



Decision and Reasons for Decision

Application Number:	310663
Applicant:	Fitzpatrick
Respondent:	James Cook University
Third Party:	HigherEd Appointments
Decision Date:	6 November 2012
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – applicant sought information about recruitment decision from James Cook University – whether disclosure of the information would found an action for breach of confidence – whether the information comprised exempt information – section 47(3)(a) and 48 of the <i>Right to Information Act 2009</i> (Qld) – whether disclosure of the information would, on balance be contrary to the public interest – section 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to James Cook University (**University**) under the *Right to Information Act 2009* Qld (**RTI Act**) seeking access to all documents from August 2009 to December 2010, concerning the appointment of the University's Head of School of Veterinary and Biomedical Sciences (**Head of School Position**). The applicant was a candidate in the recruitment process.
2. The University located 61 documents and decided² to grant full access to 17 documents, partially refuse access to ten documents and refuse access to 34 documents³ in their entirety on the basis that disclosure would found an action for breach of confidence.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of that decision.⁴
4. During the external review, the information under consideration has been narrowed to information relating to an external recruiter, HigherEd Appointments (**HigherEd**) and information relating to the balance of the selection process.

¹ On 25 March 2011, by correspondence dated 23 March 2011.

² By decision dated 15 April 2011.

³ The University referred to 'documents' in their decision. Each document is made of several pages of information.

⁴ On 9 June 2011.

5. For the reasons set out below, the University's decision is set aside and the University is entitled to refuse access to the information relating to HigherEd on the grounds that disclosure would found an equitable action for breach of confidence; and must disclose the balance of the information relating to the selection process as disclosure would not found an equitable action for breach of confidence, nor would its disclosure be contrary to the public interest.

Background

6. The applicant applied for a five year fixed-term contract for the Head of School Position in January 2010.
7. The University engaged an external recruitment company, HigherEd Appointments (**HigherEd**), to assist it with the initial phase of its recruitment process.
8. HigherEd is a recruitment firm specialising in executive recruitment. HigherEd entered into an executive search assignment with the University for the appointment of the Head of School. HigherEd's role was to:
 - conduct research into and searches for potential candidates
 - conduct an initial screening process and analysis of candidates using specialised assessment tools and weightings
 - conduct in-depth interviews; and
 - refer the candidates to the selection committee for shortlisting and interview.
9. HigherEd is a third party in this external review process.
10. The applicant was shortlisted and interviewed by the selection committee for the Head of School Position. His application was ultimately unsuccessful and another candidate was appointed.

Reviewable decision

11. The decision under review is the University's decision dated 23 March 2011.

Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching my decision is disclosed in these reasons (including footnotes and appendix).

Information in issue

13. In response to the access application, the University located:
 - the successful candidate's application for the position (comprising his curriculum vitae and statements addressing the selection criteria)
 - the applicant's application for the position (comprising his curriculum vitae and statements addressing the selection criteria)⁵
 - information created by the selection committee when assessing the candidates' against the selection criteria and the document which states the order of merit the candidates were listed in

⁵ The University disclosed this document to the applicant during the course of the external review, so it is no longer in issue.

- information created by HigherEd assessing the candidates against the selection criteria in a graph form; and
 - administrative information relating to the selection process, including travel arrangements and interview times.
14. OIC asked the University to conduct additional searches for notes taken during the interviews and documents created after the interviews which discuss the performance of candidates during the interviews. The University provided information which satisfied us that there were no further documents responsive to the request in the University's possession.
15. During the course of the external review, the applicant confirmed he was seeking documents which disclosed:
- the assessment of his application for the position of Head of School
 - the assessment of the successful candidate's application for the position
 - the successful candidate's application for the position
 - any decision to appoint the successful candidate to the position; and
 - any decision not to appoint the applicant to the position.
16. The applicant confirmed he does not seek access to information concerning panel members or information about applicants other than the successful candidate and himself, nor does he seek certain personal information of the successful candidate.⁶
17. The information in issue in this review therefore has been narrowed to the following two categories of information:
- Two documents created by HigherEd (**HigherEd information**),⁷ and
 - The successful candidate's application for the position, the information created by the selection committee when assessing the candidates' against the selection criteria and the document which states the order of merit the candidates were listed in (**remaining selection information**).⁸

Issues in this review

18. The issues for determination in this review are whether access to the information in issue should be refused on the grounds that either:
- it is exempt because disclosure would found an action for breach of confidence in equity; or
 - disclosure would, on balance, be contrary to the public interest.

