



Decision and Reasons for Decision

Citation: *S41 and Griffith University* [2023] QICmr 64 (7 December 2023)

Application Number: 317075 and 317149

Applicant: S41

Respondent: Griffith University

Decision Date: 7 December 2023

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - information relating to investigation of a complaint made about a university student - accountability and transparency - procedural fairness - personal information and privacy - prejudice to management function - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - ENTITY TO WHICH THE ACT DOES NOT APPLY - PARTICULAR FUNCTION - agency processing documents - holder of an office connected with a quasi-judicial entity - quasi-judicial functions - whether agency processing documents fall outside the scope of the IP Act - sections 17 and 52 of the *Information Privacy Act 2009* (Qld) and sections 14 and 17 and schedule 2, part 2, item 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DELETION OF IRRELEVANT INFORMATION - whether information is irrelevant to the access applications - section 88 of the *Information Privacy Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant made two consecutive access applications to Griffith University (**University**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) seeking information with respect to the management and investigation of a complaint that had been made

about the applicant. The first application¹ sought access to all documents about the complaint and the University's management of the complaint (**First Application**).² The second application³ sought access to all documents created, received or sent by named University staff about the applicant other than those considered in the First Application (**Second Application**).⁴

2. In the First Application, the University decided⁵ to refuse access to information on the basis that disclosure would, on balance, be contrary to the public interest, or to delete it on the basis of irrelevance. The applicant sought⁶ internal review of the University's decision on the First Application. The University decided⁷ to grant access to some of the information originally refused but otherwise affirmed its original decision.
3. On the Second Application, the University decided⁸ to refuse access to information on the basis that disclosure would, on balance, be contrary to the public interest or to delete it on the basis of irrelevance. The applicant also sought⁹ internal review of the University's decision on the Second Application. The University decided¹⁰ to grant access to some information it had originally refused but otherwise affirmed its original decision.
4. The applicant applied¹¹ to the Office of the Information Commissioner (**OIC**) for external review of the internal review decisions on the First Application and Second Application. The applicant made written submissions¹² to OIC contesting the refusal of access to information on both applications. The applicant submitted to OIC that he had been denied a proper opportunity to respond to the complaint against him, suffered consequences from the complaint, was not sufficiently informed about the complaint handling process and generally raised administration of justice considerations in favour of his case for disclosure of the refused information.¹³
5. For the reasons explained below, I have decided:
 - in External Review 317075, to affirm the University's decision that disclosure of information would, on balance, be contrary to the public interest¹⁴ and that certain information may be deleted as it is irrelevant to the access application¹⁵; and
 - in External Review 317149, to vary the University's decision by finding that certain information is not subject to the IP Act¹⁶ and that the remaining information in issue may be deleted as it is irrelevant to the access application.¹⁷

¹ Dated 27 September 2022.

² Between 2 August 2022 and 27 September 2022.

³ Dated 9 December 2022.

⁴ Between 2 August 2022 and 9 December 2022.

⁵ On 30 November 2022.

⁶ On 12 December 2022.

⁷ On 23 December 2022.

⁸ On 25 January 2023.

⁹ On 4 February 2023.

¹⁰ On 13 February 2023.

¹¹ On 5 January 2023 (**External Review 317075**) and 21 February 2023 (**External Review 317149**).

¹² Dated 5 January 2023, 20 October 2023 and 10 November 2023.

¹³ Submission dated 20 October 2023.

¹⁴ Section 67 of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

¹⁵ Section 88 of the IP Act.

¹⁶ Section 52(1)(b)(ii) of the IP Act.

¹⁷ Section 88 of the IP Act.

