on public interest grounds (primarily comprising complaint information).

Issues for determination

13. The issues for determination are:
- a) whether information may be deleted under section 88 of the IP Act because it is not relevant to the access application
 - b) whether access to information may be refused under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act because it is exempt information
 - c) whether access to information may be refused under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act because its disclosure would, on balance, be contrary to the public interest; and
 - d) whether the University was entitled, under section 69 of the IP Act, to neither confirm nor deny the existence of responsive information contained in student email mailboxes on the ground that, if such documents existed, they would contain prescribed information.

⁷ Including submissions made by the applicant in his external review application, and in a submission received on 26 December 2025.

⁸ Sections 21 and 25 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ From pages 39 (part) and 40 (full).

¹¹ As identified in the documents released to the applicant in conjunction with the internal review decision.

Issue a) - Deleted Information

Relevant law

14. Section 88 of the IP Act permits an agency to delete information from a document which it considers is not relevant to an application. This provision does not set out a ground for refusal of access. Rather, it provides a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the application.¹²

Findings

15. In my letter to the applicant dated 18 December 2025, I advised the applicant that I had reviewed the information deleted by the University under section 88 of the IP Act and had formed the preliminary view that the information could properly be characterised as irrelevant as it did not relate to the applicant, or to the scope of the access application. This information consisted of parts of media monitoring bulletins, as well as information that the University had initially decided was subject to legal professional privilege, but which it had identified as irrelevant on internal review. As the University noted in its internal review decision in respect of the latter category, it consisted of lengthy documents such as audits and General Counsel quarterly reports, only very small segments of which related to the applicant (and in respect of which the University maintained its claim of privilege). I advised the applicant that I considered that the remainder of these documents could be deleted under section 88(2) of the IP Act as irrelevant to the terms of the access application.
16. In his submission in response,¹³ the applicant did not address this issue or seek to argue that the information in question should not be regarded as irrelevant to the access application.
17. I find that the information deleted by the University under section 88(2) of the IP Act is not relevant to the access application.

Issue b) - Exempt information

Relevant law

18. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent the documents contain the individual's personal information.¹⁴ The IP Act is to be administered with a pro-disclosure bias;¹⁵ however, the right of access is subject to a number of exclusions and limitations, including grounds of refusal of access.
19. Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of

¹² *FO80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made in the context of the equivalent of section 88 of the IP Act, section 27(3) of the repealed *Freedom of Information Act 1992* (Qld). Refer also to *Kiepe and The University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [11] and *2CDLO3 and Department of Education and Training* [2016] QICmr 20 (10 June 2016) at [54].

¹³ Dated 26 December 2025.

¹⁴ Section 40(1)(a) of the IP Act.

¹⁵ Section 64(1) of the IP Act.

the RTI Act. Relevantly, section 47(3) of the RTI Act permits an agency to refuse access to documents to the extent they comprise exempt information.¹⁶

20. Schedule 3, section 7 of the RTI Act provides that information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.
21. This exemption reflects the requirements for establishing privilege at common law.¹⁷ Broadly, for information to be subject to legal professional privilege it must be a confidential communication made:
 - in the course of a lawyer/client relationship for the dominant purpose of seeking or providing legal advice or assistance (advice privilege); or
 - for the dominant purpose of use in existing or reasonably anticipated legal proceedings (litigation privilege).
22. If these elements are satisfied, the agency must still consider if:
 - the privilege has been waived; or
 - the circumstances give rise to the improper purpose exception.

Findings

23. In my letter to the applicant dated 18 December 2025, I advised the applicant that I had reviewed the information in issue¹⁸ and formed the preliminary view that it satisfied the requirements of the exemption: that is, that the communications in question comprised confidential communications between lawyer and client, made for the dominant purpose of seeking or providing legal advice or assistance, or for use in existing or reasonably anticipated legal proceedings. I stated that there was nothing before me to indicate that the lawyers in question were not suitably qualified, or were not acting in a professional legal capacity in providing the relevant advice or assistance to the University as client.
24. In his application for external review, the applicant had contended that some of the communications in question were likely to refer to an order for production in legal proceedings which he had brought against the University. The applicant considered that the University had 'defied' that order in the relevant proceedings and argued that, if any of the communications in question related to that issue, they were made for an improper purpose and could not attract privilege.
25. It is not open to OIC to make a determination about whether the University can properly be regarded as having 'defied' a production order made in legal proceedings involving the applicant and the University, such as to give rise to a potential application of the improper purpose exception to a claim of privilege. But in any event, as I advised the applicant in my letter dated 18 December 2025, I was satisfied from my review of the

¹⁶ Section 47(3)(a) of the RTI Act. Schedule 3 of the RTI Act sets out the types of information that comprise exempt information: section 48 of the RTI Act.