Relevant law

19. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, that right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

⁶ That is, the successful candidate's home address, home phone number, remuneration details, referee details or photograph. He is only seeking information related to the successful candidate in so far as it relates to the selection process. This was confirmed in a phone call with the applicant's legal representative on 1 June 2012.

⁷ Document 2 and document 6.

⁸ Parts of documents 14-26 and document 33 (information about other candidates, selection committee members, the successful candidate's home address, home phone number, referee details and remuneration are not considered).

20. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises exempt information. Schedule 3 sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest and is therefore exempt.
21. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest.
22. In making this decision I have considered whether the information in issue:
 - is exempt information disclosure of which could found an action for breach of confidence;⁹ or
 - is information the disclosure of which, would, on balance, be contrary to the public interest.¹⁰

Exempt information

Breach of confidence

23. Information will be exempt if its disclosure would found an action for breach of confidence in equity.
24. The following elements must be established to give rise to an equitable obligation of confidence:
 - a) information must be capable of being specifically identifiable as information that is secret, rather than generally available
 - b) information must have the necessary quality of confidence
 - c) circumstances of the communication must create an equitable obligation of confidence
 - d) disclosure to the applicant for access must constitute an unauthorised use of the confidential information; and
 - e) disclosure must cause detriment to the plaintiff.¹¹
25. The University claims that disclosure of each of the two categories of information would found an action for breach of confidence.
26. I will consider each category and the relevant submissions in turn.

HigherEd information

27. HigherEd is a recruitment firm, specialising in executive recruitment. As set out in the background to this decision, HigherEd entered into an executive search assignment with the University for the appointment of the Head of School, Veterinary and Biomedical Sciences. HigherEd's role was to:
 - conduct research into and searches for potential candidates

⁹ Schedule 3, section 8 of the RTI Act.

¹⁰ Section 47(3)(b) and 49 of the RTI Act.

¹¹ The Queensland Information Commissioner identified these requirements in *B and Brisbane North Regional Health Authority* [1994] QICmr 1 (**B and BNRHA**) in applying the equivalent exemption under the repealed *Freedom of Information Act 1992* (Qld). See also *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic) and Another* (1987) 14 FCR 434 (**Corrs Pavey**) at 437 per Gummow J. The recent decision of *TS008G and Queensland Health* (Unreported, Queensland Information Commissioner, 13 December 2011) confirmed the requirement of detriment in RTI cases.

- conduct an initial screening process and analysis of candidates using its assessment tools and weightings
- conduct in-depth interviews; and
- refer the candidates to the selection committee for shortlisting and interview.

28. The HigherEd information is the documents created during dot point two and three of the above process. It includes commentary on the successful and unsuccessful candidate and HigherEd's weighting of each selection criteria and various charts assessing each candidate against the selection criteria.

(a) specifically identifiable information

29. The first limb of the test for a breach of confidence exemption requires that it is possible to identify with specificity, and not merely in general terms, the information in question.¹²
30. The HigherEd information comprises commentary on the successful and unsuccessful candidate, HigherEd's weighting of each selection criteria and various charts assessing each candidate against the selection criteria. I am therefore satisfied that the HigherEd information is specifically identifiable and that this requirement is met.

(b) necessary quality of confidence

31. The second limb of the test makes it clear that an equitable obligation of confidence will only protect information with the necessary quality of confidence—it will not extend to information that is generally known, useless or trivial.¹³
32. The applicant's solicitors submit that 'there can be no breach of confidence by disclosing information to our client which relates to his own candidacy.'¹⁴ Some of the HigherEd information relates to the applicant, but it is not known to the applicant. It comprises assessments of the applicant's application by HigherEd using their assessment tools, such as selection criteria weightings. This information is not known to the applicant or to the wider community, nor is it useless or trivial. I am therefore satisfied that this requirement is met.

