



Decision and Reasons for Decision

Citation:	<i>Abbot and Marohasy and Central Queensland University</i> [2017] QICmr 54 (21 November 2017)
Application Number:	313081
Applicant:	Abbot and Marohasy
Respondent:	Central Queensland University
Decision Date:	21 November 2017
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - documents in relation to PhD candidature - attribution of authorship in published journal article - contribute to innovation and the facilitation of research - prejudice research of an agency or person – whether disclosure would, on balance, be contrary to the public interest- section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS- NONEXISTENT OR UNLOCATABLE DOCUMENTS - applicants contend additional documents exist in relation to PhD supervision and application for grants - whether agency has taken all reasonable steps to locate documents - whether access to documents can be refused on the ground that they are nonexistent or unlocatable - section 47(3)(e) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The access application that is the subject of this review was made to Central Queensland University (**CQU**) under the *Right to Information Act 2009* (Qld) (**RTI Act**). It sought access to:
 1. *All documents, including emails, letters and memos, with any reference to Dr Abbot between 1/3/2015 and [26 August 2016]¹ held at CQU sent by or to [5 members of CQU staff]*
 2. *All documents, including emails, letters and memos, with any reference to Ms Marohasy between 1/3/2015 and [26 August 2016] held at CQU sent by or to the following staff members to [5 members of CQU staff]*

¹ The access application sought documents until the 'current date'. Under section 27 of the RTI Act, the access application is taken to seek documents in existence as at 26 August 2016, being the date CQU received a valid access application.

3. *All documents, including emails, letters and memos, with any reference to rain or rainfall forecasting or prediction between 1/3/2015 and [26 August 2016] held at CQU sent by or to the following staff member: Professor A*
 4. *All documents, including emails, letters and memos, with any reference to rain or rainfall forecasting or prediction between 1/3/2015 and [26 August 2016] held at CQU sent by or to the following PhD student: Student B*
 5. *All documents, including emails, letters and memos, with any reference to rain or rainfall forecasting or prediction between 1/3/2015 and [26 August 2016] held at CQU sent by or to the CQU Office of Research relating to any grant applications (internal or external) in any way relating to rain or rainfall forecasting or prediction*
 6. *All letters and memos, with any reference to rain or rainfall forecasting or prediction relating to sugar industry between 1/9/2015 and the present date held at CQU exchanged between Student B and Professor A*
 7. *All letters and memos, with any reference to rain or rainfall forecasting or prediction relating to sugar industry between 1/9/2015 and [26 August 2016] held at CQU exchanged between Student B or Professor A and the publisher (IWA) of the journal Water Science and Technology.*
2. CQU located 2672 pages² responsive to the access application. CQU did not issue a decision in relation to these pages within the required processing period, and was therefore deemed to have made a decision refusing access to the requested information.
 3. The applicants³ applied to the Office of the Information Commissioner (**OIC**) for external review of CQU's deemed decision to refuse access to information. In the course of this review, some of the information located by CQU was released to the applicants, and the applicants accepted that some of this information could be deleted or refused.⁴
 4. In terms of the remaining issues in this review, I find that:
 - 229 pages may be refused on the ground that their disclosure would, on balance, be contrary to the public interest;⁵ and
 - any further documents the applicants contend CQU should have located may be refused on the ground that they are nonexistent or unlocatable.⁶

Background

5. The applicants conduct research in relation to rainfall forecasting and artificial neural networks.⁷ The applicants were previously employed as academics at CQU.
6. While at CQU, Applicant 1 supervised a Doctor of Philosophy (**PhD**) candidate, Student B, in relation to the topic of rainfall forecasting using artificial neural networks. After the applicants left CQU, Student B was allocated a different PhD supervisor, Professor A, and continued his PhD research on the topic.

² These pages consist of the 2670 pages initially located by CQU, and the 2 pages located by CQU in November 2017, which OIC requested that CQU release to the applicant on 17 November 2017.

³ While the original access application appears to have been made by Dr Abbot (**Applicant 1**) on behalf of Ms Marohasy (**Applicant 2**), on the material before OIC (including an authority signed by Applicant 2), OIC accepts that both parties intended that they be considered applicants. Accordingly, OIC has proceeded with this external review on the basis that the access application was made by Applicant 1, on behalf of himself and Applicant 2, and submissions made by Applicant 1 have been made on behalf of both parties.

⁴ See paragraphs 13 and 14 below.

⁵ Sections 47(3)(b) and 49 of the RTI Act.

⁶ Sections 47(3)(e) and 52(1) of the RTI Act.

⁷ In their submissions, the applicants provided copies of a number of articles related to their research in this area.

7. Student B and Professor A published an article in the academic journal '*Water Science and Technology*' entitled '*Monthly rainfall forecasting using neural networks for sugarcane regions in Eastern Australia*' (**the Article**).⁸ The Article identifies Student B and Professor A as its authors. It refers to earlier articles published by the applicants, five of which are listed as references at the end of the Article.
8. The applicants raised concerns with CQU that Student B, and members of CQU's staff had used their work without permission and failed to appropriately attribute authorship in the Article. CQU conducted an investigation into concerns of the applicants. The investigation did not make any adverse findings about the conduct of Student B, Professor A or any other members of staff.
9. The access application was made to CQU shortly after the applicants were asked to provide further evidence of their assertion about the authorship of the Article.
10. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

11. The decision under review is the decision refusing access to the requested information CQU is deemed to have made under section 46(1) of the RTI Act.