¹⁷ The doctrine of legal professional privilege is both a rule of evidence and a common law right. The High Court in *Daniels Corporation International Pty Ltd v Australian and Consumer Commissioner* (2002) 213 CLR 543 at 552 relevantly noted: 'It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings' (footnotes omitted). See also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (*Esso*).

¹⁸ Comprising 10 full pages (1-3 and 24-30 of the 496 page bundle) and 3 part pages (pages 35, 47 and 72 (duplicates) of the 95 page bundle, together with entries contained on pages 22, 193, 227, 452, 453, 474 and 475 of Office of the General Counsel Quarterly Reports).

communications that none concerned a discussion about a production order in legal proceedings, or the University's position with respect to such an order. I reiterated to the applicant that there was nothing in the material before OIC that gave rise to the application of the improper purpose exception to any of the communications in question.

26. In his submission dated 26 December 2025, however, the applicant continued to pursue this issue. He submitted that my conclusion regarding the application of the improper purpose exception '*appeared cursory and, with respect, implausible*':

I would ask the OIC to carefully review the relevant material, noting that references to any unlawful course of action may have been couched in oblique or indirect language.

27. I reject both the applicant's characterisation of OIC's review of the communications as 'cursory,' and his contention that the associated conclusion reached about the non-application of the improper purpose exception is 'implausible'. The subject matter of the communications is clear from a plain reading of their contents. I am satisfied that there is nothing in the communications that gives rise to the application of the improper purpose exception.

28. In its initial decision, the University gave the applicant partial access to an email dated 3 April 2025 with the subject heading of 'Media Inquiry'. It refused access to the body of the email on public interest grounds. However, on internal review, the University decided that the body of the email was privileged. In his application for external review, the applicant complained about this change of position. In my preliminary view letter, I advised the applicant that the University's change in position was of no practical consequence on external review, given that OIC conducts a merits review of the agency decision in any event. The only issue for OIC to consider on external review is whether the communication in question satisfies the test for attracting privilege, thereby qualifying for exemption. I explained to the applicant that, having reviewed the body of the email, I considered that it satisfied the test for exemption. However, in his submission dated 26 December 2025, the applicant continued to express doubt about this characterisation of the communication:

Yet the subject matter of the email (a media enquiry), its audience (which included communications staff), and its timing and context all point strongly to media relations or reputation management as the dominant purpose of the communication, rather than the provision of legal advice or the facilitation of legal proceedings.

The University bears the onus of establishing that legal professional privilege applies. In the absence of any explanation as to how the dominant purpose test was applied here, that onus has not been discharged.

29. I accept that, under section 100 of the IP Act, the agency that made the decision under review has the onus of establishing that the decision was justified. On external review, in conducting an independent merits review of the agency decision, the role of the Information Commissioner is to stand in the shoes of the agency and decide what is the correct or preferable decision. In the case of a claim for legal professional privilege, this involves reviewing the communications in question and deciding whether or not they satisfy the test for establishing a valid claim of privilege. That review has been conducted by OIC. As the applicant is aware from the information disclosed to him, the email in question is from the University's Deputy General Counsel to a number of University staff. I am satisfied that it comprises a confidential communication between lawyer and client, made for the dominant purpose of seeking or providing legal advice or assistance, or for use in existing or reasonably anticipated legal proceedings. In terms of exceptions to

the privilege, I am satisfied that the privilege has not been waived, and nor does the content of the communication give rise to the improper purpose exception.

30. Regarding the applicant's continuing doubt about OIC's review of the communications in question and the conclusions reached, I note more generally the comments made by Heenan J of the Western Australian Supreme Court in *BGC (Australia) Pty Ltd v Fremantle Port Authority*,¹⁹ about similar submissions by an applicant in connection with the application of exemption provisions contained in the *Freedom of Information Act 1992* (WA):

