



Decision and Reasons for Decision

Application Number:	311365; 311452
Applicant:	MOFV43
Respondent:	Queensland University of Technology
Application Number:	311467
Access Applicant:	MOFV43
Respondent:	Queensland University of Technology
Third Party:	Group of Queensland University of Technology academics
Decision Date:	6 November 2013
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION – applicant sought access to documents relating to a research project - access refused to several documents - whether disclosure would found an action for breach of confidence - sections 47(3) (a) and 48 of the <i>Right to Information Act 2009</i> (Qld) on the ground set out in schedule 3, section 8 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – applicant seeks access to documents about a research project - whether information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body - whether information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The access applicant applied to the Queensland University of Technology (**QUT**) for access to five documents about a research project run by QUT.¹ The five documents concern a publication by a group of QUT academics which was the subject of allegations of inaccuracies. The paper was published in an academic journal and later retracted following an inquiry into alleged research inaccuracies.

¹ For a more detailed description of the documents under consideration, please refer to paragraph 11.

2. QUT refused access to two of the documents on the grounds that disclosure would found an action for breach of confidence and granted partial access to three of the documents stating that disclosure of the balance of the documents would, on balance, be contrary to the public interest. QUT consulted several third parties in making this decision.²
3. The access applicant applied to the Office of the Information Commissioner for external review of that decision.
4. One of the third parties, a group of academics employed by QUT³ (**Third party**) applied for internal review of QUT's decision—specifically the aspect of the decision which granted partial access to two of the documents. QUT made an internal review decision⁴ about the two documents, deciding that slightly more information should not be disclosed because disclosure would, on balance, be contrary to the public interest.
5. The Third party and the access applicant applied separately for external review of this decision. The Third party submitted that no information in the two documents should be disclosed; the access applicant submitted that all information in the two documents should be disclosed.
6. During negotiations in the external review, the access applicant agreed that disclosure of the balance of document 5 would be contrary to the public interest. This document is therefore not considered in this decision.
7. For the reasons set out below, the four documents under review are exempt from disclosure as they fall under the CMC exemption.

Background

8. Significant procedural steps are set out in the appendix to this decision.

Reviewable decision

9. The decisions under review are:
 - QUT's decision on the original access application as it relates to documents 1 to 4—dated 3 January 2013
 - QUT's decision on the internal review dated 8 March 2013 on documents 1 and 2.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Information in issue

11. The information in issue in this decision is:
 - an inquiry panel report into the paper (**document 1**)

² QUT's decision was dated 3 January 2013.

³ As the group of professors applied for internal and external review collectively and made submissions collectively, I have treated them as one third party for the purposes of this decision.

⁴ Dated 8 March 2013.

- Vice-Chancellor's correspondence with external research scholar concerning the inquiry panel report (**document 2**)
 - scientific report by a private company (**document 3**); and
 - scientific report by a private company⁵ (**document 4**).
12. The access applicant is asking for review of QUT's decision to refuse access to parts of documents 1 to 4 and QUT's subsequent decision to refuse access to more of documents 1 and 2. The third parties are seeking review of QUT's decision to grant access to any of documents 1 and 2. Therefore—this decision considers whether the whole of documents 1 to 4 should be disclosed.

Issues in this review

13. The issue in this review is whether access to the information in issue can be refused on the grounds that it is exempt under the CMC exemption.
14. QUT decided that disclosure of some of documents 1 and 2 would, on balance, be contrary to the public interest. They decided that disclosure of documents 3 and 4 would found an action for breach of confidence and so be exempt from disclosure.
15. On external review, QUT provided information which raised the possibility that the information in issue is covered by the CMC exemption. I explain below why the information in issue is exempt from disclosure under the CMC exemption. As I am satisfied that the information in issue is subject to the CMC exemption, it is not necessary to consider whether disclosure of documents 1 and 2 would, on balance, be contrary to the public interest or whether disclosure of documents 3 and 4 would found an action for breach of confidence. I therefore have not considered the application of the public interest or the breach of confidence exemption in this decision.

Is the information in issue exempt from disclosure under the CMC exemption?

