



Decision and Reasons for Decision

Citation:	<i>S30 and The University of Queensland [2021] QICmr 29 (10 June 2021)</i>
Application Number:	315092
Applicant:	S30
Respondent:	The University of Queensland
Decision Date:	10 June 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF ACCESS APPLICATION - IRRELEVANT INFORMATION - information outside of the subject matter - whether information may be deleted on the basis it is irrelevant to the terms of the application - section 73 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - BREACH OF CONFIDENCE - communications between agency employees - 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) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - access refused to information about other individuals - personal information and privacy - whether disclosure would, on balance, be contrary to public interest - whether access may be refused under section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to The University of Queensland (**UQ**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:
 - for each of three specified UQ staff members, emails about the applicant that were exchanged between that staff member and other UQ staff members; and
 - emails and minutes of conversations about the applicant that were exchanged between a specified UQ staff member and parties external to UQ.

2. UQ located 1,081 pages¹ and decided to:²
 - grant access to 553 pages
 - refuse access to 94 pages and parts of 27 pages on the ground that this information is exempt information under section 47(3)(a) of the RTI Act³
 - refuse access to three pages and parts of 179 pages on the ground that disclosure of this information would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act
 - refuse access to emails about the applicant between two named UQ employees and other staff members on the ground that these documents are nonexistent under section 47(3)(e) of the RTI Act; and
 - fully withhold 171 pages and delete parts of 81 pages on the basis that this information was not relevant to the applicant's access application.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of UQ's decision.
4. For the reasons set out below, I find that:
 - 171 pages and parts of 81 pages are outside the scope of the access application or may be deleted on the basis that they are not relevant to it; and
 - 96 pages and parts of 107 pages⁴ may be refused on the ground that their disclosure would, on balance, be contrary to the public interest.

Background

5. During the course of the applicant's employment, UQ made an application to the Mental Health Review Tribunal (**MHRT**) for an Examination Authority in relation to the applicant.⁵ The applicant's access application seeks communications between UQ staff members preceding the application for the Examination Authority.
6. Significant procedural steps in this review are set out in the Appendix to this decision.

Reviewable decision

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

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (particularly footnotes and Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁶ which provides that it is unlawful for a public entity to make a decision in a way that is not compatible

¹ Categorised in UQ's decision as 1,075 pages of Group 1 documents comprising emails between one of the three specified UQ staff members and other UQ staff members; and 6 pages of Group 2 documents comprising emails and minutes of conversations about the applicant that were exchanged between a specified UQ staff member and parties external to UQ.

² Decision dated 28 November 2019.

³ Namely, information the disclosure of which would found an action for breach of confidence – schedule 3, section 8(1) of the RTI Act. At paragraph 17 of UQ's decision, UQ stated that *'even if the information in issue here was not exempt, I consider that its disclosure would be contrary to the public interest'* and, in this regard, referenced the public interest factors at schedule 4, part 3, items 3 and 19 and part 4, sections 3(c) and 6(1) of the RTI Act.

⁴ Consisting of the 94 pages and parts of 27 pages that UQ decided were exempt information (defined as the Category B Information at paragraph 31 below); and 2 pages and 80 part pages of the information that UQ decided was contrary to public interest information (defined as Category A Information, again at paragraph 31 below).

⁵ Under section 502 of the *Mental Health Act 2016* (Qld).

⁶ Which came into force on 1 January 2020.

with human rights, or to fail to give proper consideration to a human right relevant to the decision.⁷ Here, the right to seek and receive information⁸ is particularly apposite. I note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ *'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.'*¹⁰ I consider a decision-maker will be *'respecting and acting compatibly with'* the right to seek and receive information and other rights prescribed in the HR Act, when applying the law prescribed in the *Information Privacy Act 2009 (Qld) (IP Act)* and the RTI Act.¹¹ I have, in accordance with section 58(1) of the HR Act, acted in this way in making this decision.

Information in issue

10. During the course of the external review, OIC facilitated the release of a small amount of additional information.¹² Further, the applicant confirmed¹³ that she was not seeking access to the mobile telephone numbers¹⁴ or signatures¹⁵ of UQ employees. The applicant also confirmed that she was not seeking access to information that has been inadvertently redacted from some pages of information,¹⁶ as this information has been disclosed elsewhere within the documents released by UQ.¹⁷
11. Accordingly, the information that remains in issue comprises:
 - 171 pages and parts of 81 pages which were deleted; and
 - 96 pages and parts of 107 pages¹⁸ to which access was refused.

Issues for determination

12. The applicant has raised two concerns about the manner in which UQ processed her application – firstly, that UQ's decision should have been made by UQ's principal officer rather than a delegate; and secondly, that delays in processing the application could have allowed the deletion of responsive emails. My role in conducting a merits review is to 'step into the shoes' of the primary decision-maker, to consider matters relating to the agency's 'reviewable decisions'¹⁹ afresh and determine the correct and preferable decisions.²⁰ Although the applicant's two concerns regarding UQ's processing of her application are not strictly relevant to UQ's 'reviewable decisions' that are the subject of

⁷ Section 58(1) of the HR Act. While the applicant no longer resides in Queensland, she did so during the timeframe specified in her access application, and she has raised her rights under the HR Act in her submissions to OIC. It is within this context that I have taken the HR Act into account.

⁸ Section 21 of the HR Act.

⁹ *Freedom of Information Act 1982 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

¹⁰ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573].

