



## Decision and Reasons for Decision

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Citation:	<i>C56 and Non-State Schools Accreditation Board; Independent School (Third Party)</i> [2021] QICmr 38 (29 July 2021)
Application Number:	315574
Applicant:	C56
Respondent:	Non-State Schools Accreditation Board
Third Party:	Independent School
Decision Date:	29 July 2021
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - BREACH OF CONFIDENCE - communications regarding a complaint made by the applicant against an independent school - whether disclosure would found an action for breach of confidence - whether access may be refused under sections 47(3)(a) and 48 and schedule 3, section 8 of the <i>Right to Information Act 2009</i> (Qld)</b></p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - communications regarding a complaint made by the applicant against an independent school - accountability and transparency - prejudice to business affairs and ability to obtain confidential information - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b></p>

### REASONS FOR DECISION

#### Summary

1. On 26 February 2020, the applicant applied to the Non-State Schools Accreditation Board (**Board**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access correspondence between the Board and the Independent School (**School**) relating to the applicant's complaint against the School.<sup>1</sup>
2. The application was processed by the Department of Education (**Department**).<sup>2</sup> After locating relevant documents, the Department consulted<sup>3</sup> two third parties, including the

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<sup>1</sup> The date range of the application is 21 June 2012 to 21 June 2013.

<sup>2</sup> Under delegation from the Board.

<sup>3</sup> Under section 37 of the RTI Act.

- School, about the disclosure of 13 pages (**consult documents**). The School notified the Department that it objected to disclosure.<sup>4</sup>
3. The Department granted the applicant access to 390 pages and decided to refuse access to 15 pages (including the consult documents) on various grounds.<sup>5</sup> The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's refusal of access decision.<sup>6</sup>
  4. On external review, the Department maintained that access to the consult documents should be refused on the basis that they comprise exempt information and that disclosure of all 15 pages would, on balance, be contrary to the public interest.<sup>7</sup> During the review, the School was joined as a participant<sup>8</sup> and contended that disclosure of the consult documents would, on balance, be contrary to the public interest.<sup>9</sup> The applicant also confirmed that he continues to seek access to the refused information, apart from signatures.
  5. For the reasons below, I set aside the Department's refusal of access decision. I find that the information remaining in issue is not exempt nor would it, on balance, be contrary to the public interest to disclose.

## Background

6. The Board is an independent statutory body set up under the *Education (Accreditation of Non-State Schools) Act 2017* (Qld) (**Accreditation Act**).<sup>10</sup> The functions of the Board include monitoring and enforcing compliance with the Accreditation Act and *Education (Accreditation of Non-State Schools) Regulation 2017*, and conducting investigations about contraventions of, or noncompliance with, the Accreditation Act.<sup>11</sup> Complaints the Board receives about non-State schools are dealt with by the Board as part of its function to monitor whether non-State schools continue to comply with the requirements for accreditation.<sup>12</sup>
7. The applicant's complaint generally relates to allegations of bullying at the School. Those allegations have been the subject of a number of completed court proceedings.<sup>13</sup>

## Reviewable decision

8. The decision under review is the Department's decision dated 27 July 2020.

## Evidence considered

9. Significant procedural steps relating to this review are set out in the Appendix. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).

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<sup>4</sup> The Department noted in its decision that the other consulted party did not wish to make any comment concerning document release.

<sup>5</sup> Decision dated 27 July 2020.

<sup>6</sup> External review application dated 20 August 2020.

<sup>7</sup> Under sections 47(3)(a) and 48, and sections 47(3)(b) and 49 of the RTI Act.

<sup>8</sup> Under section 89(3) of the RTI Act. On 21 May 2021, the School applied to participate in the review.

<sup>9</sup> On 31 May 2021, the School notified OIC that it did not seek to maintain its claim that access could be refused to the consult documents under section 47(3)(a) of the RTI Act on the basis they comprised exempt information.

<sup>10</sup> The Board was established under the now repealed *Education (Accreditation of Non-State Schools) Act 2001* (Qld) and continues in operation under the Accreditation Act.

<sup>11</sup> Refer to <<http://www.nssab.qld.edu.au/About/Board.php>>, accessed on 28 July 2021.

<sup>12</sup> Non-State Schools Accreditation Board Complaints Management Policy, 17/467790, effective 1 January 2018.