(c) circumstances of communication

33. The third limb of the test requires that all the relevant circumstances in which information was received be considered to determine whether the party who received the information is bound with an obligation of confidence. The Information Commissioner has previously indicated¹⁵ that the relevant circumstances will include, but are not limited to:
- nature of the relationship between the parties
 - nature and sensitivity of the information
 - purpose/s for which the information was communicated
 - nature and extent of any detriment to the interests of the information-supplier that would follow from an unauthorised disclosure of the information; and
 - the circumstances relating to the communication.

¹² *B and BNRHA* at paragraphs 60-63.

¹³ *B and BNRHA* at paragraph 43; *Callejo* at paragraph 139.

¹⁴ Submission dated 7 September 2012.

¹⁵ *B and BNRHA* at paragraph 84.

34. For the HigherEd information, I must consider whether the University (as the party who received the information) is bound with an obligation of confidence to HigherEd (the party who created the information). The University and HigherEd have provided submissions explaining their understanding of the circumstances in which the HigherEd information was communicated.
35. Firstly, I note that the University was the client and HigherEd was a professional service provider in a formal business relationship. HigherEd was engaged by the University to identify suitable candidates for the selection committee to consider the Head of School recruitment process.

HigherEd submissions

36. HigherEd submits:

Our relationship with our clients and candidates depends on trust and confidentiality between them and us. We have an obligation to treat as confidential information communicated to us in confidence by our clients and by candidates.....information is provided on the mutual expectation that supply is in confidence to us and to our client.

.....

*Publication could be prejudicial in discouraging future clients and candidates approaching us, knowing that their dealings with us may not be kept confidential. Our relationship with James Cook University has been established over many years on the basis of professionalism, trust and confidentiality. We are most concerned that publication will impact that relationship.*¹⁶

37. When HigherEd speaks of obligations to 'candidates' and 'clients' I understand it to be submitting that it has an obligation of confidence both to candidates undertaking recruitment processes and clients of its services for recruitment processes, such as the University. The HigherEd information comprises documents created by HigherEd for the purposes of the University's recruitment process and communicated to the University during that process.

University submissions

38. The University submits:

*Documents 2 and 6 (the HigherEd information) were provided to the University under an obligation of confidence.*¹⁷

The University also submits that the HigherEd information was all clearly marked as confidential by HigherEd and contained opinions about the relevant candidates. Marking a document confidential is not enough on its own to provide evidence of an understanding of confidence; however, when it '*reflects the confiders genuine consideration of the nature of the information and of the need for restrictions on its use by the confidant, and is not simply routine rubber stamping without genuine consideration,*'¹⁸ it is a relevant factor to be taken into account.

39. It also refers to its Selection Committee Policy, which relevantly provides that:

¹⁶ Submission from HigherEd dated 14 May 2012.

¹⁷ 23 March 2012.

¹⁸ *B and BNRHA* (1994) 1 QAR 279 at paragraph 90.

*All applications for positions are strictly confidential and access is restricted to those who are directly involved in the recruitment process.....Referee and Assessor reports are to be made available only to members of the Selection Committee.*¹⁹

40. The Selection Committee Policy also provides that 'on accepting an offer of appointment certain information relating to the successful applicant may be disclosed to ensure transparency of the selection decision.'
41. The Selection Committee Policy is relevant in assessing whether there was an understanding of confidence between the parties, however it must be considered in all the circumstances. In this case, given the commercial relationship evident between the University and HigherEd as well as the understanding of trust and confidence between the parties during the initial phase of the recruitment process, I am satisfied that the HigherEd information was communicated by HigherEd to the University on the understanding that it would be kept confidential and would not be communicated to another person, including the applicant, for any other purpose.
42. On the basis of the matters set out above, I am satisfied that the HigherEd information was communicated by HigherEd to the University in circumstances giving rise to an equitable obligation of confidence. I am therefore satisfied that this requirement is met.