¹¹ *XYZ*, again at [573]; see also *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹² Pages 999 and 1,000 of the Group 1 Documents.

¹³ Applicant's submission to OIC received on 20 July 2020.

¹⁴ On pages 329, 338, 342, 344, 347, 349, 352, 355, 366, 398, 404, 407, 410, 411, 412, 415, 419, 423, 425, 431, 435, 438, 445, 450, 457, 459, 464, 467, 472, 475, 479, 481, 483, 490, 493, 495, 499, 501, 602, 605, 607, 609, 613, 618, 623, 629, 681, 683, 752, 757, 763, 775, 779, 782, 786, 789, 790, 793, 797, 800, 803, 806, 837, 841, 844, 847, 867, 870, 874, 878, 883, 899, 901, 902, 903, 905, 907, 908, 909, 911, 913, 914, 915, 946, 949, 952, 956, 962, 993, 1,003, 1,066, 1,070, 411, 412, 415, 419, 423, 425, 431, 435, 438, 445, 450, 457, 459, 464, 467, 472, 475, 479, 481, 483, 490, 493, 495, 499, 501, 602, 605, 607, 609, 613, 618, 623, 629, 681, 683, 752, 757, 763, 775, 779, 782, 786, 789, 790, 793, 797, 800, 803, 806, 837, 841, 844, 847, 867, 870, 874, 878, 883, 899, 901, 902, 903, 905, 907, 908, 909, 911, 913, 914, 915, 946, 949, 952, 956, 962, 993, 1,003, 1,066, 1,070 and 1,073 of the Group 1 documents and pages 1 and 3 of the Group 2 documents.

¹⁵ On pages 498 and 504 of the Group 1 documents and page 6 of the Group 2 documents.

¹⁶ Pages 386 and 670 of the Group 1 documents.

¹⁷ At pages 389, 394 and 736 of the Group 1 documents.

¹⁸ Incorrectly referred to in our preliminary view to the applicant dated 13 October 2019 as 97 pages and parts of 206 pages.

¹⁹ As defined in schedule 5 of the RTI Act.

²⁰ Section 105(1)(b) of the RTI Act.

this external review,²¹ for sake of completeness, I will briefly outline why I consider that these concerns are, in any event, misguided.

13. Firstly, the applicant submits²² that UQ's decision should have been made by UQ's principal officer, not a delegate, because the information located by UQ contains relevant healthcare information.²³ Even if I accepted the applicant's view that the information located by UQ contains relevant healthcare information (which, on my examination of the documents located by UQ, I do not), the requirement not to delegate²⁴ does not apply. This requirement only relates to dealing with an application to the extent it involves a healthcare decision²⁵ or appointing an appropriately qualified healthcare professional to make such a decision. However, UQ's decision did not involve any healthcare decision.²⁶ Consequently, UQ's delegate was able to deal with the applicant's application.²⁷
14. Secondly, the applicant considers²⁸ that there were delays in the processing of her application, which could have resulted in emails sought by her being deleted before UQ commenced its searches for them. However, the steps taken by UQ²⁹ accord with RTI Act processes and timeframes, and are necessary and/or usual for applications of this nature.
15. Apart from her concern about delays, the applicant did not raise any concerns about UQ's searches for responsive documents. OIC specifically referred the applicant to UQ's decision to refuse access to emails between two specified UQ staff members and other UQ staff members on the ground they were nonexistent; noted that it appeared that the applicant was not seeking a review of this particular decision; and advised that this issue would therefore not be addressed further.³⁰ The applicant did not respond to this advice.
16. Accordingly, the issues for determination in this review are:
 - whether information is outside the scope of, or not relevant to, the access application; and
 - whether access to information may be refused on the grounds that:
 - it is exempt information, namely information the disclosure of which would found an action for breach of confidence; or
 - its disclosure would, on balance, be contrary to the public interest.

Outside scope and irrelevant information

Relevant law

17. Under the RTI Act, a person has a right to be given access to documents of an agency.³¹ If an entire document does not contain *any* information which responds to the terms of an access application, it is outside the scope of the access application and the agency

²¹ Section 85 of the RTI Act.

²² Applicant's submissions to OIC received on 26-30 December 2019, 9 November 2020 and 10-11 December 2020.

²³ Defined in schedule 5 of the RTI Act as meaning '*healthcare information given by a healthcare professional*'.

²⁴ In section 30(5) of the RTI Act.

²⁵ Defined in section 30(6) of the RTI Act as meaning, in short, a decision under sections 47(3)(d), 51 and/or 77(2) of the RTI Act.

²⁶ That is, UQ's delegate did not make any decisions under sections 47(3)(d), 51 and/or 77(2) of the RTI Act. The decisions made by UQ's delegate are noted at paragraph 2 above.

²⁷ Under section 30(2) of the RTI Act.

²⁸ Applicant's submission to OIC received on 26-30 December 2019.

²⁹ UQ took steps to make the applicant's application compliant, consult with her under section 42 of the RTI Act, and issue a charges estimate notice under section 36 of the RTI Act, and made a request for a further specified period under section 35 which was not refused by the applicant.

³⁰ Letter from OIC to applicant dated 13 October 2020.

³¹ Section 23 of the RTI Act.

need not consider it as part of the application. Equally, once OIC determines that a document is outside the scope of an application, OIC cannot further consider the document in an external review arising from that application.

