



## Decision and Reasons for Decision

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**Application Number:** 210844

**Applicant:** Ms H Dimes

**Respondent:** James Cook University

**Decision Date:** 25 August 2009

**Catchwords:** **FREEDOM OF INFORMATION – section 44(1) of the *Freedom of Information Act 1992 (Qld)* – matter affecting personal affairs – whether information concerns the personal affairs of a person other than the applicant – whether disclosure would, on balance, be in the public interest – information relating to another individual’s course of study**

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## REASONS FOR DECISION

### Summary

1. The applicant sought access under the *Freedom of Information Act 1992 (Qld)* (**FOI Act**) to an email held by James Cook University (**JCU**). In response to the application, JCU released all except the first sentence of the email to the applicant.
2. On external review, in an effort to resolve the review informally, JCU agreed to release the sentence in issue, with the exception of five words.
3. For the reasons set out below, I am satisfied that the five remaining words are exempt from disclosure under section 44(1) of the FOI Act.

### Background

4. On 13 February 2007, the applicant applied to JCU under the FOI Act requesting access to her post graduate student application including all documents on file from June 2005.
5. By letter dated 20 April 2007, JCU provided the applicant with a copy of an email between two JCU staff members which concerned the applicant and noted that some of the text had been blacked out to protect the privacy of a third party not directly involved with the applicant's application. JCU did not inform the applicant of her rights to seek internal review of the decision.
6. By letter dated 20 January 2009 (**FOI Application**), the applicant wrote to JCU as follows:

*I remain concerned about my application to complete a PhD at JCU being rejected and find that I need to have another copy of the email sent by Jan Wegner to Helene Marsh, 22/9/05.*

*You have already sent me a copy but the first line is blocked out. That sentence must concern me in some way as the letter is completely about my application being rejected.*

*I understand that a name may be blocked out, but the only way I can be sure that this sentence does not contain information useful to me is to see the general drift of the sentence. As I have said before, only I can estimate what is useful information and what is not. Your assessment of what is 'useful information' is not called on.*

*Your letter to me of 20<sup>th</sup> April, 2007 says that the material blacked out has been withheld to protect the privacy of a third party. Deleting a name or names would do that. You understand I think that the university cannot claim exempt matter under the legislation about privacy of a third party. That sentence must have some relevance to me and so I request that your release it under FOI legislation.*

7. By letter dated 6 February 2009, JCU wrote to the applicant and advised her as follows:
  - a copy of the email was sent to her on 20 April 2007, the first line of which was withheld to protect the privacy of a third party
  - as the email was sent to her on 20 April 2007, the time limit for appealing the decision had passed
  - the original decision to withhold the first line of the email is confirmed.

8. By letter dated 20 February 2009, the applicant requested internal review of the decision dated 6 February 2009.
9. JCU did not issue an internal review decision and accordingly, JCU's principal officer is taken to have affirmed the decision dated 6 February 2009.<sup>1</sup>
10. By letter dated 6 May 2009, the applicant requested external review of the deemed affirmation.

### **Decision under review**

11. The decision under review is the deemed affirmation of the decision dated 6 February 2009 referred to at paragraph 9 above.

### **Steps taken in the external review process**

12. By facsimile dated 18 May 2009, the Office of the Information Commissioner (**Office**) asked JCU to provide various initiating documents relevant to this review.
13. By email on 9 June 2009, JCU provided the documents requested at paragraph 12 above.
14. On 18 June 2009 and 1 July 2009, a staff member of the Office inquired as to whether JCU was willing to release any further information to the applicant in an effort to informally resolve the matter. JCU agreed to release part of the relevant sentence to the applicant but maintained its claim that five words in that sentence were exempt from disclosure under section 44(1) of the FOI Act.
15. By email on 14 July 2009, JCU provided the applicant with a copy of the information it had agreed to release to her.
16. On 14 July 2009, a staff member of the Office telephoned the applicant to:
  - advise her that:
    - JCU had agreed to release some additional information to her
    - it was my preliminary view that the remaining five words in the sentence were exempt from disclosure under section 44(1) of the FOI Act
  - ascertain whether the applicant wished to resolve the external review on the basis of the additional information being released.

The applicant indicated that she did not accept my preliminary view and wished to pursue access to the remaining five words in the relevant sentence.