(d) unauthorised use

43. To satisfy this requirement, disclosure to the applicant for access must constitute an unauthorised use of the confidential information. Both HigherEd and the University strongly object to disclosure of the HigherEd information.
44. The applicant submits that there can be no equitable obligation of confidence because neither the applicant nor the successful candidate objects to disclosure of the information.²⁰ An obligation of confidence can be waived by the express or implied consent of the confider of the confidential information.²¹ In this case, the confider of the confidential information is HigherEd, not the candidates. HigherEd does object to disclosure of the information and I am therefore satisfied that disclosure of the HigherEd information would constitute an unauthorised use.

(e) detriment

45. HigherEd submits that disclosure of the HigherEd information would damage its relationship with the University and could be prejudicial in discouraging future clients and candidates. Detriment for a non-government plaintiff such as HigherEd is fairly easily established.²² In the circumstances of this case, I accept that disclosure of the HigherEd information would cause detriment to HigherEd.

Conclusion – HigherEd information

46. On the basis of the matters set out above, I find that the requirements to found an action for breach of an equitable obligation of confidence are established, and that therefore, the HigherEd information is exempt under schedule 3, section 8 of the RTI Act and access can be refused under section 47(3)(a) and 48 of the RTI Act.

¹⁹ http://www.jcu.edu.au/policy/allitoz/JCUDEV_008072.html

²⁰ Submission from applicant's legal representative dated 7 September 2012. Note my comments at paragraph 50 and 51 about the successful candidate's objection to disclosure of his information.

²¹ *B and BNRHA* (1994) 1 QAR 279 at paragraph 105

²² *B and BNRHA* at paragraph 111.

Remaining selection information

47. This information comprises information about the successful candidate, specifically his curriculum vitae (**CV**) and his application (which is his statements addressing the selection criteria for the position).²³ It also includes the selection committee assessment sheets (with numbers against the successful candidate and applicant) and the candidate short-listing sheet with information for the successful candidate and the applicant.
48. The test for breach of confidence requires that all elements of the test be established. If one element is not made out, it is not possible to bring an equitable action for breach of confidence and disclosure of the information will not be exempt under schedule 3, section 8 of the RTI Act. The crucial element for the remaining selection information is the third element and I examine it below.

(c) *circumstances of communication*

49. All the relevant circumstances in which information was received must be considered to determine whether the party who received the information is bound with an obligation of confidence

Submissions

Successful candidate

50. In response to a consultation letter from OIC, the successful candidate submitted:

The assessment sheets are very clearly labelled CONFIDENTIAL and I was led to believe that all aspects of the application and evaluation process would be treated confidentially. I will not agree to this understanding being broken and if your office chooses to do so I would regard it as an actionable and deliberate breach of confidence.

51. The OIC sent a further letter to the successful candidate stating the preliminary view that disclosure of the information would not found an equitable action for breach of confidence and inviting him to respond if he objected to that view. The successful candidate did not respond, however, the University subsequently informed OIC that the successful candidate maintains his objection.²⁴

Applicant

52. The applicant submits that there is no equitable obligation of confidence. He submits that there can be no breach of confidence by disclosing information which relates to his own application. In essence, he consents to disclosure of his information.²⁵

University

53. The University refers to its Selection Committee Policy which includes the statement *'All applications for positions are strictly confidential and access is restricted to those*

²³ It does not include certain personal information about the successful candidate, as this information is not sought. See footnote 7 for the specifics of the information the applicant has agreed not to pursue.

²⁴ OIC's original consultation letter was dated 7 March 2012. The successful candidate responded on 20 March 2012. OIC sent a further letter dated 12 April to which the successful candidate did not respond. The University informed OIC in correspondence dated 4 May 2012 and 3 October 2012 that the successful candidate continued to object to disclosure.

²⁵ Submission to OIC dated 7 September 2012.

who are directly involved in the recruitment process.²⁶ They go on to state that information should not be disclosed without the consent of the applicants.

54. The Policy also says:

In any event it should be noted that on accepting an offer of appointment certain information relating to the successful applicant (educational qualifications, training and employment or business experience, details of research and/or publications and statements addressing selection criteria) may be disclosed to ensure transparency of the selection decision.

55. When we put this to the University, it submitted that 'the operative word is may.'²⁷ In a more recent submission²⁸ the University states that it could exercise its discretion to disclose the remaining information as provided for in the Selection Committee Policy, however, it submits that disclosure of the information would found an action for breach of confidence. The University did release some information about the successful candidate to the University community via email and in a newsletter.