18. Section 73 of the RTI Act allows an agency to delete parts of a document that are not relevant to the terms of the access application in question. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents identified for release to an applicant and to facilitate that release.³² In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the applicant's application.³³

Findings

19. As noted at paragraph 1 above, the applicant requested emails about the applicant that were exchanged between specified staff members and other UQ staff members; and emails and minutes of conversations about the applicant that were exchanged between a specified UQ staff member and parties external to UQ.
20. The 171 pages and parts of 81 pages³⁴ that UQ decided were not relevant to the applicant's access application constitute emails or parts of emails which in nearly all instances relate to teaching allocations, IT issues, a course being delivered overseas, a winter research program, UQ's 'Blackboard' and other administrative matters. A small number of the emails or parts of emails are of a personal nature, comprising the exchange of news and pleasantries.
21. I am satisfied that the 171 pages and parts of 81 pages have no bearing upon, and are not pertinent to, the terms of the applicant's access application. In other words, this information is not about the applicant. Accordingly, I find that this information is outside the scope of the application or can be deleted under section 73 of the RTI Act on the basis that it is not relevant to the terms of the application.

Refused information

Exempt information – breach of confidence

Relevant law

22. Access to a document may be refused to the extent it comprises exempt information.³⁵ Schedule 3 of the RTI Act sets out the various types of exempt information – that is, information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.³⁶ Relevantly, schedule 3, section 8(1) of the RTI Act

³² Under section 73(3) of the RTI Act, the agency may give access to the document if it considers from the terms of the application or after consultation with the applicant, that the applicant would accept the copy and it is reasonably practicable to give access to the copy. The agency is entitled to make the decision to delete based on the access application itself (i.e., without consulting the applicant) where the information clearly falls outside the scope of the access application: see *8U3AMG and Department of Communities* (Unreported, Queensland Information Commissioner, 15 September 2011) at [15].

³³ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

³⁴ Pages 5, 6, 9, 10, 14, 15, 18, 19, 20, 24, 28, 32, 33, 66, 67, 73, 87, 88, 89, 90, 92, 93, 95, 96, 97, 99, 100, 101, 107, 108, 109, 110-120, 124-136, 138, 139, 140-142, 144-150, 152-157, 160-166, 169-173, 177-182, 185-189, 193-199, 201-205, 209-215, 218-225, 230-236, 238-243, 247-253, 255-259, 265-271, 274-278, 285-290, 293 and 297 of the Group 1 documents; and parts of pages 4, 8, 11, 13, 16, 21, 23, 25, 27, 29, 30, 41, 65, 83, 91, 94, 98, 105, 106, 121, 123, 143, 151, 158, 159, 167, 168, 174, 175, 176, 183, 184, 190, 191, 192, 200, 207, 216, 217, 228, 229, 237, 244, 245, 246, 254, 263, 264, 272, 273, 282, 283, 284, 291, 292, 636, 675, 676, 742, 866, 868, 869, 871-878, 958, 965, 968, 972, 976, 980, 981, 985, 990, 996 and 1,068 of the Group 1 documents.

³⁵ Sections 47(3)(a) and 48 of the RTI Act.

³⁶ Section 48(2) of the RTI Act.

provides that information is exempt if its disclosure would found an action for breach of confidence. This exemption encompasses actions for breach of contractual obligations of confidence as well as equitable actions for breach of confidence.³⁷

23. The elements of a claim for breach of confidence *in equity* are:³⁸

- 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 it.

Findings

24. I have reviewed the 94 pages and parts of 27 pages³⁹ that UQ refused on the ground that disclosure would found an action for breach of confidence. While the RTI Act prevents me from disclosing or revealing the exempt information,⁴⁰ I can confirm that it comprises communications in which third parties raised their concerns about the applicant and also information about those third parties.

25. During the review, OIC invited UQ to provide submissions to support its decision that disclosure of the information would found an action for breach of confidence.⁴¹ UQ maintained that the information met the required elements of a claim for breach of confidence in equity, but did not provide any further information to support its view.⁴²

26. In these circumstances, the information in issue itself reveals that it comprises communications in which third parties raise concerns about the applicant, and also information about those third parties. I accept that the information in issue meets the first element. As to whether it has the necessary quality of confidence to satisfy the second element, there is nothing before me to suggest that this information has been reproduced in the public domain. However, there is no evidence before me to reasonably substantiate that the information was received in circumstances importing an obligation of confidence, or that disclosure under the RTI Act constitutes an actual or threatened misuse of that information.

27. Accordingly, on the material before me and noting that UQ bears the onus in this review,⁴³ I am not satisfied that all of the requisite elements for an equitable action for breach of confidence are established. Therefore, I find that the information in issue is not exempt under schedule 3, section 8 of the RTI Act, and access to it may not be refused under section 47(3)(a) of the RTI Act.

28. I am, however, satisfied that disclosure of the 94 pages and parts of 27 pages, would on balance, be contrary to the public interest, for the reasons set out below. I refer to this information as the Category B Information in my findings at paragraphs 31 – 70.

³⁷ *Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66 (**Ramsay**) at [66].

³⁸ See *Ramsay* at [94], adopting *Optus Networks Pty Ltd v Telstra Corporation Ltd* (2010) 265 ALR 281 and *Smith Kline & French Laboratories (Aust) Ltd v Secretary, Department of Community Services & Health* 22 FCR 73.