*One can readily appreciate that, as with any doubting Thomas, the appellant may not be convinced of the justification for this particular conclusion unless it sees and examines the evidence itself. However, on the basis that the confidentiality clause is itself part of the confidential information which may not be disclosed, that result is inescapable in the light of s 74(1) and (2) and s 90(1) and (3) of the Act. The legislation expressly acknowledges that it may be necessary to receive evidence and hear argument in the absence of the public and any party or representative of the party in order to preserve the confidentiality of exempt matter (s 90(2)). **By this means the legislation ensures that the objective terms and effect of matter which is asserted to be exempt from disclosure because of confidentiality may be examined by an officer quite independent of the agency asserting a claim to confidentiality, namely, the Information Commissioner and, on appeal, by a Judge of this Court.** That this scrutiny and examination, in order to protect the confidentiality of the material if the claim is justified, must be conducted without disclosure to the applicant, its counsel or solicitors is one example of these rare instances in which a party to litigation is deprived of full access to all material documents. **However, this is not an isolated exception, and policy considerations which have prompted its acceptance, have been recognised in other areas of the law such as the power of a court to inspect documents in respect of which a claim for legal professional privilege has been made, or to scrutinise material relied upon for the issue of a search warrant, or to inspect documents for which a claim of public interest immunity has been asserted, without disclosing them to the party seeking inspection – see *Sankey v Whitlam* (1978) 142 CLR 1 at 46, 110. **None of these examples constitutes any denial of natural justice because, if the claim for privilege, confidentiality or public interest immunity is justifiably made, the party seeking to inspect the documents has no right of any kind to do so. Justice is achieved and the law applied in these situations by an examination of the documents by an independent officer or court acting on settled principles.*****

[Emphasis added]

31. The applicant's final argument regarding the communications claimed by the University to be privileged was as follows:²⁰

Additionally, even where privilege properly applies to the substance of legal advice, certain metadata does not itself attract privilege. I submit that dates, document titles, subject headings, and recipients of communications should be disclosed even if the substantive advice is withheld. Disclosure of such information would not reveal privileged advice but would allow verification that the University has properly characterised these documents and properly applied the improper purpose exception.

32. I note, firstly, that an access application for documents is taken not to include an application for access to metadata about the documents unless the application expressly states that it does.²¹ But in any event, I do not consider that the information referred to by the applicant in the preceding paragraph as metadata is, in fact, information of that

¹⁹ (2003) 28 WAR 187 at [16].

²⁰ In his submission dated 26 December 2026.

²¹ Section 48 of the IP Act.

nature.²² In response to the applicant's contention that the parts of the communications that he describes should be disclosed,²³ I note that, in applying the test for legal professional privilege, the question is whether the communication satisfies the dominant purpose test. If the communication as a whole satisfies this test, access may be refused to the entire communication. I again note the comments made by the Western Australian Supreme Court as extracted in paragraph 30 above. It is OIC's independent role under the IP Act to review the communications in question and decide whether or not they satisfy the test for attracting legal professional privilege. I reiterate that, upon my review, I am satisfied that the communications in question are privileged.

33. In summary, and for the reasons explained above, I am satisfied that the information claimed by the University to be exempt from disclosure under schedule 3, section 7 of the RTI Act meets the requirements for exemption. Access may therefore be refused on that basis.

Issue c) – Contrary to the public interest information

Relevant law

34. Another limitation on the right of an individual to access their personal information under the IP Act is where disclosure of the information would, on balance, be contrary to the public interest.²⁴
35. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.
36. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,²⁵ together with all other relevant information, in reaching my decision. I have also applied the IP Act's pro-disclosure bias²⁶ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²⁷
37. In making this decision, I have not taken into account any irrelevant factors.²⁸

Applicant's submissions

²² 'Metadata' is defined as information that defines and describes data. It is often referred to as data about data, or information about data, because it provides data users with information about the purpose, processes and methods involved in the data collection: <<https://www.abs.gov.au/statistics/understanding-statistics/statistical-terms-and-concepts/metadata>> (accessed 29 April 2026).

²³ As noted, the University disclosed information of this nature as contained in the email dated 3 April 2025. However, this was because the University initially decided to refuse access to only the body of the email on public interest grounds. However, on internal review, it decided that the email was privileged.

²⁴ Section 67(1) of the IP Act and section 47(3)(b) RTI Act. 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.

²⁵ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance. I note that the lists in Schedule 4 are non-exhaustive.

²⁶ Section 64 of the IP Act.

²⁷ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

²⁸ Including any set out in schedule 4, part 1 of the RTI Act.