17. By letter dated 15 July 2009, I wrote to the applicant confirming that it was my preliminary view that the five words remaining in issue in the review are exempt from disclosure under section 44(1) of the FOI Act. I invited the applicant to provide submissions in support of her case by 29 July 2009 if she did not accept my preliminary view.
18. On 21 July 2009, a staff member of the Office telephoned the applicant to confirm she had received the relevant correspondence from JCU and the Office and to inquire whether the applicant accepted the preliminary view. The applicant advised that she did not accept the preliminary view.

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<sup>1</sup> Section 52(6) of the FOI Act.

19. By email on 21 July 2009, the applicant requested an extension of time to provide submissions in response to the preliminary view.
20. On 22 July 2009, a staff member of the Office telephoned the applicant to advise that, in the circumstances, an extension of time was not warranted and any submissions the applicant wished to make were due on 29 July 2009.
21. By email on 23 July 2009, the applicant again requested an extension of time to provide submissions and set out the reasons for her request.
22. By email on 23 July 2009, I advised the applicant that I agreed to extend the time for her to provide submissions until 10 August 2009 and responded to a number of issues raised in her email.
23. By email on 29 July 2009, the applicant indicated that she would agree to resolve the matter if the remaining matter in issue was released to her except for the individual's name.
24. By email on 30 July 2009, I wrote to the applicant and explained that:
  - it was my preliminary view that the additional words surrounding the person's name may enable that person's identity to be ascertained
  - JCU had agreed to release all non-identifying information to the applicant
  - the solution the applicant proposed accorded with my preliminary view.

I asked the applicant to advise me whether she would be willing to settle the review on the basis of the additional information that had already been released to her.

25. By letter dated 3 August 2009, which was received by email on 4 August 2009, the applicant provided submissions in support of her case and in response to my preliminary view. The applicant also requested that I consult the relevant individual in relation to the matter in issue.
26. By email on 10 August 2009, I wrote to the applicant to clarify a number of issues raised in her submissions and to advise that consultation with the relevant individual was not practicable or necessary in the circumstances.<sup>2</sup>
27. By email on 13 August 2009, the applicant raised the issue of consultation again and suggested that she needed to be convinced that my decision to not consult the relevant individual was not to her detriment.
28. By email on 15 August 2009, the applicant provided further submissions in support of her case and in response to my preliminary view.
29. In making my decision, I have taken the following into account:
  - the applicant's request dated 13 February 2007 and JCU's letter to the applicant dated 20 April 2007
  - the FOI Application dated 20 January 2009
  - JCU's initial decision dated 6 February 2009

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<sup>2</sup> Consultation in this matter would only be required if I formed a view that the matter in issue should be released under the FOI Act. As I am satisfied that the matter in issue qualifies for exemption, it is unnecessary for me to undertake consultation.

- the applicant's internal review application dated 20 February 2009
- the applicant's external review application dated 6 May 2009
- file notes of telephone conversations with JCU on 18 June 2009 and 1 July 2009
- files notes of telephone conversations with the applicant on 14 July 2009, 21 July 2009 and 22 July 2009
- information provided by JCU by email on 9 June 2009, 22 June 2009, 1 July 2009 and 14 July 2009
- the applicant's emails to this Office dated 23 July 2009, 29 July 2009 and 13 August 2009
- the applicant's submissions dated 3 August 2009 and 15 August 2009
- the matter in issue
- relevant provisions of the FOI Act and previous decisions of the Information Commissioner, as referred to in this decision.

### **Matter in issue**

30. The matter in issue in this review is five words which appear in the first sentence of the relevant email (**Matter in Issue**). The remainder of the email has been released to the applicant in full.

### **Relevant law**

31. The FOI Act was repealed by the *Right to Information Act 2009 (RTI Act)*<sup>3</sup> which commenced on 1 July 2009.<sup>4</sup> However, because the FOI Application was made under the FOI Act and has not yet been finalised, for the purposes of making a decision in this review, I am required to consider the application of the FOI Act (and not the RTI Act) to the matter in issue.<sup>5</sup>
32. Section 44(1) of the FOI Act provides:

#### **44 Matter affecting personal affairs**

- (1) *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

33. Section 44(1) therefore requires me to consider the following questions in relation to the Matter in Issue:
- Firstly, does the matter in issue concern the personal affairs of person/s (other than the applicant)? (**Personal Affairs Question**) If so, a public interest consideration favouring non-disclosure of the matter in issue is established.
  - Secondly, are there public interest considerations favouring disclosure of the matter in issue which outweigh all public interest considerations favouring non-disclosure of the matter in issue? (**Public Interest Question**)

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<sup>3</sup> Section 194 of the RTI Act.