Background

6. On 22 August 2022, the University received a complaint¹⁸ about the applicant. The complaint was dealt with by the University under the Student Misconduct Policy.¹⁹ The University conducted a preliminary investigation²⁰ into the complaint, decided to issue a warning to the applicant, and not to proceed to a formal allegation of misconduct.
7. On 6 September 2022, the University notified the applicant of its decision in relation to the complaint. The information available to OIC demonstrates that the applicant has since initiated other complaints and proceedings in relation to or arising out of the complaint/complaint process.
8. Significant procedural steps relating to the external reviews are set out in the Appendix.

Reviewable decision and evidence considered

9. The decisions under review are:
 - the internal review decision made by the University on 23 December 2022; and
 - the internal review decision made by the University on 13 February 2023.
10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information and the right to privacy and reputation.²¹ I consider a decision-maker will be '*respecting and acting compatibly with*' those rights and others prescribed in the HR Act when applying the law prescribed in the IP Act and RTI Act.²² I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.²³

Information in issue

12. In External Review 317075, the information in issue²⁴ comprises:
 - internal communications exchanged between University staff in the management of the complaint, and communications between University staff and the complainants in the First Application (**CTPI Information**); and
 - information deleted on the basis it is irrelevant to the terms of the First Application (**Irrelevant Information**).

¹⁸ Referred to throughout these reasons as the '**complaint**'.

¹⁹ Referred to throughout these reasons as the '**Policy**' and available [online](#) via the Griffith University website.

²⁰ Section 6 of the Griffith University Student Misconduct Procedures, referred to in these reasons as the '**Procedures**'. The Procedures are also available [online](#) via the Griffith University website.

²¹ Sections 21 and 25 of the HR Act.

²² *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

²³ I note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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*'. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

²⁴ 11 full pages and 77 part pages are the subject of this decision. The University originally located 358 pages on this application; the remainder of which has been released to the applicant through the original decision and internal review decision process.

13. In External Review 317149, the information in issue²⁵ comprises:
- internal University documents relating to the processing under the IP Act of the First Application (**IP Act Processing Documents**); and
 - information deleted on the basis it is irrelevant to the terms of the Second Application (**Irrelevant Information**).

Issues for determination

14. The issues for determination are:
- a) In External Review 317149, whether the IP Act Processing Documents²⁶ are outside the scope of the IP Act under section 52(1)(b)(ii) of the IP Act;
 - b) In External Review 317075 and 317149, whether the Irrelevant Information²⁷ can be deleted under section 88 of the IP Act on the basis it is irrelevant to the First and Second Application; and
 - c) In External Review 317075, whether access to the CTPI Information²⁸ may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure of it would, on balance, be contrary to the public interest.
15. The applicant provided a number of submissions on external review²⁹ and to the extent those submissions are relevant to the issues for determination in this review, including the public interest balancing test, I have addressed them below. However, some of the applicant's submissions concern matters that are outside of my jurisdiction in these external reviews.³⁰ I recognise the applicant remains dissatisfied with the way the University handled the complaint and I also note his concerns about the conduct of the decision maker in the complaint process. However, OIC does not have jurisdiction to interrogate a complaint handling process; OIC's role is to conduct merits review of an agency's decision on access to information under the IP Act. Accordingly, I am unable to make any findings about alleged deficiencies in the complaint handling process or conduct of the decision maker. In any event, I acknowledge that the applicant has referred the conduct he is concerned about to other entities which have broader investigative and review powers.
16. While the applicant did not specifically question the University's searches, the information available to me demonstrates that the University conducted reasonable searches for documents in response to the First and Second Applications.³¹

Findings

a) IP Act Processing Documents

17. In response to the Second Application, documents in relation to the internal IP Act processing of the First Application were located by the University.

²⁵ 13 full pages and 11 part pages are the subject of this decision. The University originally located 57 pages in response to this application, the remainder of which has been released to the applicant through the original and internal review decision process.

²⁶ 13 full pages.

²⁷ Appearing throughout the 77 partially released pages in External Review 317075 and in 11 partially released pages in External Review 317149.

²⁸ 11 full pages and appearing throughout the 77 partially released pages.