16. Yes. My reasons are set out below.

Relevant law

17. An agency may refuse access to information where it comprises exempt information.⁶
18. Information is exempt information if it consists of information obtained, used or prepared for an investigation by the Crime and Misconduct Commission (**CMC**), or another agency such as QUT, in performing the prescribed functions of the CMC (**CMC Exemption**).⁷
19. The information in issue will be exempt information under the CMC Exemption if:
- the exception to the CMC Exemption does not apply
 - the information in issue was obtained, used or prepared for an investigation by QUT; and
 - in undertaking the investigation, QUT was performing the prescribed functions of the CMC.

⁵ I am unable to provide further information about the two scientific reports as these reports, including information which would identify the authors or content of the reports (such as their titles), are claimed to be exempt information. Section 108 of the RTI Act prevents me from disclosing information which is claimed to be exempt.

⁶ Sections 47(3)(a) and 48 and schedule 3 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

⁷ Under schedule 3, section 10(4) of the RTI Act.

Does the exception to the CMC Exemption apply?

20. The CMC Exemption will apply except if the investigation is (i) about the applicant and (ii) the investigation has been finalised.⁸ This is the exception to the CMC exemption.
21. QUT has submitted that the information in issue is being considered as part of an ongoing allegation of research misconduct. This investigation has been referred to the CMC and the CMC has referred it back to QUT to deal with, subject to the CMC's monitoring role.
22. The investigation is not about the access applicant and the investigations are ongoing. I am therefore satisfied that the exception to the CMC exemption does not apply.

Was the information in issue obtained, used or prepared for an investigation by QUT?

23. Yes.
24. The terms 'obtained, used or prepared' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) and so are to be given their ordinary meaning.⁹
25. QUT submitted that the information in issue was information obtained, used or prepared for an investigation of an allegation of research misconduct which is ongoing and has been notified to the CMC:
 - specifically, there is an open case with QUT which relates to a complaint about a grant from the National Health and Medical Research Council (**NHMRC**)
 - QUT referred the complaint to the CMC, which assessed the allegation and considered that the allegation, if proven, may constitute official misconduct
 - the CMC referred the matter back to QUT to deal with, subject to the CMC's monitoring role and with the requirement that the CMC be advised of the outcome; and
 - the case remains open because after QUT informed NHMRC of its decision on the complaint, NHMRC referred the matter to the Australian Research Integrity Commission (**ARIC**) for review. In reviewing QUT's handling of the complaint about the NHMRC grant, ARIC will consider QUT's handling of the earlier enquiry into the retracted publication. Once this process is finalised, the outcome will be notified to the CMC.
26. QUT have submitted that the information in issue is part of the information being considered in this investigation.
27. The applicant submitted that the information in issue was not obtained, used or prepared for an investigation by QUT.¹⁰ I am unable to describe the submissions in detail in this decision as the applicant has asked for the content to remain confidential. I have considered them however, and I am satisfied, despite the submissions, that the information in issue was obtained, used or prepared for an investigation by QUT.

⁸ Schedule 3, section 10(6) of the RTI Act.

⁹ *Springborg, MP and Crime and Misconduct CMC* (2006) 7 QAR 77.

¹⁰ Submissions dated 28 October 2013 and 1 November 2013.

Is the investigating body or agency a prescribed crime body or another agency performing a prescribed crime body's functions?

28. The CMC is a prescribed crime body
29. The CMC's 'prescribed functions' for the purposes of the CMC Exemption include its 'misconduct functions' as defined in the CM Act.¹¹
30. The CMC's misconduct functions include ensuring that a complaint about misconduct is dealt with in an appropriate way. The CMC must perform its misconduct function having regard to the principles of cooperation, capacity building, devolution and the public interest.¹²
31. If an agency reasonably suspects that a complaint involves or may involve official misconduct, it must notify the CMC.¹³ If the CMC refers a complaint about official misconduct back to the agency, the agency must deal with the complaint in the way it considers most appropriate, subject to the CMC's monitoring role.¹⁴
32. As set out above, QUT reported the allegations to the CMC, which referred them back to QUT to deal with. Therefore, I consider that QUT is performing the CMC's misconduct function while conducting the investigation. I am satisfied that QUT is therefore 'performing a prescribed crime body's functions' within the meaning of the CMC Exemption.