<sup>13</sup> To avoid identifying the applicant, I am unable to provide details about those proceedings in these reasons.

10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>14</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' this right and other rights in the HR Act when applying the law prescribed in the RTI Act.<sup>15</sup> I have acted in this way in making this decision in accordance with section 58(1) of the HR Act.

### Information in issue

11. I am constrained in how I may describe the 15 pages that remain in issue (**Information in Issue**)<sup>16</sup> however, they broadly comprise:
- signed correspondence exchanged between the School and the Board regarding the complaint<sup>17</sup> (**Board and School Letters**)
  - a policy previously published by the School on its website<sup>18</sup> (**School Policy**); and
  - an unsigned 2012 letter addressed to the applicant (**Letter to Applicant**).<sup>19</sup>

### Issues for determination

12. The Department (under delegation of the Board) bears the onus of establishing that its decision refusing access to information was justified.<sup>20</sup> The Department maintains that the Board and School Letters and School Policy are exempt and also argues that disclosure of all the Information in Issue would, on balance, be contrary to the public interest.
13. The School also objects to disclosure and contends that the Board and School Letters and the School Policy would, on balance, be contrary to the public interest to disclose.<sup>21</sup>
14. Therefore, the issues to be determined are whether access may be refused to the Information in Issue on the below bases:
- it is exempt information as its disclosure would found an action for breach of confidence;<sup>22</sup> and/or
  - disclosure would, on balance, be contrary to the public interest.<sup>23</sup>

### Breach of confidence

15. Under the RTI Act, a person has a right to access documents of an agency.<sup>24</sup> This right is subject to certain limitations, including grounds for refusal of access.<sup>25</sup> It is Parliament's intention that these refusal grounds are to be interpreted narrowly<sup>26</sup> and that the RTI Act be administered with a pro-disclosure bias.<sup>27</sup>

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<sup>14</sup> Section 21 of the HR Act.

<sup>15</sup> *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].

<sup>16</sup> Section 108 of the RTI Act, which relevantly prevents OIC from revealing information claimed to be exempt or contrary to the public interest information.

<sup>17</sup> Five letters comprising one page each. As noted above, the applicant does not seek to access signatures on these letters.

<sup>18</sup> Eight pages. The document appears to have been printed from the School website and records it was accessed on 15 September 2012. The School Policy is now superseded and no longer accessible on the School website.

<sup>19</sup> Two pages. It appears that the applicant provided a copy of this letter to the Board.

<sup>20</sup> Section 87(1) of the RTI Act.

<sup>21</sup> By letter dated 31 May 2021, the School confirmed that it did not assert that the consult documents were exempt.

<sup>22</sup> Sections 47(3)(a) and 48 and schedule 3, section 8 of the RTI Act.

<sup>23</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>24</sup> Section 23 of the RTI Act.

<sup>25</sup> Set out in section 47(3) of the RTI Act.

<sup>26</sup> Section 47(2)(a) of the RTI Act.

<sup>27</sup> Section 44 of the RTI Act.

16. One ground for refusal of access is where documents include exempt information.<sup>28</sup> Information will qualify as exempt where its disclosure would found an action for breach of confidence.<sup>29</sup> This exemption encompasses actions for breach of contractual obligations of confidence as well as equitable actions for breach of confidence.<sup>30</sup>
17. The Department relies on the reasoning in the decision under review to contend that disclosing the Board and School Letters and the School Policy<sup>31</sup> would found an action in equity for breach of confidence.<sup>32</sup>
18. The elements of a claim for breach of confidence in equity were recently enunciated in *Ramsay*<sup>33</sup> as follows:
  - the information must be identifiable with specificity
  - it must have the necessary quality of confidence
  - it must have been received in circumstances importing an obligation of confidence; and
  - there must be an actual or threatened misuse of the information.
19. I accept that this information meets the first requirement.
20. In relation to whether this information possesses the necessary quality of confidence, the Department asserts that it *'details and relates to the commercial operations of [the School] and it has significant value for the organisation. It is not trivial or useless information and has a degree of uniqueness sufficient for establishing an equitable obligation of confidence'*.<sup>34</sup>
21. The Board and School Letters concern the Board's handling of a complaint it received from the applicant about the School, under the legislative framework outlined in paragraph 6 above. None of the letters are marked confidential.<sup>35</sup> The School Policy appears to have been attached to correspondence sent to the Board by the applicant and was, at that time, publicly available on the School website.<sup>36</sup> While there is no evidence before me which indicates the Board and School Letters have been reproduced in the public domain, the applicant's complaint against the School has received media attention and, as noted above, the substance of that complaint has been ventilated in a number of legal proceedings.
22. Having considered the circumstances outlined above, I am not satisfied that all of this information possesses the necessary quality of confidence.