Evidence considered

12. The evidence, submissions, legislation, and other material considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).

Information in issue

13. Of the 2672 pages located by CQU and provided to OIC, CQU agreed to release 1601 pages⁹ and 348 part pages to the applicants.
14. Of the remaining 723 pages and 348 parts pages, the applicants' submissions relate to 229 pages, constituting a confirmation of candidature report (**Report**) and associated Powerpoint presentation (**Presentation**).¹⁰ Given the applicants' submissions on two occasions focused on their concerns about the use of their work without permission or attribution of authorship, OIC invited the applicants¹¹ to make submissions on the other four categories of information.¹² OIC advised the applicants that if no submissions on the other four categories of information were received, the applicants would be taken to accept OIC's views regarding these categories of information and they would not be dealt

⁸ The Article states that it was first received by the journal on 28 January 2016, accepted in revised form on 31 May 2016, and published online on 20 June 2016. It is OIC's understanding that the Article was subject to investigation by an organisation called 'Retraction Watch' in August 2016; however, the Article nonetheless continues to be available on the publisher's website.

⁹ This number includes the pages that CQU agreed to release on 17 November 2017.

¹⁰ These 229 pages were referred to as Category E Information in OIC's correspondence to the applicant dated 19 October 2017.

¹¹ By email dated 8 November 2017.

¹² Specifically: Category A Information - a portion of one page that OIC considered may be deleted on the basis that it is irrelevant to the access application; Category B Information - 152 pages and a portion of one page that OIC considered may be refused on the ground that they were subject to legal professional privilege and therefore exempt information; Category C Information - parts of 61 pages of CQU's financial information concerning corporate credit cards details and bank account details that OIC considered would, on balance, be contrary to the public interest; and Category D Information - 331 pages and parts of 298 pages of personal information of individuals other than the applicants (such as work mobile telephone numbers, dates of birth, addresses, usernames, passwords, study commencement dates, information about periods of leave for CQU staff, and personal opinions in email correspondence) that OIC considered would, on balance, be contrary to the public interest.

with further in this review. No further submissions have been received,¹³ and consequently these four categories of information are no longer in issue in this review.

15. Accordingly, the remaining **Information in Issue** is the 229 pages¹⁴ that constitute the Report and associated Presentation.

Issues for determination

16. The issues for determination in this review are whether:
 - the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest; and
 - any further documents the applicants contend should have been located by CQU may be refused on the ground that they are nonexistent or unlocatable.

Preliminary issue

17. Before considering the issues for determination set out above, it is necessary to first address the scope of the access application that is the subject of this review.
18. The scope of the access application submitted by the applicants to CQU is detailed at paragraph 1; however, the applicants requested¹⁵ that the scope of the application be amended after CQU issued a Charges Estimate Notice (**CEN**) to them on 30 September 2016.¹⁶ CQU did not agree to the amendments, nor did CQU issue a second and final CEN within the prescribed period,¹⁷ or issue a notice of deemed decision. In these circumstances, given CQU did not agree to the amendment of the scope proposed by the applicants, and noting that the applicants would not be disadvantaged on external review by consideration of the original scope on external review, I am of the view that the scope of the access application is the original scope as set out at paragraph 1.
19. I am satisfied that both the Information in Issue and the further documents that, in the applicants' view, should have been located by CQU fall within this scope.

Is disclosure of the Information in Issue contrary to the public interest?

Relevant law

20. The RTI Act is to be administered with a pro-disclosure bias.¹⁸ Under the RTI Act, a person has a right to be given access to documents of an agency subject to certain limitations,¹⁹ including the grounds for refusing access.²⁰ One such ground is that disclosure of the information would, on balance, be contrary to the public interest.²¹

¹³ OIC requested that the applicants provide any further submissions by 13 November 2017. As of the date of this decision, no further submissions have been received from the applicants.

¹⁴ Specifically, pages 2236-2269, 2291-235, and 2361-2490 in File 4 of the information located by CQU.

¹⁵ On 10 October 2016.

¹⁶ Specifically, the applicants requested that their application be 'split', with items 1. and 2. to be dealt with under a separate application under the *Information Privacy Act 2009* (Qld); and items 3. to 7. to be considered under the RTI Act application. They also requested that items 6. and 7. of the scope be amended.

¹⁷ In the circumstances of the present matter, the date the prescribed period ended was 28 October 2016.

¹⁸ Section 44 of the RTI Act.

¹⁹ Section 23 of the RTI Act.

²⁰ In section 47(3) of the RTI Act. These grounds are to be interpreted narrowly: section 47(2)(a) of the RTI Act.

²¹ Section 47(3)(b) of the RTI Act.

21. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest and explains the steps that a decision-maker must take²² in deciding the public interest, as follows:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure²³
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
22. 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.