³⁹ Pages 378-385, 387-388, 391-392, 396-397, 508-554, 561-581, 642-651 and 655-656 of the Group 1 documents; and parts of pages 386, 390, 395, 426, 439, 476, 484, 496, 502, 652, 657-658, 665-667, 826, 832-833, 836, 840, 843, 846-847, 869, 873 and 877 of the Group 1 documents and page 4 of the Group 2 documents.

⁴⁰ Section 108(3) of the RTI Act.

⁴¹ Letter from OIC to UQ dated 23 July 2020.

⁴² Email from UQ to OIC dated 18 August 2020.

⁴³ Section 87(1) of the RTI Act.

Contrary to the public interest information

Relevant law

29. Access to a document may be refused to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.⁴⁴ 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.⁴⁵
30. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁴⁶
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Findings

31. The information remaining in issue may be categorised as follows:
- **Category A Information** – 2 pages and 80 part pages⁴⁷ comprising personal information of UQ employees/students which is not about the applicant.
 - **Category B Information** – 94 pages and 27 part pages⁴⁸ comprising communications about the applicant sought from, or provided by, third parties, in which the third parties raised concerns about the applicant.
32. As noted at paragraph 28 above, the Category B Information comprises information that I have determined does not comprise exempt information. I also note that the extent of the refused Category B Information is less than first appears, as a document and a number of email chains or parts thereof are duplicated several times throughout this information.⁴⁹
33. In considering the Category A and Category B Information, I have kept in mind the RTI Act’s pro-disclosure bias⁵⁰ and Parliament’s intention that grounds for refusing access should be interpreted narrowly.⁵¹ Also, in my below assessment of whether disclosure of these categories of information would, on balance, be contrary to the public interest, I

⁴⁴ Sections 47(3)(b) and 49 of the RTI Act. Section 47(2)(a) of the RTI Act requires the grounds to be interpreted narrowly.

⁴⁵ 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.

⁴⁶ Section 49(3) of the RTI Act.

⁴⁷ Pages 299 and 300 of the Group 1 documents; and parts of pages 4, 7, 8, 11-12, 16-17, 21-22, 26-27, 30-31, 37, 42-43, 46, 68, 69, 72, 80, 82-85, 105, 121, 298, 308-309, 393, 417-418, 420, 424, 429, 432, 437, 446, 452, 458, 465, 473, 763, 774, 860, 863, 881, 896, 942, 958, 965, 966, 968, 969, 971-972, 975-976, 979, 980-981, 983-985, 988-996, 1,034-1,036 and 1,040-1,042 of the Group 1 documents.

⁴⁸ As set out at footnote 39 above.

⁴⁹ The information on pages 378-385 is duplicated at pages 386-388, 390-392, 395-397, 426, 439, 476, 484, 496 and 502; the information on pages 508 – 533 is duplicated at pages 534-554, 561-581, 642-643, 646, 648 and 649-651; the information on pages 644-645 is duplicated at pages 655-656; the information on page 652 is duplicated at 657-658 and 666-667; the information on page 836 is duplicated at pages 840, 843 and 846-847; the information on page 826 is duplicated at pages 832-833; and the information on page 869 is duplicated at pages 873 and 877.

⁵⁰ Section 39 of the RTI Act.

⁵¹ Section 47(2)(a) of the RTI Act.

have carefully considered the non-exhaustive lists of factors in schedule 4 of the RTI Act, and also considered whether any other public interest factors are relevant.

34. I have not taken into account any irrelevant factors in making this decision.⁵²

Factors favouring disclosure

35. The RTI Act recognises that, when the information in issue comprises an applicant's personal information, a factor favouring disclosure applies.⁵³ Personal information is:⁵⁴

information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

36. This pro-disclosure factor does not apply to the Category A Information, given that information is not about the applicant.

37. It does apply to the Category B Information, which comprises information about the applicant sought from, or provided by, third parties. Noting the public interest in individuals being able to access their own personal information held by government agencies, I afford this factor significant weight with respect to the Category B Information.⁵⁵

38. The applicant submits that releasing the information in issue would allow her to '*better understand and interpret the operations that led to the submission of an [E]xamination [A]uthority*'.⁵⁶ She also submits that releasing the information in issue '*will to some extent contribute to understanding the extent to which actions taken by [certain UQ staff] were based on their online exchange with someone using my name*'.⁵⁷ I have considered these submissions as part of my deliberations regarding whether disclosure of the information in issue could reasonably be expected to:

- promote open discussion of public affairs and enhance Government's accountability⁵⁸
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁵⁹ and
- reveal reasons for a Government decision and any background or contextual information that informed the decision.⁶⁰

39. I am satisfied that the above three pro-disclosure factors are not relevant to the Category A Information which, as noted above, comprises simply the personal information of UQ employees/students.

40. In terms of the Category B Information, although this information does not record the deliberations or decisions of UQ, I recognise that its disclosure may provide the applicant with a somewhat greater understanding of why UQ decided to make an application to

⁵² Section 49(3)(d) of the RTI Act.

⁵³ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁴ Definition of 'personal information' in schedule 5 of the RTI Act and section 12 of the IP Act.

⁵⁵ Given the references to the applicant were made by individuals other than the applicant, the information about the applicant is intertwined with the personal information of the other individuals. This issue of the 'intertwined' personal information is addressed below under the heading 'Factors favouring nondisclosure'.

⁵⁶ Applicant's submission to OIC received on 26-30 December 2019.