²⁹ Submission dated 5 January, 20 October and 10 November 2023.

³⁰ The applicant also acknowledged this in his submission dated 5 January 2023. However, some issues raised in the applicant's submissions dated 20 October 2023 are not relevant to the issues for determination and are not addressed in this decision.

³¹ Search records for External Review 317075 and 317149 were provided to OIC on 19 July 2023.

18. I conveyed a preliminary view³² to the applicant that documents received or created as part of an agency's processing of an IP access application are documents of an entity to which the IP Act does not apply: that is, they are documents in connection with the exercise of quasi-judicial functions of the Information Commissioner, which is an entity excluded from the IP Act.³³
19. The applicant made submissions contesting the preliminary view³⁴ including the following:

'...the only documents that should be excluded on the basis of connection with a quasi-judicial function are an agency's communications with the Office of the Information Commissioner regarding an external review. Here the agency has a legal obligation to assist the OIC in the conduct of the review...and thus becomes connected to a quasi-judicial process.

... no document under the control of the University could have been prepared in relation to the IC's quasi-judicial functions unless and until the IC received my application for external review 317075 on 5 January 2023. Only a request of this type can place the IC in a position to exercise such functions. Since External Review 317149 is only concerned with documents dated between 2 August and 9 December 2022, it follows that no document within the scope of this review was prepared in relation to the IC's quasi-judicial functions.

...Much of an agency's ordinary function is the disclosure of information, and the fact that requests for such disclosure may in rare instances reach the IC, does not distribute the IC's quasi-judicial character back along the conveyor-belt...'

20. For schedule 2, part 2, item 7 of the RTI Act to apply, I must be satisfied that:
- OIC is a quasi-judicial entity and that the Information Commissioner's external review functions are quasi-judicial functions; and
 - the decision-maker who processed the First Application for the University was 'connected with' the Information Commissioner in relation to those quasi-judicial functions.
21. The application of schedule 2, part 2, item 7 of the RTI Act is discussed at paragraphs 20 to 28 of *T71* and I rely on the reasoning in that decision in finding that the applicant's request for access to processing documents may be refused under section 52(1)(b)(ii) of the IP Act because it is a request to access documents of an entity to which the IP Act does not apply—that is:
- in undertaking an external review, OIC is a quasi-judicial entity exercising quasi-judicial functions; and
 - similar to the 'factual matrix' in *Carmody*, in this matter:
 - the University officer who processed the First Application would have prepared or received the internal processing documents which are captured by the Second Application
 - that officer did not hold an office or position with OIC but is a delegated decision-maker for the University;³⁵ and
 - the decision issued in respect of the First Application was a reviewable decision and is the subject of External Review 317075.

³² On 3 October 2023. This view was supported by comments by His Honour, Justice Hoeben of QCAT in *Carmody v Information Commissioner & Ors (5)* [2018] QCATA 18 (**Carmody**). The Information Commissioner has also confirmed this position in *T71 and Queensland Police Service* [2022] QICmr 10 (4 March 2022) (**T71**) and *S39 and Queensland Police Service* [2023] QICmr 44 (5 September 2023).

³³ Due to the operation of sections 17 and 52 of the IP Act, and sections 14 and 17, and schedule 2, part 2 of the RTI Act.

³⁴ Submission dated 10 November 2023.

³⁵ The decision issued on the First Application states that the decision-maker was a delegated decision-maker for the University.