Applicants' submissions

23. The applicants provided a number of submissions to OIC during the course of the review. The submissions provide extensive information about concerns that the applicants initially raised with CQU, and have since raised with the Crime and Corruption Commission (CCC).²⁴ In brief, the applicants' concerns relate to the concepts and methodologies used in the Article, which the applicants consider to be identical to those used in numerous papers published by them;²⁵ and to results in four tables in the Article, which they consider to be exact copies of more than five months of work by Applicant 1.²⁶ The submissions also address the adequacy of CQU's investigation regarding these concerns.
24. The applicants' submissions raise what they consider to be specific public interest factors regarding the contravention of CQU's codes of conduct and violation of their moral rights. They consider that these specific factors arise from use of their concepts, methodologies and results without permission or attribution of authorship. I consider that these particular concerns do not raise novel public interest factors; rather, they fall within broader categories of public interest factors favouring disclosure which are, for the most part,²⁷ listed in schedule 4 of the RTI Act. I have carefully considered each of the applicants' submissions below, to the extent they are relevant to these factors.

Findings

Irrelevant factors

25. I do not consider that any irrelevant factors arise in this matter.

²² Section 49(3) of the RTI Act.

²³ Schedule 4 of the RTI Act sets out a non-exhaustive list of factors favouring disclosure and nondisclosure, and public interest harm factors, for deciding whether disclosing information would, on balance, be contrary to the public interest.

²⁴ In their submissions dated 30 October 2017, the applicants stated that they had recently made a complaint to the CCC.

²⁵ Submissions dated 6 November 2017. Of ten papers by the applicants cited in their submissions, seven precede 2016, and therefore clearly precede the Article. Two, or possibly four, of these seven papers were cited in the Article (here, some uncertainty arises because of small differences in the descriptions of two papers between the submissions and the Article). These papers were among the five in total by the applicants that were included as citations in the Article.

²⁶ In their submissions dated 6 November 2016, the applicants contend that tables 5, 6, 7 and 8 in the Article are exact copies of skill scores generated by Applicant 1.

²⁷ Apart from considerations regarding deficiencies in conduct by persons other than agencies and officials, which are not covered by schedule 4, part 2, items 5 or 6, but which can be considered in any event, given the non-exhaustive nature of the factors in schedule 4 (see footnote 23 above).

Factors favouring disclosure

Accountability and transparency

26. The applicants did not make any submissions about accountability and transparency of CQU specifically. However, they have made the following contentions, which enliven accountability and transparency considerations:²⁸
- Student B and potentially other individuals employed by CQU have breached the CQU Code of Conduct for Research²⁹ by failing to attribute authorship to the applicants
 - the rights of the Research Sponsor, as the individual who provided financial support for the research, have been violated under the CQU's Code of Conduct for Research; and
 - there is '*very strong evidence*' of misconduct by staff under CQU Code of Conduct and there is a duty of senior administration staff at CQU to take appropriate action.
27. Given these submissions, it is necessary that I consider whether disclosure of Information in Issue could reasonably be expected to:
- promote open discussion of public affairs and enhance CQU's³⁰ accountability;³¹ and
 - inform the community of CQU's operations including, in particular, the policies, guidelines and codes of conduct followed by CQU in its dealings with members of the community.³²
28. By way of general background, CQU has submitted that a confirmation of candidature report and presentation are drafted by a PhD candidate at an intermediate stage of the research, and considered by the Research Higher Degrees Committee (**Committee**). The Committee use the confirmation of candidature report to assess a PhD candidate's progress towards specific and generic learning outcomes related to the research, as provided for in the *Higher Education Standards (Thresholds Framework) 2015* (Cth) (**Framework**).³³
29. As a confirmation of candidature report is assessed according to the Framework, which is a national regulation, I consider that the release of Student B's Report could reasonably be expected to inform the community about CQU's confirmation of candidature procedure and its compliance with the Framework.
30. In respect of the Presentation, I note that an invitation to Student B's PhD confirmation presentation was distributed by email to CQU staff.³⁴ This email did not distribute the Report or the associated Presentation; however, it did invite a broad audience to attend the PhD confirmation presentation, where I understand Student B used the Presentation which forms part of the Information in Issue.

²⁸ Submissions dated 10 April 2017 and 30 October 2017.

²⁹ Which is available at https://www.cqu.edu.au/policy/sharepoint-document-download?file_uri=%7BBE8380F3-F86D-4C55-AC0D-84A81EAFD6A2%7D/Code%20of%20Conduct%20for%20Research.pdf.

³⁰ Some of the factors favouring disclosure and nondisclosure refer to the 'Government'. As CQU is established under the *Central Queensland University Act 1998* (Qld) and its functions are for a public purpose, it is a 'public authority' within the meaning of section 16 of the RTI Act, and, in turn, an 'agency' within the meaning of section 14 of the RTI Act, and therefore part of the 'Government' referred to in these factors.

³¹ Schedule 4, part 2, item 1 of the RTI Act.

³² Schedule 4, part 2, item 3 of the RTI Act.

³³ As set out in CQU's Confirmation of Candidature procedure (Effective Date: 10 April 2017).

³⁴ See email dated 11 March 2016 at page 2188 in File 3 which indicates the email was sent to research-students@lists.cqu.edu.au, research-supervisors@lists.cqu.edu.au, researchers@lists.cqu.edu.au, and general@lists.cqu.edu.au.

