



Decision and Reasons for Decision

Citation:	<i>R58 and The University of Queensland [2020] QICmr 30 (28 May 2020)</i>
Application Number:	314727
Applicant:	R58
Respondent:	The University of Queensland
Decision Date:	28 May 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - personal information and privacy - accountability and transparency - 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)

REASONS FOR DECISION

Summary

1. An individual (**Access Applicant**) applied to The University of Queensland (**UQ**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)¹ for access to documents concerning a complaint made by the Access Applicant.
2. UQ decided² to disclose various documents³ to the Access Applicant, contrary to the views of the Review Applicant.⁴
3. The Review Applicant applied⁵ to OIC for external review of UQ's disclosure decision.⁶ The bulk of the Review Applicant's objections to disclosure of information were resolved informally, and most of the information originally in issue⁷ was therefore released to the Access Applicant.
4. There is, however, some information identified by me during the review to which UQ decided to give access, but disclosure of which I formed the view would, on balance, be

¹ Access application dated 11 March 2019.

² Decision dated 28 June 2019.

³ In whole or part.

⁴ The subject of the Access Applicant's complaint, and whose views on disclosure had been obtained by UQ under section 37 of the RTI Act.

⁵ Application dated 22 July 2019.

⁶ A 'disclosure decision' is a 'decision to disclose a document or information contrary to the views of a relevant third party obtained under section 37' of the RTI Act: section 87(3)(a) of the RTI Act. In accordance with section 87(2) of the RTI Act, the Review Applicant has the onus of establishing that a decision not to disclose information is justified. For the reasons explained below, I am satisfied that this onus is met as regards the information in issue dealt with in this decision and specified below.

⁷ I.e, information UQ decided to disclose to the Access Applicant, contrary to the Review Applicant's objections.

contrary to the public interest. The Access Applicant did not accept my preliminary view in this regard,⁸ and it is therefore necessary to resolve this issue by way of this decision.⁹

5. I vary the decision under review, by finding that access to relevant information may be refused on the basis that disclosure would, on balance, be contrary to the public interest. My reasons as to why access to may be refused are set out below.

Background

6. Significant procedural steps are set out in the Appendix.

Reviewable decision

7. The decision under review is UQ's decision dated 28 June 2019.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
9. This includes the *Human Rights Act 2019* (Qld),¹⁰ particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,¹¹ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹²

Information in issue

10. The Access Applicant did not apply for review of UQ's decision insofar as it decided to refuse access to information. Information of this kind is not, therefore, in issue in this review.¹³
11. Additionally, the Access Applicant only sought to contest my preliminary view as it related to *some* of the information I identified as being information the disclosure of which would, on balance, be contrary to the public interest.¹⁴
12. Accordingly, the only information remaining to be dealt with in this decision – the **Information in Issue** – comprises certain segments of information appearing on the following pages:
 - 424, 439, 891-893, 922, 926, 935-937, 966, 970, 985-986, 1016, 1124.

⁸ UQ does not take issue with my preliminary view – ie, it does not contest that view, as formalised in this decision.

⁹ The Access Applicant did not apply under section 89(2) of the RTI Act to participate in this review.

¹⁰ **HR Act** - which came into force on 1 January 2020.

¹¹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

¹² *XYZ*, [573].

¹³ And nor is a small segment on page 424, being information the subject of a separate external review by a separate review applicant, and in which the Access Applicant accepted a preliminary view that access to this specific segment may be refused: letters to the Access Applicant in that review dated 20 February 2020 and 2 March 2020.

¹⁴ Access Applicant's submission received 1 May 2020, and my letter to the Access Applicant dated 20 May 2020.

13. A copy of these pages, with Information in Issue the subject of this decision clearly marked,¹⁵ has been supplied by OIC to UQ.

Issue for determination

14. The issue for determination is whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.

Relevant law

15. The primary object of the RTI Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.¹⁶ The Act is to be applied and interpreted to further this primary object.¹⁷
16. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,¹⁸ including grounds on which access may be refused.¹⁹
17. Access may be refused to a document, to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.²⁰
18. In deciding whether disclosure would, on balance, be contrary to the public interest, section 49(3) of the RTI Act requires a decision-maker to:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.