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<sup>28</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>29</sup> Schedule 3, section 8(1) of the RTI Act. I note that schedule 3, section 8(2) contains an exception to this exemption, however, that exception does not arise in the circumstances of this matter and therefore, is not addressed in these reasons for decision.

<sup>30</sup> *Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66 (**Ramsay**) at [66].

<sup>31</sup> The Department does not contend that the Letter to Applicant comprises exempt information and there is no evidence before me which indicates that this document comprises exempt information.

<sup>32</sup> Submissions dated 10 May 2021. The Department does not assert that disclosure would found an action for breach of any contractual obligation of confidence. However, for completeness, I note that there is no evidence before me which indicates that disclosing any of the Information in Issue would give rise to an action for breach of any contractual obligation of confidence.

<sup>33</sup> At [94], adopting *Optus Networks Pty Ltd v Telstra Corporation Ltd* (2010) 265 ALR 281 and *Smith Kline & French Laboratories (Aust) Ltd v Secretary to the Department of Community Services & Health* (1991) 28 FCR 201.

<sup>34</sup> Page 6 of the decision under review.

<sup>35</sup> How information is labelled will ordinarily constitute a relevant factor to be evaluated, in light of all the relevant circumstances, in determining whether an enforceable obligation of confidence is imposed, but will not of itself be conclusive of the issue. Refer to *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [91] (**B and BNRHA**), a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld) at [91].

<sup>36</sup> The document records it was accessed in September 2012. The School Policy has been superseded and is no longer accessible on the School's website.

23. Assessing whether the third requirement is satisfied requires an evaluation of all relevant circumstances surrounding the communication in question, so as to determine whether the recipient *'should be fixed with an enforceable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it'*.<sup>37</sup> The Department contends that, as information was sought by, and provided to, the Board about the applicant's complaint pursuant to the requirements of the Accreditation Act and the School objected to its disclosure, it is reasonable to infer that the School had an expectation that its interactions with the Board and the information it provided to the Board would be kept confidential by the Board.<sup>38</sup> However, the Department has not otherwise provided submissions to substantiate this contention or explain how an obligation of confidence arises in respect of the letters authored by the Board. I also again note that it appears the School Policy was provided to the Board by the applicant, not the School, and it was previously published on the School's website. In these circumstances, there is insufficient evidence before me to support the inferred expectation of confidence as contended by the Department. Therefore, I am not satisfied that all of the Board and School Letters and the School Policy were received in circumstances importing an obligation of confidence.
24. The Department also contends that, given the School's disclosure objection, disclosing this information under the RTI Act would constitute an unauthorised use.<sup>39</sup> Apart from this general contention of misuse, the Department has not provided any evidence which reasonably indicates that disclosure of the Board and School Letters or the School Policy under the RTI Act constitutes an actual or threatened misuse of that information.
25. Therefore, on the material before me and taking into account that the Department bears the onus in this review,<sup>40</sup> I am not satisfied that all the cumulative requirements are established to give rise to an equitable action for breach of confidence.
26. For these reasons, I find that the Board and School Letters and the School Policy do not comprise exempt information under schedule 3, section 8 of the RTI Act and access may not be refused to them under section 47(3)(a) of the RTI Act.

### Public interest

27. Access to documents may also be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.<sup>41</sup> 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.<sup>42</sup>
28. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>43</sup>
- 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

<sup>37</sup> *B and BNRHA* at [76]. Refer also to *Daubney J in Ramsay* at [82].

<sup>38</sup> Pages 6-7 of the decision under review.

<sup>39</sup> Page 7 of the decision under review.

<sup>40</sup> Section 87(1) of the RTI Act.

<sup>41</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>42</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

<sup>43</sup> Section 49(3) of the RTI Act.