31. It is my understanding of the confirmation of candidature process that Student B's Report has been provided to the Committee to consider in accordance with the Framework, and the Presentation has been observed by members of the community who attended Student B's confirmation of candidature event.
32. In light of the above I consider that there has been sufficient oversight and scrutiny of the Report and Presentation so as to lessen the weight to be given to the transparency and accountability public interest factors in favour of disclosure. Accordingly, I consider that these factors³⁵ should be afforded a moderate weight.

Deficiencies in conduct

33. The applicants submit³⁷ that the release of the Report will demonstrate that:

*The concept, scope and experimental design of the [research] were created exclusively by [the applicants] ...
The significant skill, judgement and labour involved in screening prospective geographical sites was performed exclusively by [the applicants] ...
Every one of the 104 rainfall and temperature input data files were created exclusively by [the applicants] ...
95% of the 208 output fields providing the results, including for subsequent calculations of over 300 forecasts skill scores appearing in the infringing publication, were created by [the applicants].*

34. I understand the applicants submit that they contend the Information in Issue would reveal or substantiate deficiencies in the conduct of:

- **Student B and Professor A** – in using their concepts, methodologies and results without permission or proper attribution of authorship; and
- **CQU** – in failing to properly conduct an investigation into the applicants' concerns about conduct that '*may result in disciplinary action*'.³⁸

35. Accordingly, it is necessary that I consider whether the disclosure of Information in Issue could reasonably be expected to:

- a. allow or assist inquiry into the possible deficiencies in the conduct or administration of CQU, an employee of CQU or other individual;³⁹ and
- b. reveal or substantiate that CQU, an employee of CQU or other individual has engaged in misconduct or negligent, improper or unlawful conduct.⁴⁰

36. I will now consider the conduct of Student B and Professor A, then CQU, in turn.

Conduct of Student B, Professor A and other CQU employees

37. I recognise that research conducted by Student B which has been published in the Article and appears within the Report examines artificial intelligence in rainfall forecasting—a topic on which the applicants have published a number of papers.

³⁵ That is, schedule 4, part 2, items 1 and 3 of the RTI Act.

³⁷ 'Statement of evidence' provided by applicants with applicants' submissions dated 30 October 2017.

³⁸ CQU's Code of Conduct for Research states at page 1: '*Failure to act in accordance with the principles and practices of the Code may constitute a breach, resulting in an allegation for deviation from the Code or misconduct in research.*'

³⁹ Schedule 4, part 2, item 5 of the RTI Act. While 'other individual' is not specified in this item, it is possible to consider this public interest factor in terms of other individuals, as well as agencies and officials, given the factors in schedule 4 are non-exhaustive—see section 49(3)(b) and (c) of the RTI Act.

⁴⁰ Schedule 4, part 2, item 6 of the RTI Act. In terms of 'other individual', see footnote 39.

38. I also recognise that Applicant 1 supervised Student B in relation to his PhD research until the time that the applicants ceased employment with CQU. The supervision arrangements for Student B were then in flux until Student B was allocated Professor A as a supervisor.
39. The applicants submit that Student B and Professor A have breached the CQU Code of Conduct for Research. I have reviewed this Code and I note that it applies to 'research degree candidates' generally. I also note that the Code states as follows in relation to authorship:

7.1 To be named as author, a researcher must have made a substantial scholarly contribution to the work and be able to take responsibility for at least part of the work they contributed. Authorship depends to some extent on the discipline, but must be attributed to any participant who can be deemed to have made a substantial contribution to:

- the conception and design of the research*
- analysis and interpretation of the research (or part thereof);*
- drafting significant parts of the work or critically revising it so as to contribute to the interpretation.*

It is not tied to position, profession and does not depend on whether the contribution was paid or voluntary.

...

7.4 Provision of material, routine technical support, or made measurements of a routine nature is not sufficient to warrant authorship. Substantial intellectual input is required.

40. I have reviewed the Article. While the applicants are not listed as authors, the text of the Article includes the relevant citations to research conducted by the applicants, and five of the applicants' papers are included in the 'References' section at the end of the Article. Thus, the level of attribution given to the applicants in the Article is clear on the face of the Article itself. Noting this position and the content of the Information in Issue, I am unable to identify how disclosure of the Information in Issue would shed any further light on the attribution given to the applicants in the Article.
41. As to whether the disclosure of the Information in Issue will provide insight into the conduct of other CQU researchers and academics, it seems to me that it is of limited use. This is because the Report is in the nature of a progress report assessing whether Student B is compliant with meeting specific and generic learning outcomes, and the Presentation summarises information in this regard. The Information in Issue does not provide insight into who will be credited with what level of attribution in the final PhD thesis.
42. In these circumstances, on the material before me, I am unable to identify how release of Information in Issue would reveal that Student B, Professor A or any other individuals employed by CQU engaged in any deficient conduct.

Conduct of CQU

43. The applicants have also made submissions that the investigation by CQU into their concerns was:

an "independent" report [CQU] commissioned from [investigator], paid for by CQU to support their position. [The Investigator] has no particular expertise in the intellectual property area and his conclusions are not supported by application of the relevant laws of Australia. [The Investigator] appears to be someone CQU regularly engages in their recurrent issues with dispute resolution with employees and former employees.