56. The University provided a marked up copy of *Antony and Griffith University*²⁹ in support of its submissions.³⁰ I understand from this that the University considers that the case supports its contention that disclosure of the information would found an action for breach of confidence.

57. *Antony and Griffith University* concerns an application for recruitment documents in which the Information Commissioner found that the information was not communicated in circumstances that established an obligation of confidence by the agency.

58. Of particular relevance to this review, the Information Commissioner referred to his previous comments in *Re Baldwin*,³¹ which considered selection information:

... (I should state that I do not regard that as involving a legally binding promise to treat every part of a job application in confidence. Any information which ought to be disclosed in the interests of accountability (for example, explaining to an applicant who was not shortlisted why the shortlisted candidates were considered more suitable in terms of the selection criteria) should, in my opinion, be available for disclosure, provided the anonymity of the unsuccessful candidates is not compromised without their consent or without other good cause).

59. The Information Commissioner went on, quoting the decision of *Hawck*.³²

I do not consider any understanding of confidentiality which would be likely to be implied in such circumstances would extend beyond the time that the successful applicant was appointed to the position. In determining whether the Department would be bound with an obligation of confidence not to disclose a job application, it will be necessary to consider all relevant factors, one of which will be the uses to which the Department, in the exercise of its functions, must be expected to put the information.

Until such time that a decision is made, the uses to which an application are likely to be put are generally limited to the selection process. However, once an appointment is made, the application of the successful applicant will form part of the ongoing personnel

²⁶ http://www.jcu.edu.au/policy/allitoz/JCUEV_008072.html

²⁷ Submission dated 23 March 2012.

²⁸ Dated 3 October 2012.

²⁹ (Unpublished, Queensland Information Commissioner, 30 March 2001) (*Antony and Griffith University*).

³⁰ Dated 6 July 2011 and 23 March 2012.

³¹ *Re Baldwin and Department of Education and Others* (Information Commissioner Qld, Decision 96008, 10 May 1996, unreported).

³² *Hawck and Department of Training and Industrial Relations* (S 150/96, 31 January 1997 (*Hawck*) at paragraphs 31-32.

records of the agency and must be available for the agency to perform its functions, including its accountability functions in relation to the appointment of the successful applicant. In such cases, it seems likely that if equity were to impose an obligation of confidence on the Department prior to the appointment being made, that obligation would only extend, in the case of the successful applicant for the position, until such time as he or she was appointed to the position.

60. Finally, in *Antony and Griffith University*, the Information Commissioner stated:

While it may be possible to give feedback without comparing the basis of rating of an unsuccessful candidate against the selection criteria, with the basis of rating of the successful candidate, I consider that such a restriction would impair the effectiveness of the exercise in many instances. In my experience, shortlisted candidates frequently satisfy all relevant selection criteria, but one candidate is ultimately assessed as satisfying one or more key selection criteria to a higher degree than other candidates. For my part, I would have thought that for feedback to unsuccessful candidates to be meaningful and effective, it would frequently necessitate comparison of the areas in which, and the basis upon which, the successful candidate was assessed as being superior to the unsuccessful candidate.

61. As with Griffith University in the *Antony and Griffith University* case, the University in this matter is a public sector entity, for the purpose of the *Public Sector Ethics Act 1994* (Qld) (**Public Sector Ethics Act**). As a public sector entity under that Act, the University is subject to accountability and transparency requirements, which are reflected in its Selection Committee Policy, as well as its Code of Conduct.³³

62. Thus the remaining selection information is information from a selection process of an entity receiving public funds; the applicant is an unsuccessful candidate seeking feedback on that process. The University has submitted that:

*University employees are not part of the Queensland Public Service, the University is not covered by the Public Service Act and none of the other applicants for this position were based in Australia and therefore should not be considered public service officers in the same way that applicants from Australia may be.*³⁴