38. The information in issue comprises complaint information received by the University in June 2023 concerning the applicant's social media activity.²⁹ The information in issue is the complaint information only, as received by the University, including the identity of the complainant.
39. In my preliminary view letter dated 18 December 2025, I responded to the six arguments raised by the applicant in his external review application in favour of disclosure of the complaint information and explained why I had formed the preliminary view that the balance of the public interest favoured nondisclosure of the information.
40. In his submission in response to my preliminary view, the applicant argued as follows:
- the University itself had characterised the complaint as vexatious
 - if the complainant was one of the individuals named in the applicant's discrimination complaint dated 7 May 2023, *'then a vexatious complaint filed approximately one month later constitutes prima facie evidence of unlawful victimisation within the meaning of the AD Act ss 129-30'*
 - the University's *'apparent belief that some that some unspecified aspect of an employee's "memory and perspective" can operate as a bar to disciplinary processes otherwise warranted raises questions about the fairness and transparency of its complaints-management processes—and indeed the genuineness of its Student Charter commitments'*
 - the text of the social media post complained about should be released as it is something the applicant wrote and published: *'In those circumstances, any privacy or harm rationale for withholding the text from me is nil, and the University bears the onus of establishing why disclosure is contrary to the public interest'*
 - the conclusion that the applicant's personal information in the complaint is inextricably intertwined with the complainant's personal information is not tenable: *'Just because the post names an individual does not mean that the complainant is that individual'*
 - disclosure of the text of the post complained about would also allow for verification that the material complained of was not 'manipulated' by the complainant
 - the applicant's posts from this period were concerned with current events and named only public figures - given this scenario, there were only two realistic scenarios:
 - *the complainant is one of the public figures identified in the post - if so, the complaint text is a matter of legitimate public interest because a person of power and influence is attempting to circumscribe an individual's freedom of political communication; or*
 - *the complainant is an academic not identified in the post - if so, the complaint text remains a matter of legitimate public interest because it touches on perceived threats to viewpoint diversity and freedom of speech at Australian universities*
 - only if the complainant is not an academic or University employee could it reasonably be concluded that disclosure of the complaint will reveal nothing about the *'treatment of conservatives by the University'*, or *'the lack of viewpoint diversity within academia'*
 - similarly, only if the complainant is not an employee of the University is it open to find that it was not reasonable to expect the complainant to acquaint themselves with the details of the University's policies before making the complaint
 - there is therefore a public interest in disclosing the 'status' of the complainant

²⁹ Comprising parts of pages 39 and 41, and pages 42 and 43 in full. (The University also initially identified page 76 in this category, however, it falls outside the timeframe specified in the access application and therefore is not in issue).

- account should be taken of the public interest in deterring the making of vexatious complaints that would be achieved by disclosing complaints of that nature under the IP Act
- the *Student Misconduct Procedures* in force at the time did not confer any general right of anonymity upon complainants: the fact that the complainant did not use the University's webpage for anonymous complaints, but instead provided an email address and later followed up by email, means that it cannot be assumed that any legitimate expectation of anonymity existed; and
- disclosure of the complaint information will contribute to the administration of justice and fair treatment of the applicant because the University's decision not to act on the 2023 complaint undermines the University's defence in the proceedings that the applicant has brought against the University under the *Anti-Discrimination Act 1991 (Qld)* (**A-D Act**) in respect of an earlier complaint made about the applicant.³⁰

Findings

41. I have identified the following public interest factors favouring disclosure as arising from the University's decision, as well as from the submissions made by the applicant:³¹
- enhance the University's accountability and transparency, including in its decision-making³²
 - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official³³
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct³⁴
 - the information is the applicant's personal information³⁵
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁶
 - reveal that the information was gratuitous;³⁷ and
 - contribute to the administration of justice for a person.³⁸
42. The nondisclosure/harm factors that have potential application to the complaint information are as follows:
- the information is the personal information of another individual³⁹
 - disclosure could reasonably be expected to prejudice an individual's right to privacy⁴⁰
 - disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;⁴¹ and

³⁰ An earlier complaint of a similar nature was made about the applicant. Information relating to that complaint and the associated complaint-handling process by the University was the subject of a previous OIC decision and further appeal.

³¹ In both his external review application and in his submission dated 26 December 2025.

³² Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

³³ Schedule 4, part 2, item 5 of the RTI Act.

³⁴ Schedule 4, part 2, item 6 of the RTI Act.

³⁵ Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the IP Act defines 'personal information' as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

³⁶ Schedule 4, part 2, item 10 of the RTI Act.

³⁷ Schedule 4, part 2, item 12 of the RTI Act.

³⁸ Schedule 2, part 2, item 17 of the RTI Act.

³⁹ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁰ Schedule 4, part 3, item 3 of the RTI Act.

⁴¹ Schedule 4, part 3, item 16 of the RTI Act.