⁵⁷ Applicant's submission to OIC received on 21 July 2020.

⁵⁸ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 3 of the RTI Act.

⁶⁰ Schedule 4, part 2, item 11 of the RTI Act.

the MHRT. However, I also note that a significant amount of information in relation to the steps taken by UQ has already been provided to the applicant. The applicant has a copy of the application to the MHRT for an Examination Authority,⁶¹ a timeline of concerns raised by UQ management with the Workplace Psychologist⁶² and the communications between UQ management and the Human Resources Department in relation to the concerns that were raised about the applicant and the steps that were being considered as to how to address those concerns. The released information also indicates that the Workplace Psychologist at UQ provided the applicant with an explanation by email as to why UQ considered it necessary to make an application to the MHRT.⁶³

41. This information gives the applicant a substantial amount of information regarding the circumstances preceding UQ's application to the MHRT for an Examination Authority. I consider that disclosure of the Category B Information would not advance UQ's accountability and transparency in any significant way, or add much, if anything, to the applicant's understanding of the reasons for the referral to the MHRT. Further, while I have carefully considered the applicant's concern that UQ's actions '*were based on [an] online exchange with someone using my name*',⁶⁴ I am unable to identify any information among the Category B Information which would enable the applicant to interrogate this concern. In these circumstances, I consider disclosure of the Category B Information is not likely to significantly advance the above three pro-disclosure factors. I therefore afford these factors low weight.
42. The applicant also submits⁶⁵ that disclosure of the information in issue could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or individual employees;⁶⁶ and/or
 - reveal or substantiate that an agency or an individual employee has engaged in misconduct or negligent, improper or unlawful conduct.⁶⁷
43. In this regard, the applicant submits⁶⁸ that she considered UQ's Workplace Psychologist:
- worked in breach of the Australian Psychological Association's Code of Conduct, as well as circumvented standards in place with Queensland Health.*
44. Further, she observes⁶⁹ that UQ staff are bound by the *Public Sector Ethics Act 1994* (Qld) and UQ's Code of Conduct⁷⁰ and, noting this, contends that two instances of '*maladministration*' have occurred, namely:
- the decision making of UQ management in submitting an application for an Examination Authority to MHRT; and
 - '*comments by colleagues that were not duly dealt with*'.

⁶¹ At pages 438-441, 475-478, 483-486, 495-498 and 501-504 of the Group 1 documents and page 3-6 of the Group 2 documents. Note – within the MHRT Application Form, UQ refused access to Category A Information (a mobile telephone number and a signature) and approximately two lines of text in the Category B Information, which appear within two paragraphs describing the applicant's behaviour.

⁶² At pages 746-748 and 1,059.

⁶³ At pages 746-748, 1,059 and 1,060-1,061.

⁶⁴ Applicant's submission to OIC received on 21 July 2020.

⁶⁵ Applicant's submission to OIC received on 26-30 December 2019.

⁶⁶ Schedule 4, part 2, item 5 of the RTI Act.

⁶⁷ Schedule 4, part 2, item 6 of the RTI Act.

⁶⁸ Applicant's submission to OIC received on 26-30 December 2019.

⁶⁹ Applicant's submission to OIC received on 9 November 2020.

⁷⁰ Applicant's submissions to OIC received on 9 November 2020 and 10-11 December 2020.

45. She also states:⁷¹

... you however appear to preclude the possibility that statements by UQ staff constitute forms of harassment / bullying by describing statements as "raising concerns".

46. These submissions make serious allegations about the conduct of UQ and its employees. During the review, I asked UQ if the applicant had raised such allegations with it.⁷² UQ confirmed that the applicant had made a complaint about its Workplace Psychologist and another UQ employee, and that UQ's Integrity and Investigations Unit (IIU) had found that the issues raised by the applicant did not individually or collectively meet the definition of maladministration as per the *Public Interest Disclosure Act 2010* (Qld) (**PID Act**), or the definition of corrupt conduct under the *Crime and Corruption Act 2001* (Qld) (**CC Act**).⁷³ Having carefully examined the Category A and B Information, I am unable to identify any information consistent with the applicant's allegations noted at paragraphs 43 to 45 above. Indeed, I am unable to discern any evidence that could be construed as supporting a view that disclosure of the Category A or Category B Information could reasonably be expected to reveal any misconduct or possible deficiencies in the conduct of UQ or its employees. Accordingly, I am satisfied that the pro-disclosure factor regarding revealing or substantiating deficiencies in conduct does not apply in the circumstances of this review, while the pro-disclosure factor regarding allowing inquiry into possible deficiencies in conduct warrants no more than low weight.
47. The applicant also submits⁷⁴ that she has not been treated fairly by UQ and considers that if '*... a member of the UQ community is submitted to a coercive procedure without proper prior assessment*', then disclosure of the information could reasonably be expected to:
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies⁷⁵
 - contribute to the administration of justice generally, including procedural fairness;⁷⁶ and
 - contribute to the administration of justice for a person.⁷⁷
48. The applicant's concerns about fairness relate to the Examination Authority. I acknowledge that the applicant has concerns that she was required to undergo an involuntary examination which she states was not necessary. By its very nature, an application for an Examination Authority is made in circumstances where it is considered that a voluntary assessment is not possible. I note that the information released to the applicant indicates that UQ's Workplace Psychologist attempted to arrange to meet with the applicant, but the applicant indicated that she did not wish to meet with her, and on this basis it was felt that the applicant would be unwilling to attend a voluntary assessment.⁷⁸ I also note that the *Mental Health Act 2016* (Qld) provides that the MHRT must be satisfied that certain criteria are met before determining that an Examination Authority should be issued⁷⁹ and, in this instance, the MHRT was so satisfied. I further note that, after the applicant underwent an assessment pursuant to the Examination

⁷¹ Applicant's submission to OIC received on 9 November 2020.