- decide whether, on balance, disclosure of the information would be contrary to the public interest.

29. I have not taken any irrelevant factors into account in making my decision.

### **Factors favouring disclosure**

30. There is a public interest in disclosing information in connection with the Board's handling of complaints it has received about the welfare of children in the non-State school environment. The School submits that, given information already known by the applicant, disclosure of the School Policy and some of the Board and School Letters would not provide the applicant with any further understanding of the information available to the Board in deciding not to take any further action on the applicant's complaint.<sup>44</sup> I acknowledge that the Board's finding in this case was that there was '*no basis for further action*', but I still consider there is a moderate public interest in revealing the background and contextual information that was put before the Board and on which the Board's decision to take no further action was based.<sup>45</sup>
31. I am also satisfied that disclosure of the Information in Issue could reasonably be expected to enhance the accountability of the Board by disclosing how the Board actions complaints it receives about non-State schools.<sup>46</sup> In this regard, I note that the Department's submissions acknowledge disclosure of the Information in Issue would, to some extent, advance the Board's accountability.<sup>47</sup> As the relevant regulatory framework concerns the education of children, I consider the public interest in the Board's accountability is amplified and I afford these disclosure factors significant weight.
32. I consider the way the Board communicates with non-State schools in dealing with complaints about the welfare of children in the school environment is also a matter of serious community interest.<sup>48</sup> The School contends that the School Policy, which has been superseded, has no relevance and its disclosure will not lead to any relevant matter of importance or serious interest.<sup>49</sup> On the other hand, the Department submits that disclosure of the Information in Issue would moderately advance this factor favouring disclosure.<sup>50</sup> Having considered the terms of the access application, I can confirm that the School Policy falls within the scope of the access application and is, on that basis, a relevant document in this review, despite it being superseded. Taking into account the nature of the Information in Issue, I am satisfied that disclosing the Board and School Letters would contribute to public debate on this important issue. I accept however, that this public interest factor is more pronounced in terms of the letters *authored* by the Board, as they are the entity tasked with the regulatory function. Therefore, I afford it significant weight in relation to the Information in Issue which was authored by the Board.

### **Factors favouring nondisclosure**

33. The Department submits that nondisclosure factors concerning prejudice to business and financial affairs<sup>51</sup> apply to the Information in Issue.<sup>52</sup>

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<sup>44</sup> Submissions dated 8 April 2021.

<sup>45</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>46</sup> Schedule 4, part 2, items 1 and 3 of the RTI Act.

<sup>47</sup> Page 9 of the decision under review.

<sup>48</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>49</sup> Submissions dated 8 April 2021.

<sup>50</sup> Page 9 of the decision under review.

<sup>51</sup> Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

<sup>52</sup> In its initial disclosure objection to the Department, the School contended disclosure of the consult documents would '*doubtless prejudice the financial affairs*' of the School. However, the School's submissions on external review do not expand on its initial disclosure objection in this regard.

34. Factors favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities or prejudice trade secrets, business affairs or research of an agency or person.<sup>53</sup> The RTI Act also recognises that public interest harm will arise where:
- it would disclose trade secrets of an agency or another person
  - the disclosure of information that has a commercial value to an agency or another person could reasonably be expected to destroy or diminish the commercial value of that information; and
  - the disclosure of information concerning the business, professional, commercial or financial affairs of an agency or another person could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.<sup>54</sup>
35. The Board and School Letters and the School Policy concern the School's business affairs in terms of it providing education services and ensuring the welfare of its students. There is no evidence before me which indicates any of the Information in Issue comprises trade secrets, research or information which has a commercial value to any entity. Given the nature of the received complaint, I accept that disclosure of information could reasonably be expected to cause some prejudice and adverse effect to the School's professional, business and/or commercial affairs. However, given the age of this information and the fact the allegations which are the subject of the complaint have been ventilated in court proceedings and reported in the media, I consider such prejudice and adverse effect would be very limited. Taking the nature of these documents into account, it is unclear how disclosing this information could reasonably be expected to lead to a loss of confidence in the School; an increased risk of damage to the School's reputation; a potential reduction in the School's enrolments; a heightened impact on student and staff morale; possible public criticism of the School; or a loss of revenue, as referenced in the Department's decision. In particular, it is unclear how disclosing information related to a complaint the Board received approximately 8 years ago could be expected to *'allow a competitor to exploit the information, use it to their own advantage and remove any competitive edge the school currently has'*.<sup>55</sup> The Board and School Letters concern the Board's handling of a complaint under a legislative framework and I consider the Department has not explained how disclosure could reasonably be expected to prejudice the future supply of such information. Accordingly, to the extent these nondisclosure factors apply, I afford them only low weight.
36. The School submits that, although the Board and School Letters and School Policy relate to matters occurring in 2012 and the applicant's complaint has been ventilated in court processes, the School and its former principal will still be prejudiced by the disclosure of unsubstantiated allegations appearing within those documents.<sup>56</sup>
37. Public interest factors favouring disclosure will arise where disclosure could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;<sup>57</sup> and