22. While I acknowledge the applicant's interpretation of the application of schedule 2, part 2, item 7 of the RTI Act, I do not accept that there are grounds to distinguish the observations made by Justice Hoeben in *Carmody* in these circumstances.
23. As I have found that section 52(1)(b)(ii) of the IP Act applies to the processing documents, it is unnecessary to consider public interest arguments in respect of those documents.³⁶

b) Irrelevant Information

24. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it reasonably considers is not relevant to an application. This is a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
25. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.³⁷
26. The applicant made no submission addressing the issue of Irrelevant Information.
27. I have reviewed the information deleted by the University under section 88 of the IP Act. I am satisfied that the Irrelevant Information does not respond to the terms of the First and Second Applications—that is, it does not relate to the applicant, the complaint or the complaint handling process, rather it relates to other students or other University matters. Accordingly, I am satisfied the irrelevant information can be deleted under section 88 of the IP Act.

c) CTPI Information

28. One of the primary objects of the IP Act is to provide for a right of access to personal information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.³⁸ The IP Act must be applied and interpreted to further the primary object,³⁹ and is to be administered with a pro-disclosure bias.⁴⁰
29. Section 40 of the IP Act gives effect to the Act's primary object, by conferring a right on an individual to be given access to documents to the extent they contain the individual's personal information. This right is subject to other provisions of the IP Act and RTI Act, including grounds on which access may be refused.⁴¹ One of these grounds permits access to information to be refused where its disclosure would, on balance, be contrary to the public interest.⁴²

³⁶ There is no evidence before me that the University's decision-maker did not act in a fair and impartial manner in giving the decision, nor is there any evidence before me to enliven section 126 of the IP Act (disciplinary action).

³⁷ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52] which was a decision made under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld).

³⁸ Section 3(1)(b) of the IP Act.

³⁹ Section 3(2) of the IP Act.

⁴⁰ Section 58 of the IP Act.

⁴¹ Section 67 of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

⁴² 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

30. In determining whether disclosure of information would, on balance, be contrary to the public interest, the steps to be followed are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the CTPI Information would, on balance, be contrary to the public interest.
31. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,⁴³ together with all other relevant information, in reaching my decision. I have also applied the pro-disclosure bias⁴⁴ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.⁴⁵
32. In making this decision, I have not taken into account any irrelevant factors.⁴⁶

Factors favouring disclosure

33. The University must be transparent and accountable⁴⁷ in how it deals with complaints it receives about students. The Policy⁴⁸ sets out a formal framework for the University to deal with behaviour of students which can be construed as misconduct. The Policy also sets out the actions to be taken by decision-makers to ensure due process and natural justice.⁴⁹
34. The applicant submitted that he has not been provided with '*information about any further allegations, submissions or retractions effected by the complainants after their initial letter*' and that the information released provides no basis to understand how the University arrived at its decision.⁵⁰ I accept that disclosing the CTPI Information, to a limited extent, would provide the applicant with some further details of how the complaint was handled by the University and the decision to give the applicant a warning, however, I consider that the weight to be attributed to these factors is reduced by the information that has been disclosed to the applicant by the University—through the First and Second Applications and during the complaint process. There is also no information before me to indicate that the process set out in the Policy was not followed by the decision-maker—specifically, that the applicant was not provided with a copy of, or an opportunity to inspect, all relevant documents held by the decision-maker. I am satisfied that the University's accountability and transparency has already been substantially enhanced by the information released to the applicant and on this basis, I afford moderate weight to these factors favouring disclosure.
35. The applicant submitted that a further factor applies in that disclosure of the CTPI information could reasonably be expected to contribute to positive and informed debate

⁴³ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning protection of the environment (schedule 4, part 2, item 13 of the RTI Act).

⁴⁴ Section 64 of the IP Act.

⁴⁵ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

⁴⁶ Including any set out in schedule 4, part 1 of the RTI Act.

⁴⁷ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁸ The Procedures are available to assist University staff to implement the Policy.

⁴⁹ As set out in section 4 of the Policy.

⁵⁰ Submission dated 20 October 2023.

on important issues or matters of serious interest.⁵¹ The applicant considers this factor is raised as the CTPI Information is '*likely relevant to debates ... and ongoing threats to viewpoint diversity at Australian Universities*'.⁵² As the CTPI Information primarily relates to the University's management of the complaint and is administrative in nature, I am not persuaded that disclosure of *this* information would contribute to, or further, positive and informed debate in relation to these important matters. For these reasons, I am satisfied that this public interest factor does not apply.