44. The applicants wrote to CQU⁴¹ with the purpose of advising CQU of: *'concerns over a likely breach of CQU's Intellectual Property and Moral Rights Policy and Code of Conduct for Research, to put [CQU] on notice of that breach, and to respectfully ask [CQU] for assistance in ensuring the breach does not continue.'* The applicants further contend that:

...the [Article] is 'at best, an adaption of [the applicants'] manuscript and at worst a copy.

...

[The applicants] consider that the reproduction or adaption of [their] manuscript without permission of [the applicants] constitutes blatant infringement of their copyright rights.

...

In the circumstance, [the applicants] ask that [CQU] take immediate steps to assist in determining whether [Professor A] or [Student B], or any other CQU staff are involved in the incident and if so direct them to have Water Science & Technology: Water Supply journal to correct the online version (and any future printed copies) of the article to:

- (a) include both of our clients as main authors of that article, showing affiliation with the Climate Modelling Laboratory, Noosa, Queensland; and
(b) to include attribution to our client's benefactor...*

45. CQU conducted investigations in response to the allegations raised by the applicants. Prior to CQU concluding this investigation, CQU wrote to the applicants requesting that they *'provide any additional evidence they may have in support of the allegation that [the applicants] were the original authors of [the] work.'*⁴² There is no evidence before me to suggest that the applicants responded to this request from CQU. The investigation did not make any adverse findings against Student B, Professor A, or any other member of CQU staff.
46. I note that the applicants have submitted that they have made a complaint to the CCC in relation to their concerns.⁴³ While I am not privy to the content of this complaint, nor whether the CCC has or will progress it, I note that the CCC has power to investigate concerns within its jurisdiction by obtaining information directly from the agency concerned.
47. In these circumstances, in light of both the CQU investigation and my comments at paragraph 41, I consider that release of the Report would have limited use in demonstrating that CQU engaged in any deficient conduct.
48. Given my conclusions at paragraphs 42 and 47 above, I am satisfied that these factors do not apply in relation to the Information in Issue. However, for the sake of completeness, I note that even if I were incorrect in this regard, and these factors could be said to apply, they would nonetheless warrant low to no weight.

Administration of justice for the applicant

49. The applicants have made two key submissions⁴⁴ which contend that the release of the Information in Issue contributes to the administration of justice. These submissions are that:

⁴¹ Letter dated 18 July 2016.

⁴² Email from CQU's In-house Solicitor to the Solicitor acting for the applicants and Person 1 dated 8 August 2016.

⁴³ Submission dated 30 October 2017.

⁴⁴ Submissions dated 10 April 2017 and 30 October 2017.

- the applicants' moral rights have been violated under the Australian Copyright Act 2000⁴⁵ by the omission of their authorship of the Article (**Moral right infringement**); and
- the applicants require evidence to make a complaint of fraud (**Criminal complaints**).⁴⁶

50. Accordingly, I have considered whether disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for a person.⁴⁷

51. In determining whether this public interest factor in favour of disclosure applies, I must consider whether:

- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law;
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.⁴⁸

52. I have considered these requirements in relation to two key submissions of the applicants below.

Moral right infringement

53. The *Copyright Act 1968* (Cth) (**Copyright Act**) gives copyright owners the exclusive right to do certain acts related to their material. In relation to academic material, CQU's '*Intellectual Property And Moral Rights Policy*'⁴⁹ states that:

...the University owns any Intellectual Property developed, acquired or contributed by its staff, in the performance of their duties and or using University facilities and resources.

54. Academic staff, as the creators of copyright material, hold moral rights, which include the right:

- of integrity of authorship of a work⁵⁰
- to take action against false attribution of authorship;⁵¹ and
- to object to derogatory treatment of originator's work which prejudicially affects their honour or reputation.⁵²

55. The applicants have submitted that they hold the moral rights to material which was used by Professor A and Student B in the Article. They further submit that, while they consented to Student B using their academic work, specifically the results that the applicants had generated, in order to draft an abstract and make an oral presentation to the *International Conference on Sustainable Water Management* in December 2015, they did not consent to the use of their academic work in further publications. I have construed the applicants' submission to be that they consider that they have suffered

⁴⁵ I assume that the applicants are referring to the *Copyright Act 1968* (Cth) and the *Copyright Amendment (Moral Rights) Act 2000* (Cth).

⁴⁶ The applicants have cited the criminal conviction of Ms Caroline Barwood, a Parkinson's disease researcher, formerly of the University of Queensland.

⁴⁷ Schedule 4, part 3, item 17 of the RTI Act.

⁴⁸ *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)

⁴⁹ Available on the CQU website.

⁵⁰ Section 195AQ of the Copyright Act.

⁵¹ Section 195AP of the Copyright Act.