Findings

19. Schedule 4 to the RTI Act contains non-exhaustive lists of irrelevant factors, and factors favouring disclosure and nondisclosure. I have had regard to schedule 4 in reaching this decision, and have disregarded prescribed irrelevant factors.
20. I have also had regard to the Access Applicant's submissions as made during the review.²¹ These submissions stress the particular importance of the Information in Issue to the Access Applicant, the Access Applicant's central role in matters to which the Information in Issue pertains, and the Access Applicant's desire to obtain as much information concerning those matters as possible, including information that will assist in giving insight into how UQ managed the Access Applicant's complaints.

¹⁵ With red redaction boxes, and labelled 'In issue'.

¹⁶ Section 3(1) of the RTI Act.

¹⁷ Section 3(2) of the RTI Act.

¹⁸ Section 23(1) of the RTI Act.

¹⁹ Section 47 of the RTI Act. The grounds are to be interpreted narrowly (section 47(2)(a) of the RTI Act), and the Act is to be interpreted with a pro-disclosure bias (section 44 of the RTI Act).

²⁰ Section 47(3)(b) of the 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14-16.

²¹ Received 1 May 2020.

21. Having considered the above, I have formed the view that disclosure of the Information in Issue could reasonably be expected to²² give the Access Applicant access to their own personal information,²³ permit the Access Applicant further insight into UQ's investigation of the Access Applicant's complaint, by disclosing background and contextual information informing UQ's decisions,²⁴ and enhance the accountability and transparency of UQ for its investigatory processes.²⁵ Also relevant is the general public interest in promoting access to government-held information.²⁶
22. The above are important public interests. Each has, however, been met to some degree by information UQ has given to the Access Applicant, including information released under the RTI Act, and letters advising of final findings and measures taken.²⁷ This moderates the weight to be afforded pro-disclosure considerations. I therefore afford these considerations moderately strong weight.
23. Telling against release is the fact that disclosure of the Information in Issue – preliminary and/or draft information, preceding UQ's final decision on the Access Applicant's complaint²⁸ – would disclose personal information of the Review Applicant,²⁹ and/or could reasonably be expected to prejudice the protection of the Review Applicant's privacy,³⁰ in circumstances that could also reasonably be expected to prejudice the Review Applicant's fair treatment, by disclosing preliminary considerations and views or details of other material that were not ultimately substantiated and/or relied upon in UQ's final findings.³¹ These are all significant public interest considerations, which, given the sensitive context in which the information was generated, warrant substantial weight.
24. Balancing competing public interests against one another, I consider that in the particular circumstances of this case, the substantial public interest considerations favouring nondisclosure of the Information in Issue outweigh those factors favouring disclosure.
25. Accordingly, I am satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest. Access to this information may therefore be refused.

²² The phrase 'could reasonably be expected to' calls for a decision-maker to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (eg merely speculative/conjectural 'expectations') and expectations which are reasonably based, ie, expectations for the occurrence of which real and substantial grounds exist: *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [155] to [160]. A reasonable expectation is one that is reasonably based, and not irrational, absurd or ridiculous: *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009) at [189] – [193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

²³ Schedule 4, part 2, item 7 of the RTI Act, noting that at least some of the Information in Issue comprises the Access Applicant's personal information, being 'information or an opinion...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': section 12 of the *Information Privacy Act 2009* (Qld) and schedule 5 to the RTI Act.

²⁴ Schedule 4, part 2, item 11 of the RTI Act.

²⁵ Schedule 4, part 2, items 1-3 of the RTI Act.

²⁶ I can identify no other factors or considerations favouring disclosure – schedule 4 does contain factors concerning administration of justice (including procedural fairness: schedule 4, part 2, items 16 and 17 of the RTI Act), however I do not consider these specific factors arise to be considered, in view of both the information that has been conveyed to the Access Applicant, and the fact that UQ communicated proposed and final outcomes to the Access Applicant – including affording an opportunity to comment on proposed outcomes, prior to their being finalised: UQ letters to the Access Applicant dated 19 December 2018 and 30 January 2019.