36. The applicant raised a number of concerns about the University's conduct in dealing with the complaint, specifically:⁵³

- he was not afforded procedural fairness in the investigation of the complaint
- the decision-maker responsible for managing the complaint was not impartial and his conduct showed a '*clear violation of his Code of Conduct obligation to treat members of the University community with respect*'; and
- he may suffer a '*considerable economic loss*' as a result of the complaint.

37. Taking into account these submissions, it is relevant to consider whether the following public interest factors apply:

- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;⁵⁴
- contribute to the administration of justice generally, including procedural fairness;⁵⁵
- contribute to the administration of justice for a person;⁵⁶
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁵⁷ and
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁵⁸

38. As explained at paragraph 34, a significant proportion of the information in relation to how the complaint was managed and investigated has been released to the applicant. On the information before me, it does not appear that the applicant was denied an opportunity to respond to the complaint.⁵⁹ I also note that the University decided not to proceed to a formal investigation, rather, issued a warning to the applicant. The applicant concedes he was given an opportunity to respond during the investigation, however, that this was limited to the complaint letter and that details of subsequent communications between the decision-maker and the complainants were withheld. The applicant further submitted that natural justice requires that he have access to *all* evidence against him.⁶⁰ I note that in the context of an investigation, procedural fairness generally requires that a person is adequately informed of the allegations against them, given an opportunity to respond to the allegations and informed of the outcome of those allegations.⁶¹

⁵¹ Schedule 4, part 2, item 2 of the RTI Act.

⁵² Submission dated 20 October 2023.

⁵³ In his submission dated 5 January 2023, 20 October 2023 and 10 November 2023.

⁵⁴ Schedule 4, part 2, item 10 of the RTI Act.

⁵⁵ Schedule 4, part 2, item 16 of the RTI Act. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision. See *Kioa v West* (1985) 159 CLR 550 at 584 per Mason J.

⁵⁶ Schedule 4, part 2, item 17 of the RTI Act.

⁵⁷ Schedule 4, part 2, item 5 of the RTI Act.

⁵⁸ Schedule 4, part 2, item 6 of the RTI Act.

⁵⁹ For example, the documents released to the applicant by the University, including emails dated between 23-26 August 2022, letter dated 22 August 2022 and letter dated 6 September 2022 demonstrate that the complaints were put to the applicant and he was given an opportunity to respond.

⁶⁰ Submission dated 20 October 2023.

⁶¹ *Gapsa and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 6 September 2013).

39. Based on the information available to me, I consider the following types of information have been conveyed to the applicant by the University:⁶²
- the substance of the allegations made against the applicant
 - how the investigation was conducted
 - a summary of the findings made by the investigator; and
 - the investigator's analysis and conclusions.
40. I acknowledge that the applicant expected a more detailed analysis of the evidence in the decision and is dissatisfied with the outcome. However, I am satisfied, on the information before me, that the applicant was informed of the substance of the allegations and was provided an opportunity to respond during the investigation process.⁶³ Further, as noted at paragraph 34, no formal findings were made against the applicant. Having considered the nature of the CTPI Information, the information disclosed by the University and the applicant's submissions, I am not satisfied that disclosure of the CTPI Information would advance, in any meaningful way, the applicant's fair treatment in his dealings with the University or substantially contribute to procedural fairness for the applicant, other than to provide a more fulsome picture of the information held by the University in relation to the complaint. Therefore, I afford these factors low weight.
41. I have also considered whether disclosure of the CTPI Information could reasonably be expected to contribute to the administration of justice for the applicant.⁶⁴ For this factor to apply, it must be established that an applicant has suffered a wrong in which a remedy is, or may be available under the law, that there is a basis for seeking any such remedy and that disclosure of the information held by the University would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.⁶⁵ While I note the applicant's submission about potential economic loss and that he has initiated other complaints and proceedings, there is no information before me to indicate that disclosure of the CTPI Information is required to enable the applicant to pursue or evaluate any legal remedy.⁶⁶ For these reasons, I am satisfied that this public interest factor favouring disclosure does not apply.
42. The applicant also submitted that revealing information in relation to how the complaint was managed would allow or assist inquiry into deficiencies in the process and/or conduct of the decision maker.⁶⁷ I have considered the information advanced by the applicant in support of this submission.⁶⁸ In the circumstances, I afford moderate weight to the public interest in terms of allowing or assisting such inquiry, however, based on the information available to me, I afford no weight to the factor concerned with revealing or substantiating misconduct as I do not consider there is a reasonable expectation of such an outcome through disclosure of the CTPI Information.⁶⁹