63. While the University is not a public sector agency and not subject to the same accountability requirements as public service agencies, it is, nevertheless, an entity receiving government funding, which is subject to the RTI Act and the Public Sector Ethics Act, with a code of conduct and Selection Committee Policy in place which reflects public sector accountability standards.
64. Candidates have been put on notice, by the fact that they are applying for employment to an entity which receives public funds and the content of the University's Selection Committee Policy, that disclosure of information relating to successful candidates is possible.
65. The Information Commissioner's comments in *Antony and Griffith University* have emphasised the importance of providing feedback to unsuccessful candidates in selection processes, in particular by providing information about successful candidates to unsuccessful candidates. In this case, the applicant is seeking information on the selection process undertaken by the University for the Head of School Position. The University has located the CV and responses to selection criteria of the successful candidate, as well as the selection committee's assessment of the successful candidate and the applicant against the selection criteria. This information would allow

³³ http://www.jcu.edu.au/policy/governance/conduct/JCUDEV_007161.html

³⁴ Submission to OIC dated 23 March 2012.

the applicant to gain a greater understanding of the selection process and enhance the University's accountability in selection processes. As the remaining selection information relates to a selection process in an entity receiving public money with Public Sector Ethics Act obligations, I do not consider that, as between the University and the successful candidate, an understanding of confidence can survive beyond the appointment of the successful candidate to the position of Head of School.

66. On the basis of the matters set out above, I am satisfied that disclosure of the remaining information would not found an action for breach of confidence in equity.
67. Given my finding that this requirement is not met, it is unnecessary for me to consider the application of the other elements necessary to establish an equitable obligation of confidence.

Public interest

68. The University has submitted that disclosure of the information in issue in this review would also, on balance, be contrary to the public interest to disclose. As I have found that disclosure of the HigherEd information would found an action for breach of confidence, it is not necessary to consider public interest arguments in respect of those documents.
69. I will therefore consider whether disclosure of the remaining selection information would, on balance, be contrary to the public interest.

Would disclosure of the remaining selection information be contrary to the public interest?

70. No, for the reasons that follow.
71. In determining whether disclosure of the remaining selection information would, on balance, be contrary to the public interest I must:³⁵
 - identify and disregard irrelevant factors
 - identify factors favouring disclosure of the information in the public interest
 - identify factors favouring nondisclosure of the information in the public interest
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to public interest.

Irrelevant factors

72. I have examined the irrelevant factors in schedule 4 of the RTI Act and do not consider that any irrelevant factors arise here.

Factors favouring disclosure

73. After carefully considering all of the information before me, I am satisfied that the factors favouring disclosure of the remaining selection information include that disclosure could reasonably be expected to:
 - disclose personal information of the applicant³⁶

³⁵ Section 49(3) of the RTI Act.

³⁶ Schedule 4, part 2, item 7 of the RTI Act.

- reveal the reason for the selection committee's decision and any background or contextual information that informed the decision³⁷
- contribute to the transparency and accountability of the University's recruitment and appointment process; and
- ensure effective oversight of expenditure of public funds.³⁸

Factors favouring nondisclosure

74. After carefully considering all of the information before me, I am satisfied that the factors favouring nondisclosure in the public interest of the remaining selection information include that disclosure:

- would disclose personal information of a person other than the applicant;³⁹ and
- could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁰

Balancing factors favouring disclosure and nondisclosure in the public interest

75. The remaining selection information comprises the selection committee's opinions set out in the form of numbers and a limited amount of written commentary about the successful candidate, the short listing sheet and the successful candidate's CV and job application.

76. Some of the information is the applicant's personal information. There is a public interest in the applicant obtaining his personal information. I give this factor some weight.

77. Previous decisions of this Office have found that disclosure of selection committee information furthers the public interest in accountability and transparency by allowing candidates to understand the reasons for recruitment decisions. The Information Commissioner recognised in *Antony and Griffith University* that:

*...for feedback to unsuccessful candidates to be meaningful and effective, it would frequently necessitate comparison of the areas in which, and the basis upon which, the successful candidate was assessed as being superior to the unsuccessful candidate.*⁴¹

78. Disclosure of these documents would further the public interest in transparency and accountability by showing the applicant the way the selection committee assessed him in relation to the successful candidate. Disclosing the job application and CV of the successful candidate would likewise allow the applicant to have an understanding of the information before the selection committee when they were making their decision.