<sup>4</sup> With the exception of sections 118 and 122 of the RTI Act.

<sup>5</sup> Section 199 of the RTI Act.

### **Personal Affairs Question**

34. In *Stewart and Department of Transport (Stewart)*<sup>6</sup> the Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act. In particular, he said that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:
- family and marital relationships
  - health or ill-health
  - relationships and emotional ties with other people
  - domestic responsibilities or financial obligations.
35. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.

### **Public Interest Question**

36. The 'public interest' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a public interest consideration is one which is common to all members of the community, or a substantial segment of them, and for their benefit. The public interest is usually treated as distinct from matters of purely private or personal interest. However, some recognised public interest considerations may apply for the benefit of individuals in a particular case.
37. In *Fox and Department of Police*,<sup>7</sup> the Information Commissioner indicated that:

*Because of the way that section 44(1) of the FOI Act is worded and structured, the mere finding that information concerns the personal affairs of a person other than the applicant for access must always tip the scales against disclosure of that information (to an extent that will vary from case to case according to the relative weight of the privacy interests attaching to the particular information in issue in the particular circumstances of any given case), and must decisively tip the scales if there are no public interest considerations which tell in favour of disclosure of the information in issue. It therefore becomes necessary to examine whether there are public interest considerations favouring disclosure, and if so, whether they outweigh all public interest considerations favouring non-disclosure.*

### **The agency's submissions**

38. In its letter to the applicant dated 6 February 2009, JCU indicates that the information withheld<sup>8</sup> was not disclosed, so as to protect the privacy of a third party.

### **The applicant's submissions**

39. By letters dated 3 August 2009 and 15 August 2009, the applicant made submissions in support of her case and in response to my preliminary view.

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<sup>6</sup> (1993) 1 QAR 227. See in particular paragraphs 79 – 114.

<sup>7</sup> (2001) 6 QAR 1 at paragraph 19.

<sup>8</sup> Which at that time was the first sentence in the email.

### **Personal Affairs Question**

40. By letter dated 3 August 2009, the applicant made the following submissions which are relevant to the Personal Affairs Question:

*Preliminary: As per your email of July 30<sup>th</sup>, I see that in the original assessment by Tara and you your concern was to release those words which were about me.<sup>9</sup> This is not what I wanted. I wanted that sentence in its entirety released as it must have had some relevance to me, the remainder of the email being entirely about me and my concerns.*

*You assessed that all but five words should have been released to me. However, those words which were released only confirmed that someone else was in the same difficulty as me, or had been. In other words the interests of person x and I, ie our personal affairs, were parallel or conjoined in the eyes of JCU staff. I certainly feel that I and person x have concerns/personal affairs in common.*

...

*3: You say that Tara and yourself carefully considered which words in the sentence might enable the identity of the other person to be ascertained. However, as paragraphs 86 to 90 of Stewart make clear, the principle that a person's name is part of that person's personal affairs call for a careful evaluation and characterisation of the context in which a person's name appears. Their name, per se, is that by which a person may, not merely privately but generally, be known. A name alone does not ordinarily fall within the meaning of the phrase "personal affairs".*

*4: You do not appear to consider that the personal affairs of person x is at issue on any other grounds. (These are dealt with in paragraphs 78 to 80 of Stewart.)...*

41. By letter dated 15 August 2009, the applicant made the following submissions which are also relevant to the Personal Affairs Question:

*1: You quote s.44(1) as supporting your view that the exempted five words 'can be characterized as personal affairs information because it relates to another individual in the context of that individual's course of study.'*

*I did not bother submitting a view about this as in my opinion the fact of person x being a student is on the public record. This is more or less what your FOI Concepts sheet says about personal affairs – they are not about things the person does in a job or business, or as part of a public activity.*

*I am assuming therefore that*

- *the name of the person is not an issue for you but that*
- *your principal interest is in person x in the context of their study.*

### **Public Interest Question**

42. By letter dated 3 August 2009, the applicant made the following submissions which are relevant to the Public Interest Question:

*1: What is at issue is that I and another person have been categorized as 'difficult' and that having that character was or could be an issue for decision makers within JCU. Therefore, it became apparent that what was at issue in the whole saga of*