⁵² Section 195AO of the Copyright Act.

loss or damage, in that their moral rights have been infringed in relation to attribution of authorship.⁵³

56. In order for the public interest factor regarding the administration of justice for a person to apply, each of the three criteria must be satisfied. I do not consider it necessary to consider the first two criteria as set out in paragraph 51 above, as I am satisfied that the third criteria is not met. My reasons for this conclusion follow.
57. The question is whether disclosing the information held by CQU would assist the applicants to pursue a remedy, or evaluate whether a remedy is available or worth pursuing. I note that the applicants already have access to the Article which they claim has infringed their rights. I consider that the Information in Issue is separate and distinct from the Article. It differs both in terms of content—including progressed, developed and revised details in relation to the research which has been and will be conducted as part of Student B's PhD—and also in that it is subject to the assessment procedures of CQU.
58. In my opinion, it is more likely that information contained within the Article, information released to the applicants through informal resolution, and the applicants' correspondence with Student B may be of some value in demonstrating whether a legal remedy is available.
59. In the event that the applicants decide to commence any proceedings, it is reasonable to expect that they may avail themselves of relevant court disclosure processes. In these circumstances, I consider the comments of the Information Commissioner in *Phylard and Department of Police*⁵⁴ are relevant:

The RTI Act was not, however, designed to serve as an adjunct to court processes, but to comprise a stand-alone mechanism for enabling public access to government-held information. Obviously, the applicant is entitled to elect to pursue access under the right of access conferred by the RTI Act. In doing so, however, she must accept the qualifications upon and limitations to that right imposed by the Act itself ...

60. In these circumstances, I am unable to identify how disclosure of the Information in Issue would assist the applicants to assess the viability of pursuing any action regarding the Article.

Criminal complaints

61. The applicants have submitted:⁵⁵

*It is overwhelmingly in the public interest that all information I have requested be disclosed, so that all relevant evidence can be made available to the Crime and Corruption Commission. I note that the recent case of [a former researcher at the University of Queensland (**Researcher C**)] also involved false attribution of authorship on scientific papers and resulted in a criminal conviction for fraud.*

62. As the applicants have drawn correlations between their concerns and the investigation into Researcher C, I have considered whether the facts of this matter support the factor favouring the disclosure of the Information in Issue.
63. By way of summary, Researcher C was formerly employed by the University of Queensland (**UQ**). Researcher C published a number of papers related to Parkinson's

⁵³ Submissions dated 10 April 2017 and 30 October 2017.

⁵⁴ (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

⁵⁵ Submissions dated 6 November 2017.

disease research and received financial benefit, in the form of grants and a bursary, as a results of this research. Following a referral from UQ, CCC conducted an investigation into the conduct of Researcher C, and her colleague (**Researcher D**). The outcome of the CCC investigation was that Researcher C was charged with six offences related to research fraud and the misuse of associated grant money⁵⁶ and Researcher D was later charged with 16 fraud-related offences related to fabricating research findings and fraudulently applying for public and private research funding.⁵⁷

64. It is the role of CCC to consider whether to progress the applicants' complaints. I note that CCC has extensive powers to compel an agency or individual to disclose information as part of its investigation. Accordingly, it is not necessary for an individual who has made a complaint to CCC to provide CCC with all the relevant evidence.
65. Given these considerations, I am unable to identify how disclosure of the Information in Issue would advance the administration of justice either generally or specifically for the applicants.
66. I am satisfied that this public interest factor does not apply. However, I note that even if this conclusion were incorrect, and this factor applied, it would nonetheless warrant low to no weight.

Innovation and the facilitation of research

67. The applicants have submitted:⁵⁸

I think that given the events of the past week [April 2017] with Cyclone Debbie, public interest considerations would very strongly support correct dealing with intellectual property so as not to hamper development of this major problematical area in Queensland.

68. Given these submissions, I have considered whether the disclosure of the Information in Issue could reasonably be expected to contribute to innovation and facilitation of research.⁵⁹
69. I have considered the ordinary meaning of the 'contribute'⁶⁰ and 'facilitate',⁶¹ as these terms are not defined in the RTI Act.
70. While, as stated in paragraphs 37 and 38, I recognise that the applicants have generated a number of papers in relation to the topic of rainfall and artificial neural networks, and also supervised Student B at the initial stages of this PhD research, I consider that, in having access to the Article, the applicants have already been provided with the research that Student B has published.
71. As the Information in Issue relates to an intermediate assessment in the PhD process, I consider that the disclosure of this information will go some way toward better informing the community of the concepts, and preliminary results and analysis of the research. I am also of the view that the disclosure of the Information in Issue has the potential to

⁵⁶ CCC media release dated 31 October 2014 entitled 'University researcher to appear in court on fraud offences'.

⁵⁷ CCC media release dated 12 December 2014 entitled 'Former researcher to face court over alleged fraud'.

⁵⁸ Submissions dated 10 April 2017.

⁵⁹ Schedule 4, part 2, item 19 of the RTI Act.

⁶⁰ The Macquarie Dictionary online defines 'contribute' as:

1. to give in common with others; give to a common stock or for a common purpose: to contribute money, time, help.
2. to furnish to a magazine or journal.
3. to make contribution; furnish a contribution.

⁶¹ The Macquarie Dictionary online defines 'facilitate' as:

1. to make easier or less difficult; help forward (an action, a process, etc.).
2. to assist the progress of (a person).

facilitate further research. However, I also note that the research is not yet completed, the Information in Issue is relatively inconclusive, in that the methodology is yet to be fully deployed and tested, and findings are preliminary in nature.⁶²

72. Given this position, I consider that the capacity of the Information in Issue to contribute to or facilitate further research is necessarily limited, when compared with information relating to completed, peer reviewed research. Accordingly, I am satisfied that this factor warrants moderate weight in the circumstances of this review.