- d) disclosure could reasonably be expected to prejudice the management function of an agency.⁴²
43. I note at the outset that it is clear that the University determined to take no action in relation to the 2023 complaint. As such, the applicant suffered no adverse consequences as a result of that complaint. However, he is nevertheless concerned to ascertain more about the precise nature of the complaint (beyond the fact that it related to his social media activity), the context in which it was made, and who made it.
44. As such, many of the applicant's submissions are directed towards establishing a public interest in disclosing the identity of the complainant, or at least what the applicant refers to as the 'status' of the complainant. He argues, in effect, that the public interest in disclosing the complaint information will be heightened if the complainant is a public figure, or an academic, or a University employee. He also argues that if the complainant is a person named in the applicant's discrimination complaint against the University, then that person has potentially breached the A-D Act. In his submissions, the applicant queried whether, in forming a preliminary view in favour of nondisclosure, OIC took account of these types of considerations.
45. As the applicant was advised during the course of the review, it is not the role of OIC to confirm or dispel an applicant's assumptions, suspicions or guesswork about information in issue, including the identity and/or 'status' of complainants. OIC is also prohibited under the IP Act from disclosing (including indirectly, through confirmation or denial of an applicant's assumptions, speculations or suspicions) any information that an agency claims is exempt information, or contrary to the public interest information. Addressing at least some of the applicant's submissions in any detail could unintentionally confirm or dispel some of his assumptions or suspicions.
46. Nevertheless, and in an effort to allay some of the applicant's concerns and suspicions, the University has consented to the applicant being advised that the University's records do not indicate that the complainant has any association with the University. As such, those public interest submissions that the applicant has made, that are predicated on such an association existing, are not relevant to the issues for determination.
47. As to the applicant's concern that OIC may not have taken all relevant circumstances into account in forming a view about the application of the public interest balancing test to the complaint information, including the identity and status of the complainant, OIC's role is to apply the provisions of the IP Act to the information in issue. In doing so, the applicant can be assured that all aspects of the information in issue are considered.
48. The applicant claims that the University itself classified the complaint as 'vexatious' in its internal review decision. I have reviewed the decision and regard the applicant's submission in this respect as misconceived. I consider that, in referring to the complaint as vexatious, it is clear that the University was merely repeating the applicant's description of the complaint in his application for internal review.⁴³ I reiterate the view expressed to the applicant during the course of the review, that is, that there is nothing on the face of the complaint to indicate that it could reasonably be considered to be either gratuitous or vexatious – it appears to have been based upon a genuine concern of the complainant, and with a genuine belief that the University could deal with it. The fact that the University may subsequently have determined that the complaint was not a

⁴² Schedule 4, part 3, item 19 of the IP Act. The process of dealing with complaints about students has been found to comprise part of a university's management functions: *Stella v Griffith University* [2025] QCATA 20 at [70].

⁴³ At page 3 of the internal review decision, where it is stated: 'I understand you disagree with the complaint and consider its disclosure would enable you to act on its vexatious nature'.

matter that it had jurisdiction to deal with does not, in my view, detract from this characterisation of the complaint. I also reject the applicant's submission that disclosure of the complaint could reasonably be expected to reveal that it was misleading or 'manipulated' in any way.

49. Further to my findings in the preceding paragraph, it follows that I reject the applicant's submission that disclosure of the complaint information in issue would be in the public interest because it could reasonably be expected to act as a deterrent to the making of gratuitous or vexatious complaints in the future.
50. As regards the applicant's contention that the complainant could not reasonably have expected that their complaint would be kept confidential, I noted above that the University took no action in respect of the complaint. It is generally accepted that a complaint will be kept confidential unless and until it becomes necessary to disclose it to the subject of the complaint in order to afford them procedural fairness by providing them with an opportunity to respond before any adverse action is taken against them. As it was not necessary to disclose the complaint to the applicant in order to afford him an opportunity to respond, I consider that the conditional, mutual understanding of confidence between the complainant and the University was not displaced in those circumstances.
51. As I noted at paragraph 38, the refused information comprises only the complaint information received by the University. Of itself, it reveals nothing about the University's complaint-handling or decision-making processes. The applicant is already aware from information disclosed to him that the complaint information concerned his activity on social media and that the University decided to take no action on the basis that it determined that the complaint fell outside the scope of the Student Misconduct Policy and was protected by the University's Academic Freedom and Freedom of Speech Policy. Given this information of which the applicant is already aware, and in the context of the applicant's arguments about the administration of justice and fair treatment pro-disclosure public interest factors, I consider that disclosure of the complaint itself would be of limited assistance to the applicant in the anti-discrimination proceedings in which he has advised he is involved.⁴⁴
52. Finally, I acknowledge that the IP Act recognises a strong public interest in an individual obtaining access to their personal information as held by government. I also acknowledge that the complaint information in issue contains the applicant's personal information. However, I maintain the view expressed to the applicant during the course of the review - that the applicant's personal information is inextricably intertwined with the personal information of other individuals, such that the applicant's personal information cannot be extracted and access given to it alone. For the reasons discussed above, I am restricted by the provisions of the IP Act regarding how much detail about the information in issue that I can reveal. However, I am satisfied that disclosure of any part of the complaint information could reasonably be expected to reveal the personal information of individuals other than the applicant. As I will discuss further below, that gives rise to the application of both nondisclosure and public interest harm factors.
53. In summary, and taking account of complaint information in issue, the applicant's knowledge of the nature of that information and the 'status' of the complainant, as well as the University's reason for taking no action in respect of the complaint, I make the following findings concerning the application of the public interest factors favouring disclosure listed in paragraph 41 above:

⁴⁴ See the final bullet point in paragraph 40.

- I find that factor f) does not apply;
 - I afford low weight to factors a), b), c), e) and g); and
 - I afford significant weight to factor d)
54. Turning to the factors favouring nondisclosure listed in paragraph 42, and as I mentioned above at paragraph 52, the IP Act recognises that a public interest harm automatically arises through the disclosure of another individual's personal information under the IP Act. Associated with this is the prejudice caused to the protection of that individual's right to privacy. In the context of the personal information in question identifying a complainant, I afford strong weight to both the harm and nondisclosure factor. In doing so, I have taken account of the fact that there are no restrictions or limitations upon what a person may do with information that is disclosed to them under the IP Act, including the possibility of further dissemination.⁴⁵
55. I also afford significant weight to nondisclosure factors c) and d). Regardless of the fact that the University may have determined to take no action in respect of the complaint because it fell outside the scope of the Student Misconduct Policy, I am satisfied that there remains a significant public interest in protecting source complaint information. Such information is generally provided by complainants on the understanding that it will, if required, be used exclusively for an investigation process and in any subsequent disciplinary action process. Disclosing information outside that process (or where that process has not been required) under the IP Act (where, as noted above, there can be no restriction on its use, dissemination or re-publication) could reasonably be expected to make complainants reluctant to make complaints in the future. This, in turn, would negatively impact the University's ability to obtain confidential information in relation to misconduct allegations that may require it to perform its management functions.
56. Regardless of whether a complaint turns out to be unfounded, or a matter which the agency has no jurisdiction to act upon, or even false or malicious in nature, it is recognised there is nevertheless a strong public interest in protecting the source of the information so as to preserve the future flow of confidential information to agencies that may potentially assist them to discharge their statutory or other functions, including (in respect of an educational institution such as the University) the effective management of staff and students,⁴⁶ and to otherwise assess and decide whether or not to take action in respect of matters complained about.⁴⁷
57. In summary, I afford significant weight to the four factors favouring nondisclosure of the information in issue.
58. After balancing the factors favouring both disclosure and nondisclosure of the complaint information, I find that, on balance, the factors favouring nondisclosure outweigh those favouring disclosure. As such, disclosure of the information would, on balance, be contrary to the public interest and access may be refused on that basis.

Issue d) – Neither confirm nor deny

Relevant law

⁴⁵ As Judicial Member McGill SC of QCAT observed '*... the effect of the... [IP Act] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*' *FLK v Information Commissioner* [2021] QCATA 46 at [17].

⁴⁶ <<https://ucc.edu.au/university-governance>> (accessed 29 April 2026).

⁴⁷ *McEnery and The Medical Board of Queensland* (1994) 1 QAR 349 at [63] and [64].

59. Another limitation on the right of access to personal information under the IP Act is contained in section 69. Section 69 of the IP Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it existed, would contain 'prescribed information'. This provision is intended to apply in situations where, due to the specific nature of the request, revealing that the agency does, or does not, have documents in response to an application, would reveal information to which an agency would normally be entitled to refuse access.
60. 'Prescribed information' is defined⁴⁸ as including 'personal information the disclosure of which would, on balance, be contrary to the public interest, under the Right to Information Act, section 47(3)(b)'.
61. Determining the application of section 69 of the IP Act essentially requires a decision-maker to conduct a hypothetical public interest balancing exercise, making a judgment as to where the balance of the public interest would lie, were the requested information to exist. This involves a notional application of the public interest balancing test, as prescribed in section 49 of the RTI Act, including identifying public interest factors that would operate to favour disclosure and nondisclosure, assuming the existence of relevant information.⁴⁹