Conclusion

33. Based on the above, the information in issue satisfies the requirements of the CMC Exemption and QUT is entitled to refuse access to the information in issue as it is exempt under sections 47(3)(a) and 48 and schedule 3, section 10(4) of the RTI Act.

DECISION

34. I vary the decisions under review and find that QUT is entitled to refuse access to the information in issue as it is exempt under the CMC Exemption.
35. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Assistant Information Commissioner Corby

Date: 6 November 2013

¹¹ Schedule 3, section 10(9) of the RTI Act.

¹² Section 33(b) and section 34 of the CM Act.

¹³ Sections 34 and 38 of the CM Act.

¹⁴ Section 44(2) of the CM Act.

APPENDIX

Significant procedural steps

Date	Event
8 November 2012	The access applicant made an application to QUT for five documents about a research project.
3 January 2013	QUT issued a decision on the access application.
20 January 2013	A company applied for internal review of QUT's decision in respect of one aspect of document 1.
30 January 2013	The access applicant applied to the OIC for external review of the original access decision (OIC file number 311365).
6 February 2013	OIC notified the applicant in writing that external review application 311365 had been accepted. OIC notified QUT that external review application 311365 had been accepted and asked QUT for a copy of the Information in Issue.
8 February 2013	Third party applied to QUT for internal review of QUT's decision dated 3 January 2013 in respect of document 1 and 2.
14 February 2013	The access applicant informed OIC that he had not received all of document 5 and he still sought access to this document in full.
26 February 2013	QUT issued an internal review decision to the company about document 1, deciding that a small amount of additional information would, on balance, be contrary to the public interest to be disclosed. Neither the company, nor the access applicant applied for external review of this decision.
27 February 2013	QUT provided the balance of document 5 to OIC, agreeing to disclose the covering letter with the identity of a research scholar removed.
8 March 2013	QUT issued an internal review decision to the Third party and the original access applicant in respect of the Third party's request for internal review of QUT's original decision on documents 1 and 2.
8 April 2013	The access applicant applied to OIC for external review of QUT's internal review decision dated 8 March 2013 (OIC file reference 311452).
9 April 2013	The Third party applied to OIC for external review of QUT's internal review decision dated 8 March 2013 (OIC file reference 311467).
19 April 2013	OIC wrote to the access applicant confirming document 5 was being considered in external review application 311365 and setting out the documents and issues under consideration in the access applicant's two external reviews (311365 and 311452).
2 July 2013	OIC wrote to QUT asking for more submissions on the applicability of the breach of confidence exemption to documents 3 and 4. OIC wrote to the applicant informing him that QUT had agreed to disclose part of document 5 and asking him to respond if he still sought access to the balance of document 5.
12 July 2013	The access applicant responded to OIC's 2 July 2013 letter stating he still sought access to document 5.
16 July 2013	QUT provided additional submissions on its breach of confidence claim.
31 July 2013	OIC wrote to the access applicant setting out our view that disclosure of documents 3 and 4 would found an action for breach of confidence and that disclosure of the balance of document 5 would, on balance, be contrary to the public interest.

12 August 2013	Applicant responded to OIC's view, indicating that he did not accept the view.
26 August 2013	OIC provided a second view to the applicant, re-stating our view on documents 3–5 and providing our view that documents 1 and 2 are subject to the CMC exemption.
9 September 2013	The access applicant responded to OIC's letter, objecting to the view on documents 1–4.
24 October 2013	QUT provided OIC with additional information on the application of the CMC exemption to documents 3 and 4.
25 October 2013	OIC issued a third view to the applicant stating that the CMC exemption applied to documents 3 and 4.
28 October 2013	The applicant contacted OIC stating he did not accept our view on the CMC exemption and provided submissions.
1 November 2013	The applicant contacted OIC restating he did not accept our view on the CMC exemption and provided a further submission.