⁶² Including in emails dated 23-26 August 2022, letter dated 22 August 2022 and letter dated 6 September 2022.

⁶³ In accordance with section 4 of the Policy.

⁶⁴ Schedule 4, part 2, item 17 of the RTI Act.

⁶⁵ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

⁶⁶ Schedule 4, part 2, item 17 of the RTI Act.

⁶⁷ Schedule 4, part 2, item 5 of the RTI Act.

⁶⁸ Including his concerns about the content of particular emails, eg. email dated 9 September 2022 from the University staff member who managed the complaint; and an email chain dated 2 September 2022.

⁶⁹ Schedule 4, part 2, item 6 of the RTI Act.

43. Because the complaint to the University was *about* the applicant and he was involved in the University's investigation, some, but not all, of the information relates to the applicant and comprises his personal information.⁷⁰ To the extent the CTPI Information contains the applicant's personal information, this gives rise to a factor favouring disclosure⁷¹ and I afford this factor significant weight. However, the applicant's personal information is inextricably intertwined with the personal information of other individuals and cannot be disclosed without disclosing the personal information of these individuals⁷² (this raises nondisclosure factors that are discussed below).
44. The applicant submitted that '*disclosure of the withheld information is likely to reveal personal information of [the applicant] provided by the complainants, [decision-maker], and other employees is "incorrect", "misleading", "gratuitous", "unfairly subjective" and/or "irrelevant"*'.⁷³ On the information before me, I am not satisfied that this factor arises for consideration. While I acknowledge that the applicant disputes the basis of the complaint and contests how it was managed by the University, this does not, in my view, necessarily mean that information in the complaint or investigation process is incorrect, misleading or otherwise of a nature enlivening the factor in schedule 4, part 2, item 12 of the RTI Act. Based on the information available to me, this factor does not apply.
45. I have carefully considered all other factors listed in schedule 4, part 2 of the RTI Act and can identify no other public interest considerations that arise which favour disclosure of the CTPI Information.

Factors favouring nondisclosure

46. The RTI Act recognises that there is a public interest harm⁷⁴ in disclosing an individual's personal information and also that the public interest favours nondisclosure of information which could reasonably be expected to prejudice the protection of an individual's right to privacy.⁷⁵ Having reviewed the CTPI Information, I am satisfied that it includes the personal information of the complainant/s including their names, recollection of events, opinions and personal views. This information appears in the highly sensitive context of a complaint about student misconduct.⁷⁶ Given the nature of the CTPI Information, the type of concerns raised in the complaint, and the context in which the complaint arose, I am satisfied that the information forms part of other individuals' personal spheres (although not at the highest end of the privacy spectrum) and would therefore, moderately prejudice their right to privacy if disclosed.
47. Similarly, I am satisfied that disclosing the personal information could reasonably be expected to cause a moderate level of public interest harm in that source complaint information is generally provided by complainant/s on the understanding that it will be used exclusively for an investigation process, and in any subsequent disciplinary action process. I consider that disclosing such information outside the complaint process and under the IP Act (where there can be no restriction on its use, dissemination or re-

⁷⁰ Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the IP Act defines *personal information* 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.*'

⁷¹ Schedule 4, part 2, item 7 of the RTI Act.