Submissions

62. As part of his (revised) access application, the applicant named three individuals and requested access to all documents containing his personal information created, edited, or sent by, or to, these individuals (whether in their capacity as a student or employee).
63. The University relied upon section 69 of the IP Act to neither confirm nor deny the existence of responsive information contained in student email accounts. The University found that a student email account will necessarily contain the personal information of the student, giving rise to an automatic public interest harm in disclosure, as well as an associated prejudice to the protection of the student's right to privacy. The University stated that, unlike staff, students are not undertaking work on behalf of the University and there is therefore a higher level of privacy associated with their personal information.
64. In his application for external review, the applicant submitted that:

Either these mailboxes contain my personal information or they do not. The University does not contest the names of the individuals, nor that they were each at some relevant time students. Confirming the existence of the information could not disclose any further personal information of theirs.

I submit that there is no public interest harm in confirming whether the three employees used their student accounts to store my personal information. The information itself should be considered for release pursuant to the ordinary public interest balancing test.

65. In OIC's preliminary view letter dated 18 December 2025, the following was stated:

I consider that information contained in emails sent or received by a student and stored in that student's email account is properly to be regarded as the personal information of that individual. Even simply by virtue of the fact that identifying information such as the student's email address would be contained in each email, the emails are about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. A public interest harm in disclosure of the emails therefore automatically arises. I also consider

⁴⁸ In schedule 5 of the IP Act.

⁴⁹ *Nadel and Queensland Police Service* [2020] QICmr 19 (6 April 2020) at [15].

that there is a strong public interest in protecting the privacy of students as regards the contents of their email accounts. I consider that the accounts and their contents are properly to be regarded as falling within the personal sphere of those individuals, and that those individuals have a right to preserve their personal sphere free from interference from others.

In your external review application, you did not identify any public interest factors that you contended would weigh in favour of disclosure of the requested information if it were to exist. You simply contended that no public interest harm would be caused by confirming that your personal information was stored in the student email accounts of the three individuals. I disagree, for the reasons explained in the preceding paragraph.

If information about you were to exist in the relevant accounts, this would give rise to a public interest in your obtaining access to your own personal information. However, it is reasonable to assume that your personal information would be shared with the personal information of the holder of the email account. As I noted above, while there is a strong public interest in an individual obtaining access to their own personal information, there is an equally strong public interest in protecting the personal information and right to privacy of other individuals under the IP Act, particularly given that there are no restrictions upon what a person may do with information released to them under the IP Act.

I am unable to identify any other public interest factors that would weigh in favour of disclosure of the requested information, if it were to exist. Accordingly, on the information available to me and, after applying a hypothetical public interest balancing test to the requested information and weighing the competing factors that might apply to the information if it were to exist, it is my preliminary that the public interest in protecting the personal information and right to privacy of the holders of the email accounts would outweigh the public interest in your obtaining access to your own personal information. As such, its disclosure would, on balance, be contrary to the public interest.

66. In response, the applicant argued as follows:

- *The issue in dispute is whether the Act permits an agency to decline to deal with documents that would otherwise fall within its scope solely because an employee chose to store them in a mailbox associated with a different internal role.*
- *The Preliminary View proceeds on the implicit premise that privacy interests said to be associated with student email accounts in general are determinative in this case, notwithstanding that the relevant account holders were employees of the University at the time the documents were created or received. No authority is identified for [this] premise, and no explanation is given as to how it is derived from s.12 or the structure of the Act.*
- *Properly analysed, the Act requires attention to the agency's entitlement to access the documents and the public interest considerations attending their disclosure, not to the internal categorisation of the mailbox in which they happen to be stored. To treat storage location as dispositive would be to introduce a distinction not found in the Act.*
- *In any event, and to address any residual privacy concerns, I am amenable to limiting any search of the relevant email accounts to those periods during which [student name] et al were employees of the University. The Preliminary View does not identify any statutory basis on which such a limited and proportionate approach could properly be refused.*

Findings

67. The applicant's submissions above evidence a misapprehension regarding the operation of section 69 of the IP Act. In relying upon section 69 in its internal review decision to neither confirm nor deny the existence of responsive documents, the University did not find that it had no entitlement to access any responsive documents if they were to exist, nor that any responsive documents would not fall within the definition of 'document of an agency' in section 12 of the RTI Act. Rather, the University decided that if any responsive

documents were to exist, they would (after applying a hypothetical public interest balancing test) comprise prescribed information and the University was therefore entitled to neither confirm nor deny their existence.