Other factors favouring disclosure

73. I have carefully considered all other public interest factors listed in schedule 4, part 2 of the RTI Act and can identify no other factors that apply and weigh in favour of disclosure of the Information in Issue.

Factors favouring nondisclosure

Prejudice or harm to research

74. In the circumstances of this review, it is necessary to consider whether disclosure of the Information in Issue:
- could reasonably be expected to prejudice the research of an agency or person;⁶³ or
 - would disclose the purpose or results of research of an agency or person, and could reasonably be expected to have an adverse effect on that agency or person, thereby causing public interest harm.⁶⁴

75. As stated in paragraphs 28 and 72, the Report is an intermediate stage of the PhD research and is akin to a progress report. CQU has recently confirmed to OIC that Student B has not yet completed his PhD research.⁶⁵

76. I consider that releasing the Report and the associated Presentation would disclose methodology, preliminary results and analysis within Student B's research which are not yet publicly available. I acknowledge that Student B disclosed some information in relation to the research in the PhD confirmation presentation; however, I consider that the information disclosed was brief and general in nature. Further, I note that, in an email dated 29 February 2016 to Professor A, Student B stated in relation to the Presentation:⁶⁶

I have tried to summarize the main points of the Confirmation of Candidature report and added them into the presentation. I added only one slide about the review, which summarizes in general the methods being used for rainfall prediction. If there is a need to go deeper, I will change it and discuss some of the studies being deployed by others.

77. I recognise that the applicants did assist Student B at the initial stages of his PhD research and thus already possess some insight into the nature of the research. However, I also consider that Student B's research for his PhD has progressed and developed since the applicants' departure from CQU, and that the Report and Presentation reflect the intermediate stage of this research.

⁶² Confirmed in telephone conversations between CQU and OIC on 14 July 2017 and 20 November 2017.

⁶³ Schedule 4, part 3, item 15 of the RTI Act.

⁶⁴ Schedule 4, part 4, section 7(3) of the RTI Act.

⁶⁵ See footnote 62.

⁶⁶ See page 2235 in File 4 of the information located by CQU.

78. In these circumstances, I consider that disclosing the Information in Issue could reasonably be expected to prejudice and harm Student B's research, at least until such time that Student B has completed his research. In this regard, I note that disclosure under the RTI Act—where there can be no restriction on its use, dissemination or republication—could enable other researchers at different universities to gazump the research he is progressing.
79. I also consider that disclosing the Information in Issue could reasonably be expected to prejudice and harm Student B's prospects of publishing further articles. The Article is the only published paper related to Student B's PhD research of which I am aware. I am of the view that, while some research in relation to Student B's PhD research has been published in the Article, there is a reasonable expectation that the content of the Report has the potential to lead to further publication. Making the Information in Issue publicly available could, in my opinion, reasonably be expected have an adverse effect on Student B, by enabling others to use it for the purpose of publication before Student B has had the benefit of publishing his findings.
80. The RTI Act provides that the public interest harm factor⁶⁷ will not apply if the information in issue concerns research which was carried out by the access applicant.⁶⁹
81. The applicants submit that Student B's research relied upon their methodology and testing which they had conducted over a number of months. In this regard, I note that the applicants are referring to the Article and not the Report. As stated in paragraph 77, I recognise that the applicants assisted Student B in the initial stages of his PhD; however, the Information in Issue is constituted by documents that are separate and distinct from the Article,⁷⁰ both in terms of content and also in that they are subject to the assessment procedures of CQU. In these circumstances, I am satisfied that research, as set out in the Information in Issue, is not the applicants' research, and therefore the exception to the research harm factor⁷¹ cannot apply.
82. In these circumstances, I consider that disclosure of the Information in Issue could reasonably be expected to cause a public interest harm by allowing others to gazump the research he is progressing, or publish papers before he has done so.
83. Given the importance of university research to the community as a whole, and the need to ensure that it attracts individuals capable of performing it as their livelihood, I consider that these factors warrant significant weight.

Balancing the factors

84. The RTI Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.⁷²
85. I have taken into account the various factors enlivened by the applicant's submissions as well as other factors identified by me. I have set out below the weight apportioned to each of the public interest factors for and against the disclosure of the Information in Issue. I have then balanced those factors against each other to ascertain where the balance of the public interest lies.

⁶⁷ Schedule 4, part 4, section 7(3) of the RTI Act.

⁶⁹ Schedule 4, part 4, section 7(4) of the RTI Act.

⁷⁰ As stated in paragraph 57.

⁷¹ In schedule 4, part 4, item 7(4) of the RTI Act.

⁷² Section 44 of the RTI Act.