⁷² The RTI Act recognises that there are public interest factors favouring nondisclosure of other people's personal information: see paragraphs 46 to 49 of these reasons.

⁷³ Submission dated 20 October 2023. Schedule 4, part 2, item 12 of the RTI Act.

⁷⁴ Schedule 4, part 4, section 6 of the RTI Act.

⁷⁵ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' is not defined in the IP Act. It can, however, be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others (as discussed in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108, 12 August 2008, at 1.56).

⁷⁶ Section 121 of the IP Act prevents me from providing further detail about the nature or content of the CTPI Information.

publication)⁷⁷ could reasonably be expected to make complainants reluctant to fully participate in future investigations of this nature. In turn, this would negatively impact the University's ability to obtain confidential information⁷⁸ in relation to misconduct allegations that it requires to perform its management functions.⁷⁹ These factors are discussed further below.

48. The applicant submitted that there are 'exceptional circumstances' in this matter which overcome the protection that would typically be afforded to a complainant's personal information and privacy and that therefore the weight of these factors is significantly reduced. He also submitted that he is aware of complainant identities.⁸⁰ While the applicant may be aware of *some* of the CTPI Information because of his involvement in the investigation process, and information he has received from the University through that process, I do not consider that this reduces the weight of these nondisclosure factors particularly, as explained at paragraph 47, as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.⁸¹ I am not satisfied that the circumstances in this case warrant reduction in the weight of the personal information and privacy factors to anything less than moderate.
49. The applicant also made a number of submissions refuting the sensitivity of the relevant information and stating that a complainant's right to anonymity during these processes is not absolute.⁸² As explained at paragraph 46, I am satisfied that parts of the CTPI Information are of a highly sensitive nature and disclosure of this information would be a significant intrusion into the privacy of these individuals. I also consider that the extent of the harm that could be anticipated from disclosing this information under the IP Act would be significant. For these reasons, I afford moderate weight to the factors which seek to protect the personal information and privacy of other individuals.⁸³
50. As observed above, I am satisfied that the CTPI Information could reasonably be expected to prejudice the University's management functions⁸⁴ and its ability to obtain confidential information in the context of investigations into complaints.⁸⁵ The CTPI Information includes views and opinions of University staff about the complaint, discussions around potential outcomes, and analysis of advice about dealing with the complaint. During a complaints process, it is vital for management to engage openly with colleagues about dealing with a complaint, its impact on the agency, and broader outcomes. While I acknowledge the applicant's view that information about University staff, as employees of a public body, should be disclosed, I consider that views/opinions of the staff which relate to the management and investigation of student misconduct allegations fall outside the category of routine work information. Disclosure of this information in the context of complaint management and investigation would, in my view, impact on the ability of management to openly discuss how to manage

⁷⁷ As Judicial Member McGill SC of the Queensland Civil and Administrative Tribunal (QCAT) observed '... *the effect of the IP Act is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 (*FLK*) at [17].

⁷⁸ Schedule 4, part 3, item 16 of the RTI Act.

⁷⁹ Schedule 4, part 3, item 19 of the RTI Act.

⁸⁰ Submission dated 20 October 2023. The applicant's submission also discusses an inadvertent release of information to the complainant/s which I understand is/has been the subject of a separate complaint process. I have not dealt with this issue any further in these reasons for decision as it falls outside OIC's external review jurisdiction.

⁸¹ *FLK* at [17].

⁸² Submission dated 20 October 2023. The applicant referred to OIC's Information Sheet 'Privacy in complaints management – anonymity and confidentiality' in support of this submission. However, this Information Sheet qualifies that the extent to which it will be necessary for a complainant to identify themselves will vary according to the type of complaint and the agency's response to the complaint.