<sup>53</sup> Schedule 4, part 3, items 2 and 15 of the RTI Act.

<sup>54</sup> Schedule 4, part 4, sections 7(1)(a), (b) and (c) of the RTI Act.

<sup>55</sup> Page 9 of the decision under review.

<sup>56</sup> Submissions dated 8 April 2021.

<sup>57</sup> Schedule 4, part 3, item 2 of the RTI Act. Schedule 4, part 4, section 6 of the RTI Act also recognises that disclosure of an individual's personal information could reasonably be expected to cause a public interest harm.

- prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.<sup>58</sup>
38. I acknowledge that some of the Board and School Letters reference the applicant's complaint, however, they do not particularise the allegations nor identify any specific individual. While I acknowledge the School's broader concerns about unsubstantiated allegations, given the particular information that appears in these letters, I consider that any prejudice to the fair treatment of any individual that could be expected to arise from disclosure would be minimal. I also note that all remaining information in the Board and School Letters is directed to the historical actions taken by the School to address the wider issue of bullying (including its review and update of relevant policies and processes). On this basis, I do not consider these factors favouring nondisclosure apply.
39. The Department's decision also afforded significant weight to '*the nondisclosure factor relating to the confidentiality and protection of certain operational information where an Act prohibits disclosure of the information*'. The RTI Act recognises that there is a public interest harm in disclosing information of a confidential nature that was communicated in confidence where its disclosure could reasonably be expected to prejudice the future supply of information of that type.<sup>59</sup> Under the RTI Act, factors favouring disclosure will also arise where disclosure of information:
- is prohibited by an Act;<sup>60</sup> or
  - could reasonably be expected to prejudice the flow of information to a regulatory agency or prejudice an agency's ability to obtain confidential information.<sup>61</sup>
40. While I acknowledge that the Accreditation Act does contain certain confidentiality obligations,<sup>62</sup> the Department has not enunciated how these obligations arise in respect of the Information in Issue or how they prohibit disclosure of this information under the RTI Act. Having carefully considered the Accreditation Act, I do not consider that its provisions prohibit disclosure of the Information in Issue to the applicant under the RTI Act as broadly asserted by the Department. As the School provided information to the Board in response to requests under a regulatory framework,<sup>63</sup> I do not consider disclosure of that information could be reasonably expected to prejudice the flow of information to the Board as a regulatory body. In these circumstances, I am not satisfied that the nondisclosure factors relating to disclosure being prohibited by an Act and prejudice to the flow of information apply to this particular Information in Issue. To the extent the Information in Issue can be characterised as confidential information,<sup>64</sup> I consider any prejudice that disclosure could be expected to cause to the Board's ability to obtain confidential information would be minimal. Accordingly, I afford low weight to the nondisclosure factors concerning the Board's ability to obtain confidential information.
41. The Letter to Applicant appears to have been submitted by the applicant to the Board with the complaint. The Department's submissions do not directly address how the

<sup>58</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>59</sup> Schedule 4, part 4, section 8(1) of the RTI Act.

<sup>60</sup> Schedule 4, part 3, item 22 of the RTI Act.

<sup>61</sup> Schedule 4, part 3, items 13 and 16 of the RTI Act.

<sup>62</sup> For example, under section 176(2) of the Accreditation Act certain individuals must not disclose certain information, however, section 176(3) lists a number of exceptions to this nondisclosure obligation.