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<sup>9</sup> In my email I said '*... I had emphasised that the five words are not about you because I wanted to let you know that I have considered your concern. Which was quite understandable in the circumstances, that the words must have been about you. However, what I didn't explain was that before we approached James Cook University to ask if they would agree to release some additional information in the first sentence, Tara and I carefully considered which words in the sentence might enable the identity of the other person to be ascertained.*'

- *my application being rejected*
- *and then failing to come within the ambit of JCU's grievance procedures,*
- *and of failing to have the decision to reject reversed by my application under such procedures as were available to me*

*was also an issue for person x. The realities of decisionmaking as practised at JCU is naturally a matter of interest to all other members of the public who apply to JCU for a decision on some matter. Specifically, informal networking of subjective and therefore inappropriate information is included in JCU's decision-making procedures.*

...

*This five words therefore has a wider relevance than just to me or to person x. My problem about an unsatisfactory decision is not personal to me. It is about the attainment of one of the major objects of FOI legislation (ie, enhancing government's accountability and keeping the community informed of government's operations). Government in this instance, as you know, should be understood to mean 'agent' or 'agency' and applies within the legislation to, in this instance, JCU's accountability and transparency of their operations. In other words Public Interest arises as an issue favouring full disclosure of the email to both me and person x as an example of the decision-making process as administered at JCU.*

43. By email to this Office on 23 July 2009, the applicant also made the following submissions on this issue:

- *I am compared as a student with person X so the identity of person X is of concern to me and does concern me.*
- *This item of information would allow me to look up the public record to see what the problem was between X and JCU.*
- *I might even know of the person already and or the history of their problems with JCU.*
- *This history may establish that JCU has a track record, or that a legal decision went against them in that case*

44. By letter dated 15 August 2009, the applicant made the following submissions which are relevant to the Public Interest Question:

*2: It is known to me and various staff at JCU that person x and I are characterized as having 'difficult' personalities. However the only information which can be yielded in five words is unlikely to tell me anything more than that (plus the name, of course.) That is it does not reveal anything else about person x in the context of their study.*

*I have put to you that the public interest would be served by releasing those five words because it is possible that*

- *they alert not just me, but person x and the public generally how our character as a student can be defamed; but more significantly*
- *that unprofessional opinions of this sort can play a part in my/the other person's career/business as a student.*

*3: That same FOI Concept sheet does mention exempt matter as including 'information about a student's education.' I don't think so few words would reveal anything about person x's education let alone anything sensitive. However, these five words are of concern to me and my personal experience as a student because they allow me to understand more fully what that sentence comparing person x and me means. Person x may have a physical disability for example. They may simply be a mature age student. This would change the significance for me of being characterized along with person x as 'difficult'.*



## Findings

### *Personal Affairs Question*

45. In providing reasons for my decision I am prohibited from disclosing matter that is claimed to be exempt matter.<sup>10</sup> In her submissions the applicant speculates about what she believes the Matter in Issue conveys. Nothing in these reasons should be taken to confirm or deny the applicant's speculations as to the content of the Matter in Issue.
46. The applicant suggests that the Matter in Issue constitutes her personal affairs *and* the personal affairs of the other individual because:
- it appears in an email which is otherwise about her and therefore must have some relevance to her
  - the email confirms that someone else was 'in the same difficulty' as her and therefore the interests of the other individual and her are parallel or conjoined in the eyes of JCU staff and therefore they have concerns/personal affairs in common.
47. I do not accept the applicant's first submission. I explained to the applicant in my letter conveying my preliminary view that although the Matter in Issue appears on an email which is otherwise about her, the Matter in Issue is an aside before the author goes on to discuss the applicant. I am satisfied that the Matter in Issue is about and concerns someone other than the applicant and is not about the applicant.
48. In relation to the applicant's second submission, the Information Commissioner has previously explained that matter can concern more than one individual's personal affairs<sup>11</sup> and is sometimes inextricably interwoven. In such circumstances the personal affairs of each individual cannot be severed. However, I am satisfied that this is not such a circumstance.
49. The applicant has made extensive submissions based on her assumption that the individual referred to in the email was 'in the same difficulty' as her in an effort to construe the Matter in Issue as shared personal affairs.
50. To be characterised as shared personal affairs, the relevant information must concern both the applicant's and another individual's personal affairs. In this matter, I am satisfied that the Matter in Issue concerns only the other individual's personal affairs and does not comprise 'shared personal affairs'.
51. The Information Commissioner has previously indicated that:
- for information to be exempt under section 44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual<sup>12</sup>
  - information, such as a person's name, must be characterised according to the context in which it appears.<sup>13</sup>

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<sup>10</sup> Section 83(3) of the FOI Act.