79. The University has published a University wide email and a media article following the appointment of the successful candidate, announcing his appointment to the position and providing brief details of his previous work experience. The University provided this information in the context of a discussion about its Selection Committee Policy, which as noted at paragraph 39 of this decision, states

In any event it should be noted that on accepting an offer of appointment certain information relating to the successful applicant (educational qualifications, training and

³⁷ Schedule 4, part 2, item 11 of the RTI Act.

³⁸ Schedule 4, part 2, item 4 of the RTI Act.

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

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

⁴¹ At paragraph 31.

employment or business experience, details of research and/or publications and statements addressing selection criteria) may be disclosed to ensure transparency of the selection decision.

80. The fact that this information is published does not detract from the public interest in publishing the CV and job application of the successful candidate. It shows that the University has a policy of transparency and disclosure. As some of the information is now in the public domain, disclosure of the remaining information will further advance transparency in selection processes, as set out in the University's policy. I therefore give these two factors significant weight.
81. The selection committee documents reveal the considerations of the selection committee, including for example, the weightings given to each candidate in the short listing process. This information could be characterised as background or contextual information that informed the selection committee's decision, as well as part of the reasoning for the appointment decision. I note that the information is the selection committee's views on the candidate's application prior to interview as the University was not able to locate selection committee information on candidate interviews. While the selection committee documents may not give the applicant a full picture of the selection committee's deliberations, I nevertheless consider that this factor merits strong weight as disclosure of this information will allow the applicant to gain some understanding of the selection committee's decision making process.
82. As the University receives government funding, disclosure could also reasonably be expected to ensure effective oversight of expenditure of public funds. There is a public interest in ensuring that public funds are expended responsibly and accountably and I give this factor some weight.
83. As to the public interest factors favouring nondisclosure, I accept the University's submissions that disclosure of the remaining selection information will disclose the successful candidate's personal information, which will cause prejudice to his privacy.⁴² The personal information of the successful candidate remaining in issue is not particularly sensitive. The applicant is not seeking information relating to the successful candidate's remuneration, his home address or personal telephone numbers. The personal information is essentially the contents of the successful candidate's CV and job application. The privacy of a successful candidate is diminished upon appointment to a role in the University because the fact of their application and their success is a matter of public record (in contrast to the privacy of an unsuccessful candidate).⁴³ It is further diminished in this case by the fact that some information has been published about the successful candidate. I therefore give these factors favouring nondisclosure low weight.
84. On balance and taking into account all of the matters set out above, I am satisfied that:
 - the public interest factors favouring disclosure of the remaining selection information outweigh the public interest factor favouring nondisclosure; and
 - disclosure of the remaining selection information would not, on balance, be contrary to the public interest.

⁴² Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁴³ *Hawck* at paragraph 21.

DECISION

85. I set aside the University's decision to refuse access to the information in issue and find that:

- disclosure of the HigherEd information would found an equitable action for breach of confidence and is therefore exempt from disclosure under schedule 3, section 8 and section 47(3)(a) of the RTI Act; and
- the remaining selection information does not comprise exempt information under section 47(3)(a) of the RTI Act; and would not, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act.

86. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

V Corby
Assistant Information Commissioner

6 November 2012

APPENDIX

Significant procedural steps

Date	Event
25 March 2011	By correspondence dated 23 March 2011, the applicant sought access to all documents regarding the appointment of the Head of School of Veterinary and Biomedical Sciences, from August 2009 to December 2010
15 April 2011	The University decided to grant full access to 17 documents, refuse access to parts of 10 documents on the basis that the documents contained personal information of individuals other than the applicant and refuse access to 34 documents in full on the basis that disclosure would found an action for breach of confidence.
9 June 2011	The applicant applied to OIC for external review of the University's decision
22 June 2011	The Information Commissioner decided to exercise the discretion to extend the timeframe in which an applicant can apply for external review under section 88(1)(d) of the RTI Act
6 July 2011	The University made submissions in support of its decision and confirmed that it did not consult any individuals under section 37 of the RTI Act
9 August 2011	By telephone conversation with OIC staff, the University explained searches undertaken for documents responding to the access application and the basis for expecting that all relevant documents had been located
5 October 2011	Following discussions with the applicant's representatives, OIC confirmed that the applicant did not seek access to certain information about the administration of the recruitment process or information about other unsuccessful candidates
6 – 18 October 2011, 25 November 2011	The University clarified inconsistencies between the number of documents and pages mentioned in its decision and those provided to OIC on external review
December 2011 – January 2012	OIC identified possible issues with the sufficiency of the University's searches and by correspondence dated 10 January 2012, sought further submissions from the University
23 January 2012	The University provided information about its searches and explained that of the ten selection committee members, who may hold additional documents responding to the access application, two were not University employees, one had left the University and one had died. The remaining six selection committee members had undertaken searches for documents and completed certifications however no additional documents within the scope of the application had been located
10 February 2012	By telephone conversations, OIC consulted with HigherEd and the successful candidate as third parties that may be concerned by disclosure of some of the Relevant Information under section 97 of the RTI Act
7 March 2012	By correspondence to the successful candidate, OIC conveyed its preliminary view in relation to disclosure of Documents 14-20, 25, 30 and 33 and sought the successful candidate's views under section 97 of the RTI Act
7 March 2012	OIC requested the University provide the contract under which HigherEd was engaged by the University, in order to assess any contractual understanding of confidence between the parties
9 March 2012	By correspondence, OIC conveyed to the University its preliminary view that some of the Relevant Information should be released to the applicant because its disclosure would not, on balance, be contrary to the public interest
19 March 2012	The University provided documents concerning the University's engagement of

	HigherEd
21 March 2012	By correspondence dated 20 March 2012, the successful candidate advised OIC that he objected to disclosure of the information concerning him which was identified for release in OIC's letter dated 7 March 2012
23 March 2012	By correspondence, the University advised that it did not accept OIC's preliminary view and provided a submission in response to the OIC's preliminary view
26 March 2012	The University provided additional information in support of its non-acceptance of OIC's preliminary view
30 March 2012	By correspondence, OIC conveyed its preliminary view in relation to disclosure of Documents 2 and 6 and sought the recruitment company views under section 97 of the RTI Act
4 April 2012	HigherEd's representative sought an extension of time in which to provide a response to OIC's letter dated 30 March 2012. OIC confirmed an extension until 14 May 2012
12 April 2012	By correspondence to the successful candidate, OIC confirmed its preliminary view that certain information in Documents 14-20, 25, 30 and 33 should be disclosed to the applicant and sought his views again under section 97 of the RTI Act. OIC also indicated that unless the successful candidate notified of his objection to disclosure by 19 April 2012, OIC would proceed on the basis that he no longer objected
19 April 2012	The due date for the successful candidate to object to disclosure of information concerning him passed and the successful candidate was taken to no longer object to disclosure
20 April 2012	By correspondence to the University, OIC confirmed its preliminary view that the Relevant Information should be released to the applicant because it does not comprise exempt information or information, the disclosure of which would, on balance, be contrary to the public interest
27 April 2012	By telephone conversation, the applicant's representative advised that the applicant did not seek access to the identities of selection committee members
30 April 2012	By correspondence with HigherEd, OIC advised that the successful candidate no longer objected to disclosure of the information concerning him in the review
4 May 2012	By correspondence, the University advised that it did not accept OIC's preliminary view as set out in correspondence dated 20 April 2012 and provided submissions in support of its case. The University also advised that it had consulted with the successful candidate and was concerned that the successful candidate continued to object to disclosure
14 May 2012	By correspondence, HigherEd advised OIC that it objected to disclosure of the information identified for release in OIC's letter dated 30 March 2012 and provided submissions in support of its objection
23 May 2012	By correspondence, OIC confirmed that HigherEd wished to be a party to the external review
1 June 2012	By telephone conversation with the applicant's representative, OIC confirmed the applicant did not seek access to certain information.
20 August 2012	OIC conveyed a preliminary view to the applicant
7 September 2012	Applicant responded to preliminary with submissions
18 September 2012	OIC conveyed a status update and preliminary view to the University
3 October 2012	University responded to preliminary view with submissions