<sup>63</sup> At page 9 of the decision under review, the Department observed: '*The provision of information and documentation to the [Board] when requested, and as required by relevant legislation ensures that the school operate within the confines of the law. The consequences for non-compliance by the school with the legislation that governs its operation are severe, including the withholding of funding and significant monetary penalties.*'

<sup>64</sup> Noting that the School Policy was previously published on the School's website and the applicant's complaint has been the subject of media reporting and completed legal proceedings.



nondisclosure factors discussed above apply to this document. Given the applicant was the named recipient of this letter and had a copy in their possession, I am satisfied that any nondisclosure factors that may apply to its content<sup>65</sup> can only be afforded minimal weight.

42. The Department bears the onus of establishing that disclosure would, on balance, be contrary to the public interest.<sup>66</sup> However, for completeness, I have considered all factors listed in schedule 4, parts 3 and 4 of the RTI Act, and I can identify no other public interest considerations favouring the nondisclosure of the Information in Issue.<sup>67</sup>

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

43. For the reasons set out above, it is my view that the factors favouring disclosure of the Information in Issue are deserving of moderate and significant weight. Disclosure of this information will reveal background and contextual information to the Board's decision about the complaint and will enhance the Board's accountability and transparency by disclosing how the Board actions received complaints. I also consider disclosing information authored by the Board, as a regulator, will significantly contribute to public debate about the serious matter of how complaints about the welfare of children in the school environment are dealt with.
44. I am also satisfied that disclosure of the Information in Issue is not likely to impact the business, commercial or financial affairs of the School in any significant way and, on this basis, I afford low weight to the nondisclosure factors relating to business, commercial and financial affairs. I have also afforded low weight to the factors concerning the Board's ability to obtain confidential information.
45. On balance, I find that the factors favouring disclosure outweigh the factors favouring nondisclosure. Accordingly, I find that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.

### **DECISION**

46. I set aside the Department's decision and find that the Information in Issue may not be refused under sections 47(3)(a) or 47(3)(b) of the RTI Act.
47. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**T Lake**  
**Assistant Information Commissioner**

**Date: 29 July 2021**

<sup>65</sup> Schedule 4, part 3, items 2 and 15 and schedule 4, part 4, section 7(1) of the RTI Act.

<sup>66</sup> Section 87(1) of the RTI Act.

<sup>67</sup> Taking into consideration the nature of the Information in Issue, I cannot see how its disclosure could, for example, impede the administration of justice generally or for a person (schedule 4, part 3, items 8 and 9 of the RTI Act). In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight I have afforded to the public interest factors that favour disclosure.

## APPENDIX

### Significant procedural steps

Date	Event
20 August 2020	OIC received the application for external review.
30 September 2020	OIC notified the applicant and the Department that it had accepted the external review application and asked the Department to provide information.
24 November 2020	OIC asked the Department to provide the previously requested information and provided an update to the applicant.
7 December 2020 and 7 January 2021	OIC asked the Department to provide the previously requested information.
15 January 2021	OIC received the requested information from the Department and provided an update to the applicant.
2 February 2021	OIC requested further information from the Department
9 February 2021	OIC received the requested information from the Department.
9 March 2021	OIC provided an update to the applicant
12 March 2021	OIC conveyed a preliminary view to the Department and invited the Department to provide further submissions if it did not accept the preliminary view. OIC conveyed a preliminary view to the School and invited the School to apply to participate in the review and provide submissions if it did not accept the preliminary view.
22 March 2021	The School confirmed to OIC that it objected to disclosure.
8 April 2021	OIC received disclosure objections from the School.
21 April 2021	The Department confirmed to OIC that it maintained its objection to disclosure.
5 May 2021	The applicant confirmed he did not seek to access signatures.
10 May 2021	The Department confirmed to OIC that the reasons for its disclosure objection are as outlined in the decision and it made no additional submissions.
18 May 2021	OIC wrote to the Department confirming the preliminary view and advised the Department that a decision would be required to finalise the external review. OIC conveyed a further preliminary view to the School and again invited the School to participate in the review.
21 May 2021	OIC advised the applicant that a decision would be required to finalise the external review. The School applied to participate in the review.
24 May 2021	OIC wrote to the School to grant its request to participate in the review and, noting that the School had not contested the preliminary view about exempt information, asked the School to confirm the basis of its disclosure objection.
31 May 2021	The School confirmed that it did not assert that information comprised exempt information.