<sup>11</sup> *B and Department of Health* (1994) 1 QAR 279 referring with approval to *Re Thomas and Royal Women's Hospital and Another* (1988) 2 VAR 618 at 622.

<sup>12</sup> *Stewart* at paragraph 81.

52. I am satisfied that disclosure of the Matter in Issue would enable the identity of the third party to be ascertained and that deletion of the name alone would not be sufficient to ensure the relevant individual is not identified.<sup>14</sup>
53. The applicant submits that a name alone does not ordinarily fall within the meaning of 'personal affairs' and that '*the fact of person x being a student is on the public record*'.
54. At paragraph 88 of *Stewart*, the Information Commissioner approved the following statement by Mahoney JA of the New South Wales Supreme Court of Appeal regarding a person's name:<sup>15</sup>

*A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known.*

55. However, the Information Commissioner also went on to say:<sup>16</sup>

*Many of the earlier tribunal decisions which automatically applied the principle that a person's name, address or telephone number are part of that person's personal affairs might well have been correctly decided if the context in which they appeared was properly evaluated. However, I think that the more recent cases properly call for a more careful evaluation and characterisation of the context in which a person's name, address or telephone number (or any combination thereof) appear, before it is decided that their disclosure would disclose information concerning the personal affairs of a person.*

56. The name of the individual referred to in the email appears in a context which concerns that person's course of study.
57. The applicant submits that '*the fact of person x being a student is on the public record*'. I do not accept the applicant's submission that this is a matter of public record. In *Griffiths and Building Services Authority (Griffiths)*<sup>17</sup> the Information Commissioner decided that information relating to an individual's course of study concerns that person's personal affairs for the purposes of section 44(1) of the FOI Act. In that decision, the Information Commissioner relevantly said:<sup>18</sup>

*In my view, the decision to undertake a course of study at a public or private educational institution, the time and effort expended in its pursuit, and the subject results thereby obtained, fall within the realm of an individual's personal affairs (notwithstanding that the study may have been undertaken as a step towards acquiring trade, professional or employment qualifications).*

58. In view of the above, I am satisfied that disclosure of the name of the individual as well as the other words comprising the Matter in Issue (disclosure of which would enable the individual to be identified) would disclose information concerning the personal affairs of that individual because the identifying information appears in a context concerning the individual's personal affairs, that is, their course of study. Accordingly, the Matter in Issue is *prima facie* exempt from disclosure under section 44(1) of the FOI Act, subject to the public interest balancing test.

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<sup>13</sup> *Stewart* at paragraph 90. See also paragraphs 21 – 23 of *Pearce and Queensland Rural Adjustment Authority; Various Landowners (Third Party)* (1999) 5 QAR 242.

<sup>14</sup> In accordance with section 32 of the FOI Act.

<sup>15</sup> *Commissioner of Police v District Court of New South Wales and Perrin* (1993) 31 NSWLR 606 at page 638.

<sup>16</sup> At paragraph 90.

<sup>17</sup> (Unreported, Queensland Information Commissioner, 31 August 1998).

<sup>18</sup> At paragraph 17.

### **Public Interest Question**

59. The applicant's submissions in relation to the Public Interest Question relate to the following public interest considerations in favour of disclosure of information under the FOI Act:

- promoting the accountability and transparency of government
- justifiable need to know
- fair treatment of the individual.

#### **Promoting the accountability and transparency of government**

60. In *Eccleston and Department of Family Services and Aboriginal and Islander Affairs (Eccleston)*,<sup>19</sup> the Information Commissioner discussed the public interest in the accountability of government and stated that one of the intentions of the FOI Act is to:<sup>20</sup>

*... enable interested members of the public to discover what the government has done and why something was done, so that the public can make more informed judgments of the performance of the government, and if need be bring the government to account through the democratic process ...*

61. This public interest consideration is consistent with the notion of the accountability of government, which has been given express recognition by Parliament in section 4 of the FOI Act.