⁷² With a view to ascertaining whether any information may be exempt information under schedule 3, section 10(4) or section 12(1) of the RTI Act.

⁷³ Email from UQ to OIC dated 1 February 2021.

⁷⁴ Submissions accompanying application for external review.

⁷⁵ Schedule 4, part 2, item 10 of the RTI Act.

⁷⁶ Schedule 4, part 2, item 16 of the RTI Act.

⁷⁷ Schedule 4, part 2, item 17 of the RTI Act.

⁷⁸ At pages 361, 746 and 1,062.

⁷⁹ Section 504(2) of the *Mental Health Act 2016* (Qld).

Authority, UQ's Workplace Psychologist provided a response to the applicant's questions about why UQ reached the decision to make an application to the MHRT.⁸⁰

49. Taking these circumstances, the information already released to the applicant⁸¹ and the content of the Category A and Category B Information into account, I do not consider that disclosure of the Category A or B Information could reasonably be expected to advance the fair treatment of the applicant, or contribute to the administration of justice, including procedural fairness, for the applicant, in relation to UQ's application for, and MHRT's issuing of, the Examination Authority.
50. The applicant's concerns about fairness also appear to relate to how UQ dealt with a complaint that she made to UQ about certain UQ staff. As noted at paragraph 46 above, the applicant made a complaint to UQ in relation to the Workplace Psychologist and another UQ employee, and UQ's IIU determined that the issues raised by the applicant did not qualify as maladministration under PID Act or corrupt conduct under the CC Act.⁸²
51. Taking these circumstances and the content of the Category A and B Information into account, I cannot identify how disclosure of the Category A or B Information could reasonably be expected to advance the fair treatment of the applicant, or contribute to the administration of justice for her, in terms of her complaint to IIU. For these reasons, in terms of both the Examination Authority and the IIU complaint, I do not consider that the above three pro-disclosure factors apply in respect of the Category A or B Information.
52. Finally, the applicant submits⁸³ that, as no further action was taken by Mental Health Services after she underwent an examination, disclosure of the Category B Information could reasonably be expected reveal that information relied on by UQ in determining to make an application for an Examination Authority was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.⁸⁴ Accordingly, the applicant considers that this pro-disclosure factor should be given considerable weight.
53. The Category B Information records third parties' concerns and opinions regarding circumstances preceding UQ's application for the Examination Authority. Such information is, by its very nature, shaped by factors such as the relevant parties' memories, impressions and points of view regarding particular events. This inherent subjectivity does not mean that the information provided by the third parties is necessarily incorrect, misleading or unfairly subjective, or that disclosure of the information could reasonably be expected to reveal this. Having carefully considered both the information released to the applicant and the Category B Information, I do not accept the applicant's contention that events following the examination demonstrate that the Category B Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. I am satisfied that all disclosure of the Category B Information would potentially reveal is that third parties' personal interpretations of particular events preceding UQ's application for the Examination Authority differ from the applicant's interpretation of those events. Given this, I am satisfied that this factor does not apply.

⁸⁰ At pages 1,060-1,061.

⁸¹ At pages 336, 339, 342, 349-350, 353, 357-363, 365-369, 376-377, 386, 389, 393-395, 405, 407, 409-504, 555-561, 587-631, 638-641, 653, 657-668, 678-729, 744-748, 759-859, 869 and 1,059.

⁸² Email from UQ to OIC dated 1 February 2021.

⁸³ Applicant's submission to OIC received on 10-11 December 2020.

⁸⁴ Schedule 4, part 2, item 12 of the RTI Act.

Factors favouring nondisclosure

54. The RTI Act recognises that disclosing an individual's personal information⁸⁵ to someone else can reasonably be expected to cause a public interest harm⁸⁶ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁸⁷
55. I consider these nondisclosure factors warrant significant weight with respect to the Category A Information which, as noted above,⁸⁸ comprises solely the personal information of UQ employees/students.
56. In terms of the Category B Information, as noted above,⁸⁹ this information comprises information about the applicant sought from, or provided, by third parties. Given the intertwined nature of this information, it is not possible to separate information concerning the applicant from information concerning the third parties. While the Category B Information is about the applicant, it is not solely about her, and its disclosure would also disclose the personal information of the third parties.
57. The applicant's submissions⁹⁰ quote the relevant definition of personal information and then assert:

An opinion will always be expressed by another individual. However, the IP Act puts emphasis on the person about whom an opinion is expressed. This information is understood as personal information. The definition does not foresee giving emphasis to protecting the person who expresses an opinion and in this way may make him/herself identifiable by introducing a term "intertwined information".