⁸³ Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

⁸⁴ Schedule 4, part 3, item 19 of the RTI Act.

⁸⁵ Schedule 4, part 3, item 16 of the RTI Act.

misconduct allegations and could also reasonably be expected to lead to a reluctance in staff/students providing comprehensive details in relation to misconduct complaints. In the context of a student misconduct complaint in a University environment, and taking into account the particular circumstances of this case, I afford these factors significant weight in favour of nondisclosure.

Balancing the relevant factors

51. I recognise that the public interest favours disclosure of information which would enhance the University's accountability and transparency around handling of student misconduct complaints, allow inquiry into possible deficiencies in conduct, advance the applicant's fair treatment and procedural fairness and allow him access to his personal information. However, on balance, I am satisfied that the public interest in protecting the personal information and privacy of complainant/s, safeguarding the University's ability to obtain confidential information and limiting prejudice to the management function of the University, outweigh the factors favouring disclosure of the CTPI Information. Accordingly, I consider that, on balance, access may be refused to the CTPI Information as its disclosure would be contrary to the public interest.

DECISION

52. In External Review 317075, I affirm the University's decision and find that:

- the Irrelevant Information may be deleted under section 88 of the IP Act; and
- access to the CTPI Information may be refused as disclosure would, on balance, be contrary to the public interest.⁸⁶

53. In External Review 317149, I vary the University's decision and find that:

- IP Act Processing Documents are outside the scope of the IP Act;⁸⁷ and
- the Irrelevant Information may be deleted under section 88 of the IP Act

54. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 7 December 2023

⁸⁶ Sections 67(1) of the IP Act and 47(3)(b) of the RTI Act.

⁸⁷ Section 52(1)(b)(ii) of the IP Act.

APPENDIX**Significant procedural steps**

External Review No. 317075	
Date	Event
5 January 2023	OIC received the application for external review in 317075 OIC requested the preliminary documents and information from the University and confirmed receipt of the external review application with the applicant.
9 January 2023	OIC received correspondence from the applicant.
6 February 2023	OIC notified the applicant and the University that it had accepted the application for external review. OIC asked the University to provide OIC with relevant information relating to the review.
14 February 2023	OIC received the requested information from the University.
16 February 2023	Further information requested from the University.
23 March 2023	OIC received the requested information from the University.
28 March 2023	OIC requested further information from the University.
5 July 2023	OIC requested further information from the University.
19 July 2023	OIC received the requested information from the University.
17 September 2023	OIC received correspondence from the applicant.
18 September 2023	OIC sent correspondence to the applicant.
3 October 2023	OIC issued a preliminary view to the applicant.
18 October 2023	OIC received correspondence from the applicant.
20 October 2023	OIC received submissions from the applicant.
9 November 2023	OIC contacted the applicant and the University to confirm a formal decision would be issued to finalise this review.

External Review No. 317149	
Date	Event
21 February 2023	OIC received the application for external review in 317149
22 February 2023	OIC requested the preliminary documents and information from the University and confirmed receipt of the external review application with the applicant.
28 March 2023	OIC notified the applicant and the University that it had accepted the application for external review. OIC asked the University to provide OIC with relevant information relating to the review.
3 April 2023	OIC received the requested information from the University.
21 April 2023	Further information requested from the University.
9 May 2023	Further information requested from the University.
10 May 2023	OIC received the requested information from the University.
5 July 2023	OIC requested further information from the University.
19 July 2023	OIC received the requested information from the University.
17 September 2023	OIC received correspondence from the applicant.
18 September 2023	OIC sent correspondence to the applicant.
3 October 2023	OIC issued a preliminary view to the applicant.
18 October 2023	OIC received correspondence from the applicant.
20 October 2023	OIC received submissions from the applicant.
9 November 2023	OIC contacted the applicant and the University to confirm a formal decision would be issued to finalise this review.
10 November 2023	OIC received further submissions from the applicant.