62. In a recent decision, the Information Commissioner indicated that:<sup>21</sup>

*Transparency in government means clear government decisions for which reasons are made plain and other contextual information behind government decision making is made available.*

63. The applicant submits that release of the Matter in Issue to her would promote the accountability and transparency of JCU in relation to its decision making processes. In support of this submission the applicant suggests that the problems she experienced with JCU regarding her PhD application being rejected, her not being able to access JCU's grievance procedures and being unable to have that decision reversed were 'also an issue' for the third party and that this reflects on JCU's decision-making processes.

64. As I have already discussed, the applicant's submissions are mere speculation. From this basis the applicant suggests that if the Matter in Issue were disclosed to her, she may be able to embark on further inquiries and those further inquiries may disclose deficiencies in JCU's processes.

65. The Matter in Issue in this review does not provide any information about the applicant, nor does it provide any information about JCU's decision making processes. Accordingly, I do not consider that releasing the Matter in Issue would further the public interest in the accountability of JCU or transparency in its decision making processes.

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<sup>19</sup> (1993) 1 QAR 60.

<sup>20</sup> At paragraph 58.

<sup>21</sup> *OKP and Department of Communities* (Unreported, Queensland Information Commissioner, 9 July 2009) at paragraph 59.

### **Justifiable need to know**

66. The applicant's submission suggests that she needs the Matter in Issue in order to investigate what occurred between JCU and the other individual.
67. In *Pemberton and The University of Queensland*,<sup>22</sup> (**Pemberton**) the Information Commissioner recognised that an applicant's involvement in, and concern with, particular information may be of such a nature that it is capable of being taken into account as a public interest consideration favouring disclosure to the particular applicant. In that decision, the Information Commissioner said:<sup>23</sup>

*... The public interest in the fair treatment of persons and corporations in accordance with the law in their dealings with government agencies is, in my opinion, a legitimate category of public interest. It is an interest common to all members of the community, and for their benefit. In an appropriate case, it means that a particular applicant's interest in obtaining access to particular documents is capable of being recognised as a facet of the public interest, which may justify giving a particular applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received and, if not, to pursue any available means of redress, including any available legal remedy.*

68. This is not a case of the type contemplated in *Pemberton*. I have no evidence before me to suggest that the Matter in Issue in this review has any connection to the applicant of any kind. As I indicated at paragraph 47 above, the words comprising the Matter in Issue are an aside before the author of the email goes on to talk about the applicant. Personal curiosity as to what has occurred in relation to another individual's course of study is not a public interest consideration favouring disclosure of the Matter in Issue and does not give the applicant a justifiable need to know that information. Accordingly, I am satisfied that a public interest consideration of this kind does not arise in this matter.

### **Fair treatment of the individual**

69. In *Eccleston*, the Information Commissioner also recognised that there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government. In that decision, the Information Commissioner relevantly said:<sup>24</sup>

*While in general terms, a matter of public interest must be a matter that concerns the interests of the community generally, the courts have recognised that: "the public interest necessarily comprehends an element of justice to the individual" (per Mason CJ in Attorney-General (NSW) v Quin (1990) 64 ALJR 627). Thus, there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government, as this is an interest common to all members of the community. Similarly, the fact that individuals and corporations have, and are entitled to pursue, legitimate private rights and interests can be given recognition as a public interest consideration worthy of protection, depending on the circumstances of any particular case.*

70. However, I do not consider that this is a relevant public interest consideration in this review because, as I have noted above, the Matter in Issue does not have any connection to the applicant of any kind and accordingly disclosure of this information would not provide any assistance in determining whether the applicant has been treated fairly in her dealings with JCU.

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<sup>22</sup> (1994) 2 QAR 293.

<sup>23</sup> At paragraph 190.

<sup>24</sup> At paragraph 55. See also *Pemberton* at paragraph 190.

### **Conclusion**

71. For the reasons set out above, I am satisfied that:

- the Matter in Issue concerns another individual's personal affairs and is therefore *prima facie* exempt from disclosure under the FOI Act
- there are no public interest factors favouring disclosure of the Matter in Issue in this review
- the Matter in Issue is exempt from disclosure under section 44(1) of the FOI Act.

### **DECISION**

72. I affirm the decision under review by finding that the Matter in Issue is exempt from disclosure under section 44(1) of the FOI Act.

73. I have made this decision as a delegate of the Information Commissioner, under section 90 of the FOI Act.

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**Suzette Jefferies**  
**Acting Assistant Commissioner**

**Date: 25 August 2009**