58. As noted at paragraph 35 above, personal information is '*information or an opinion ... about an individual...*'. The Category B Information comprises *opinions* about the applicant and, at the same time, *information* about the third parties who provided the opinions – and therefore comprises the personal information of both the applicant and the third parties. I can see no basis for the applicant's submission that the IP Act puts 'emphasis' on the person about whom an opinion is expressed. To the extent that the applicant suggests that the IP Act definition of personal information requires that greater weight be afforded to the factor favouring disclosure for an individual about whom an opinion is expressed; and/or less or no weight be afforded to factors favouring nondisclosure for an individual who expressed the opinion, I disagree.
59. The applicant also submits⁹¹ that:

It is very unclear how the submission to an involuntary procedure is considered as weighing less in terms of its interference into a person's privacy and family, as well as with regard to its implications on a person's reputation, in comparison to the privacy of someone making a voluntary statement in an email conversation.

...

Given that statements were issued in a context that brought about negative consequences for the applicant, i.e. submission to an involuntary procedure, it is considered reasonable to

⁸⁵ Again, '*personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*'

⁸⁶ Schedule 4, part 4, section 6(1) of the RTI Act.

⁸⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁸⁸ At paragraph 31.

⁸⁹ At paragraph 31.

⁹⁰ Applicant's submission to OIC received on 9 November 2020.

⁹¹ Applicant's submission to OIC received on 9 November 2020.

disclose personal information about the applicant that in this case is comprised of the opinions of others.

60. I acknowledge that the applicant experienced considerable distress being the subject of an application for an Examination Authority and undergoing an assessment pursuant to that Authority – particularly when she considers that the involuntary assessment was not necessary – and recognise that these processes encroached on her personal sphere in a very significant way. In this review, however, I am not tasked with balancing the prejudice to applicant's privacy in the Examination Authority processes against the prejudice to third parties' privacy should the Category B Information be released. Rather, I am required to consider only the possible release of the Category B (and A) Information, and weigh all pro-disclosure and nondisclosure factors related to this release against one another.
61. The applicant further submits⁹² that she is not seeking access to information from which an individual can be identified, and that given the short time she was employed at UQ she would be '*unlikely to know, from quotes, who the issuer of the statement was*'. I am satisfied that, even if the names and contact details of any individuals were redacted, their identity can '*reasonably be ascertained*' from the information. That is, using additional information, such as the surrounding information in the documents and contextual information concerning the individuals' connection and contact with the applicant, the third parties' identities can be reasonably ascertained.
62. The Category B information records the third parties' opinions, observations, experiences and/or concerns relating to the applicant. As such, it records their thoughts and, at times, emotions. I consider that this information is highly sensitive in nature, given that it was provided in the context of concerns about the applicant's wellbeing. I do not accept that the fact that the third parties provided the information on a voluntary basis⁹³ diminishes this sensitivity. In the circumstances of this review, I am satisfied that disclosure could reasonably be expected to prejudice the protection of the individuals' right to privacy and cause a public interest harm; and I consider that these two nondisclosure factors should be given significant weight in relation to the Category B Information.
63. The Category B Information was provided to UQ management by third parties who were concerned about the applicant's health and wellbeing – either in response to a request, or at the third party's own volition. Accordingly, I have also considered whether disclosure of the Category B Information could reasonably be expected to prejudice the management function of an agency⁹⁴ or have a substantial adverse effect on the agency's management of its staff, thereby causing a public interest harm.⁹⁵
64. The applicant refers to the *Public Sector Ethics Act 1994* (Qld) and ethical principles in UQ's Code of Conduct and submits⁹⁶ that:

... the decision-making in the case at hand pertaining to an involuntary submission falls under "maladministration" ... Ethical Principle 2 of UQ's Code of Conduct sees maladministration as something "to the detriment of the University community generally", which is why it encourages reporting of maladministration. Disclosure of information would hence be in UQ's own interest, as defined in UQ's Code of Conduct.

...

⁹² Applicant's submission to OIC received on 10-11 December 2020.

⁹³ Applicant's submission to OIC received on 9 November 2020.

⁹⁴ Schedule 4, part 3, item 19 of the RTI Act.

⁹⁵ Schedule 4, part 4, section 3(c) of the RTI Act.

⁹⁶ Applicant's submission to OIC received on 9 November 2020. (Applicant's footnote is omitted from this extract.)

Non-disclosure on the grounds that it would “prejudice the management function of an agency” would hence outweigh, if not work against, UQ’s own Ethical Principles.

65. In effect, the applicant’s submission contends that the factor favouring nondisclosure regarding prejudice to the management function of an agency does not apply. This submission is predicated on the basis that disclosure of the Category B Information would disclose ‘maladministration’. However, as set out at paragraph 46 above, I am unable to discern any evidence that could be construed as supporting this position.
66. I consider it relevant to note that agencies such as UQ often rely on information from individuals within their workforce to be alerted to, and to investigate, concerns about an individual employee’s health and wellbeing. To promote effective workplace management, it is important that employees can raise such concerns confidentially. Agency staff who raise concerns about a colleague generally do so on the understanding that the concerns raised will only be used by management to investigate the concerns raised and to enable management to provide any necessary support to the employee about whom concerns have been raised. It is reasonable to expect that, in the future, third parties may be deterred from providing this type of information if they are aware it would be disclosed to an employee under the RTI Act. This, in turn could prejudice the ability of an agency to effectively discharge its functions in managing its employees.
67. Taking into account the nature of the Category B Information, I consider the prejudice and public interest harm to UQ’s management function arising from the disclosure of this information would be significant and afford these nondisclosure factors significant weight.