68. After receipt of OIC's preliminary view, the applicant contended that any privacy concerns could be extinguished by confining his request to any emails contained in the student email accounts that related to any period when the three individuals were both students, and employees, of the University. I presume that the applicant's argument is that if emails containing his personal information are contained in student email accounts but are stated by the relevant individual to have been sent/received in the individual's capacity as an employee of the University rather than a student, then the public interest in protecting the right to privacy of the individual would be reduced, given their status as employees. I do not understand the applicant to be arguing that the mere fact that an email was sent/received during a period when the individual was both a student and employee of the University to be enough, of itself, to potentially affect privacy rights: clearly, there must be something about the email itself to indicate that it was sent or received by the individual in their capacity as an employee.
69. The discussion in OIC's preliminary view letter about the contents of student email accounts necessarily followed on from the University's decision, and the applicant's submissions on external review, both of which focused on the characterisation of the contents of such accounts. But, in my view, regardless of whether an email is sent by an individual in their capacity as student or employee, and regardless of where it is stored, it is reasonable to expect that the email will contain identifying and, therefore, personal, information of one or more individuals: at the very least, it will contain the email addresses of sender and recipient. As noted above, disclosure of another person's personal information under the IP Act automatically gives rise to a public interest harm. Associated with this is the public interest in protecting the right to privacy of the relevant individual/s.
70. I accept that the public interest in protecting the right to privacy for University employees may be less than for students in certain circumstances. However, this very much depends on the nature and contents of the document in question, and related considerations as to context, sensitivity etc. Even disclosure of routine personal work information of an employee may sometimes cause a degree of prejudice to the protection of the employee's right to privacy, albeit potentially reduced because of its routine nature.
71. In this case, and as noted in OIC's preliminary view, the applicant has identified no public interest considerations favouring disclosure of any emails containing his personal information that may exist in the student email accounts, other than arguing that no public interest harm would be caused by confirming that his personal information is stored in these accounts. He has identified no context for the likely existence of such emails so as to enable identification of public interest factors favouring disclosure that may be relevant. As to the more recent confining of his request to emails stored in student accounts at times when the individuals in question were also employees of the University, again, the applicant has not identified a likely context for such emails if they were to exist. He has not sought to argue or provide evidence that he had interactions of any type with the individuals in their capacities as employees of the University, such that disclosure of emails could reasonably be expected, for example, to enhance the accountability and transparency of the University and its staff, etc. It is also not possible, given the lack of evidence as to context, to make a finding that the personal information of the employees contained in any such emails could reasonably be regarded as routine

work information, with a potentially corresponding reduction in the weight to be afforded to the protection of the right to privacy.⁵⁰

72. As noted at paragraph 52 above, the IP Act recognises a strong public interest in an individual obtaining access to their personal information as held by government. While the applicant has not specifically raised this in his submissions as a factor favouring disclosure, it is, as I have noted above, a consideration I have identified and taken into account. However, even if responsive emails containing the applicant's personal information were to exist in the student email accounts, it is reasonable to expect that such emails would also contain the personal information of other individuals, including the sender of the email: that is, the emails would contain shared personal information. The IP Act recognises a strong countervailing public interest in protecting, from unrestricted disclosure under the IP Act,⁵¹ the personal information of individuals other than the access applicant.
73. Accordingly, even if the requested emails were to exist, and regardless of whether they were sent or received by the relevant individuals in their capacities as student or employee, I am unable, on the material before me, and in applying a hypothetical public interest balancing test to such information, to identify public interest factors favouring disclosure that would be sufficient to outweigh the public interest in protecting the personal information and right to privacy of the other individuals involved in the emails, including the sender and recipient. Based on the applicant's submissions, the only potential public interest favouring disclosure that I am able to identify is, as noted, the general public interest in his obtaining access to his personal information. Without further context, I am not satisfied that this factor is sufficient to outweigh the potential application of the prejudice/harm nondisclosure factors that I have discussed above and that are concerned with protecting the personal information and right to privacy of others. As such, disclosure of any such emails would, on balance, be contrary to the public interest.
74. In summary, if the requested information were to exist, I find that it would comprise prescribed information and that its existence may therefore be neither confirmed nor denied by the University under section 69 of the IP Act.
75. It should be noted that nothing in the preceding discussion is to be taken as confirming the existence or otherwise of the requested information.

Conclusion

76. The above are the reasons for my decision set out in paragraph 1 above.
77. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.

⁵⁰ The broader contextual circumstances of the applicant's submissions, and his dealings with the University more generally, indicate that his primary concerns are about complaints and complaint-handling. I would simply note that information of that nature will not ordinarily be regarded as routine personal work information.

⁵¹ See footnote 45.