²⁷ See footnote 26.

²⁸ Which outcome was, as noted, communicated by UQ to the Access Applicant: see footnote 26.

²⁹ Giving rise to a public interest harm favouring nondisclosure: schedule 4, part 4, section 6 of the RTI Act. The Information in Issue appears in documents created in the course of dealing with the Access Applicant's complaint about the Review Applicant. The information appears in a context in which the Review Applicant is identifiable to the Access Applicant, and in these circumstances it can be regarded as personal information about the Review Applicant, subject to schedule 4, part 4, section 6 of the RTI Act. It is intertwined with the Access Applicant's personal information (see paragraph 21), and disclosure of the latter would therefore give rise to the relevant public interest harm.

³⁰ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others: paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" *Australian Law Reform Commission Report No. 108*, Vol 1, released 11 August 2008, at paragraph 1.56. I am satisfied information of the kind in issue falls within the Review Applicant's 'personal sphere', and that disclosure would interfere with that personal sphere.

³¹ Schedule 4, part 3, item 6 of the RTI Act.

DECISION

26. I vary the decision under review, by finding that access to the Information in Issue may be refused under sections 47(3)(b) and 49 of the RTI Act.
27. I have made this decision under section 110 of the RTI Act, as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Louisa Lynch
Right to Information Commissioner

Date: 28 May 2020

APPENDIX**Significant procedural steps**

Date	Event
22 July 2019	OIC received the Review Applicant's application for external review.
23 July 2019	OIC acknowledged receipt of the application for external review, and notified UQ of the application.
20 August 2019	UQ supplied procedural documents to OIC.
22 August 2019	UQ supplied further procedural documents to OIC.
9 September 2019	OIC wrote to both UQ and the Review Applicant, advising that the external review application had been accepted.
18 October 2019	OIC notified the Access Applicant of OIC's external review.
21 November 2019	OIC wrote to UQ, conveying a preliminary view that access to some information may be refused and requesting further information.
18 December 2019	UQ wrote to OIC, accepting OIC's preliminary view and providing requested information.
4 February 2020	OIC wrote to UQ, confirming UQ's position and specifying additional information to which access may be refused.
6 February 2020	OIC wrote to the Review Applicant, conveying a preliminary view that there were no grounds for refusing access to much of the information subject to objection, and inviting submissions in reply.
19 February 2020	The Review Applicant provided submissions.
25 February 2020	OIC wrote to the Review Applicant, reiterating OIC's 6 February 2020 preliminary view, inviting submissions in reply and advising OIC would proceed on the basis the Review Applicant accepted the preliminary view and withdrew objections to disclosure, in the event no reply was received by 10 March 2020.
17 March 2020	OIC wrote to the Review Applicant, advising OIC would proceed in accordance with its 25 February 2020 letter and ask UQ to release information (other than the Information in Issue) to the Access Applicant.
19 March 2020	OIC wrote to UQ, requesting it prepare information for release to the Access Applicant.
3 April 2020	OIC wrote to the Access Applicant, conveying the preliminary view that access may be refused to, relevantly, the Information in Issue.
17 April 2020	OIC requested UQ release information to the Access Applicant.
27 April 2020	The Access Applicant advised OIC that they did not accept OIC's preliminary view. OIC wrote to the Access Applicant, inviting both their application to participate in the external review and submissions in reply to the preliminary view.
28 April 2020	OIC wrote to the Review Applicant, advising of the status of the review.
1 May 2020	The Access Applicant lodged submissions.
7 May 2020	OIC invited the Access Applicant to apply to participate in the review.

Date	Event
20 May 2020	<p>OIC supplied UQ with copies of the Information in Issue and requested UQ provide the Access Applicant with a redacted copy.</p> <p>UQ confirmed provision of the redacted copy to the Access Applicant.</p> <p>OIC wrote to the Access Applicant, confirming the Information in Issue, reiterating OIC's preliminary view that access to that information may be refused, and confirming that the next step in the review would comprise a written decision.</p>