Balancing the public interest

68. As outlined above, in relation to the Category B Information, I afford the pro-disclosure factor concerning the applicant’s personal information significant weight, and also afford the pro-disclosure factors regarding accountability, government operations, background or contextual information and deficiency of conduct low weight. In terms of the Category A Information, I have identified no factors favouring disclosure.
69. On the other hand, I afford the nondisclosure factors regarding personal information and privacy of other individuals in relation to the both Category A and Category B Information significant weight. Similarly, I afford the nondisclosure factors regarding prejudice or harm to the management function of an agency significant weight with respect to the Category B Information.
70. On balance, for the Category A Information, I consider that the nondisclosure factors outweigh the pro-disclosure bias and, for the Category B Information, I consider that the nondisclosure factors outweigh the pro-disclosure bias and applicable pro-disclosure factors. Accordingly, I find that access to the both the Category A and Category B Information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

DECISION

71. For the reasons set out above:

- I affirm UQ's decision that 171 pages and parts of 81 pages are outside the scope of the access application or may be deleted on the basis that the information is irrelevant⁹⁷
- I also affirm UQ's decision that access to two pages and parts of 107 pages (that is, the Category A Information) may be refused on the ground that disclosure of this information would, on balance, be contrary to the public interest;⁹⁸ and
- in terms of 94 pages and parts of 27 pages that UQ decided to refuse on the ground they comprised exempt information (that is, the Category B Information), I vary UQ's decision and find that access to this information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.⁹⁹

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

A Rickard
Assistant Information Commissioner

Date: 10 June 2021

⁹⁷ Section 73 of the RTI Act.

⁹⁸ Section 47(3)(b) and 49 of the RTI Act.

⁹⁹ Section 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
26 December 2019	OIC received the applicant's external review application.
27 December 2019	The applicant provided OIC with an updated external review application.
30 December 2019	The applicant resent the updated external review application to OIC.
2 January 2020	OIC notified the applicant and UQ that the external review application had been received and requested procedural information and documents from UQ.
13 January 2020	UQ provided some requested information to OIC.
19 January 2020	The applicant emailed OIC, raising a concern about communicating with her by email.
20 January 2020	UQ provided further requested documents to OIC.
24 January 2020	UQ provided the remaining requested documents to OIC.
16 February 2020	The applicant emailed OIC, confirming that, if OIC had sent her an email, she had not received it.
19 February 2020	OIC notified the applicant and UQ that the external review had been accepted, and requested the information in issue from UQ.
20 February 2020	UQ provided the information in issue to OIC. The applicant emailed OIC, raising a concern that OIC's notification did not capture the submissions in her external review application and asking if she could elaborate. OIC confirmed that it would consider all material before it and this was not required.
20 March 2020	The applicant emailed OIC, advising she had been in contact with UQ about procedures for whistleblowers. The applicant then resent this email to OIC.
16 April 2020	The applicant provided OIC with further information about her communications with UQ.
24 April 2020	OIC provided an update to the applicant.
30 June 2020	The applicant emailed OIC, seeking an update and confirming that, if OIC had sent her an email, she had not received it.
7 July 2020	OIC wrote to the applicant, requesting clarifications as to the scope of the matter.
20 July 2020	The applicant provided a written submission to OIC.
21 July 2020	The applicant provided a further written submission to OIC. The applicant then resent both written submissions to OIC.
23 July 2020	OIC wrote to UQ, conveying the preliminary view.
26 July 2020	The applicant emailed OIC, enquiring whether OIC had sent her an email regarding a change to OIC's business hours, as if OIC had not, this indicated cybersecurity problems with her email account.

Date	Event
27 July 2020	OIC registry staff confirmed to the applicant that the email about OIC's business hours was a general email sent to all current applicants.
18 August 2020	UQ provided a written submission to OIC and advised that it accepted some of OIC's preliminary view.
13 October 2020	OIC wrote to UQ, requesting that it release the further information to the applicant. OIC wrote to the applicant, conveying a preliminary view.
14 October 2020	UQ notified OIC that further documents had been released to the applicant.
22 October 2020	The applicant emailed OIC, stating that she presumed her email account had been hacked and requesting an extension of time to respond to OIC.
23 October 2020	The applicant emailed OIC, referring to problems with her email account and reiterating her request for an extension.
23 October 2020	The applicant emailed OIC, confirming that she had only sent one email earlier that day, and advising that she was experiencing problems with her email account.
26 October 2020	OIC emailed the applicant, granting an extension and confirming the new due date.
9 November 2020	The applicant provided a written submission to OIC. The applicant then resent the email containing her submission.
11 November 2020	The applicant emailed OIC with a clarification regarding her written submission.
25 November 2020	OIC wrote to the applicant, responding to issues raised in her submission and the preliminary view conveyed on 13 October 2020.
9 December 2020	The applicant emailed OIC, noting that OIC's due date did not specify a timezone and confirming when she would send her response.
10 December 2020	The applicant provided a written submission to OIC. She then emailed OIC with a clarification regarding her written submission.
11 December 2020	The applicant provided another version of her written submission, which included the clarification and other changes made by her.
28 January 2021	OIC advised the applicant that it would be proceeding to a formal decision.
29 January 2021	OIC wrote to UQ, requesting further information.
1 February 2021	UQ wrote to OIC, responding to UQ's request for more information.
23 April 2021	The applicant wrote to OIC, advising of cybersecurity problems with her email accounts.
27 May 2021	The applicant telephoned OIC, advising of cybersecurity problems with her email accounts.