86. I have afforded the accountability and transparency factors favouring disclosure moderate weight in light of the Information in Issue's ability to inform the community about PhD procedures and CQU's compliance with them. I have also afforded moderate weight to the factor favouring disclosure regarding contributing to innovation and the facilitation of research, noting that the value of the Information in Issue is lessened given the research is incomplete. In relation to the other factors, I have afforded a low to no weight to the factors favouring disclosure relating to revealing or substantiating deficiencies in the conduct of CQU, Student B and any other employees of CQU. Similarly, I am satisfied that the administration of justice for a person factor favouring disclosure warrants low to no weight.
87. In contrast, I am satisfied that the disclosure of the Information in Issue could reasonably be expected to prejudice Student B's research, and have an adverse effect on his ability to publish articles regarding his PhD. I have afforded these factors significant weight.
88. Taking into account all the consideration set out above, I am satisfied that, on balance, the public interest factors favouring nondisclosure of the Information in Issue outweigh the public interest factors favouring disclosure.

Conclusion

89. Based on the information before me, I am satisfied that access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.⁷³

Further documents the applicants believe CQU failed to locate

Relevant law

90. As noted above⁷⁴, there are some limitations on the right of access under the IP Act, including grounds for refusal of access.⁷⁵ Relevantly, one such ground is that access to a document may be refused if the document is nonexistent or unlocatable.⁷⁶ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁷⁷ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.⁷⁸
91. To be satisfied that a document is nonexistent, the Information Commissioner has previously recognised that a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:⁷⁹
- the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)

⁷³ Section 47(3)(b) and 49 of the RTI Act.

⁷⁴ Paragraph 20.

⁷⁵ Set out in section 47(3) of the RTI Act.

⁷⁶ Sections 47(3)(e) and 52 of the RTI Act.

⁷⁷ Section 52(1)(a) of the RTI Act.

⁷⁸ Section 52(1)(b) of the RTI Act.

⁷⁹ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (**PDE**). The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

- the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
92. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. This is the case in circumstances where it is ascertained that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
93. Searches may also be relied on to satisfy the decision-maker that a document does not exist. If searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.⁸⁰ What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
94. To determine whether a document exists, but is *unlocatable*, the RTI Act requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find it.⁸¹ In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.⁸²

Applicants' submissions

95. Prior to the applicants making an application for external review the applicants made submissions to CQU that:⁸³

I have some concerns that some communications are missing from the list you have provided. For example your list indicates zero emails between [Professor A] and [Student B]. I have several emails within this category already in my possession. Can you please explain why these have been omitted from your list.

96. At an early stage of the review, the applicants submitted:⁸⁴

I have reason to believe that the sufficiency of search requirements were not met by CQU in their response to my RTI request last year when they provided a numerical list of relevant documents within the scope of the request. I responded to CQU by giving examples of failure to include all documents. I never received a response.

...

I request all documentation within CQU regarding [the Article] and also all correspondence between CQU and the publisher of the Journal of Water Science and Technology in relation to the paper.

...

I would like to know if there are grant applications by CQU staff based on [the Article]. The original response from CQU indicated relevant email communication with the Office of Research.

⁸⁰ As set out in *PDE* at [49]. See also section 130(2) of the RTI Act.

⁸¹ Section 52(1)(b) of the RTI Act.

⁸² *Pryor* at [21].

⁸³ Email to CQU dated 10 October 2016.

⁸⁴ Submissions dated 10 April 2017.

97. The applicants submitted in later correspondence:⁸⁵

[I]f there are any documents, or parts of documents, that are currently being concealed that relate to the following, the public interest is overwhelmingly in favour of immediate disclosure:

- 1. Correspondence relating to generation of results for publication of [the Article], including any communication with the publisher; and*
- 2. Any correspondence that relates to applications for, or distribution of, grants or other financial gain, on the basis of publication or anticipated publication of [the Article].*

Steps taken by CQU to locate the documents

98. CQU provided OIC with search certifications regarding the searches which were conducted in relation to the scope of the application. OIC considered that the searches conducted by CQU, including the locations searched, the individuals who conducted the searches and the search terms which were used, appeared appropriately targeted and comprehensive. However, as Student B and Professor A were located in different geographical locations, OIC considered it reasonably possible that further documents may exist.

99. OIC requested⁸⁶ that CQU conduct further searches for documents responsive to the access application, specifically:

- email correspondence between Professor A and Student B regarding guidance about the nature of the research, planning and preparation for drafting the Article (**Search 1**); and
- email correspondence between the applicants and Student B in relation to guidance about the nature of the research, planning and preparation for drafting the Article (**Search 2**).

100. OIC further requested⁸⁷ that CQU conduct further searches of Professor A's email account to confirm that all relevant documents had been identified in earlier searches (**Search 3**).

Findings

Searches 1 and 3

101. As noted above,⁸⁸ the applicants submit that CQU should have located further correspondence between Professor A and Student B. Searches 1 and 3 were directed at conducting all reasonable searches for email correspondence falling within the scope of the access application—that is, containing any reference to the terms *'rain or rainfall forecasting or prediction'*, as specified in items 3. to 7. of the scope as set out at paragraph 1.

102. Search 1 involved searches of Professor A's email account for emails containing these terms, while Search 3 involved further searches of Professor A's email account for such emails.

⁸⁵ Submissions dated 6 November 2017.

⁸⁶ In a letter dated 4 May 2017.

⁸⁷ In an email date 1 November 2017.

⁸⁸ At paragraphs 95 and 96.

103. In CQU's responses regarding Searches 1 and 3, CQU:

- advised that PhD students and their supervisors are not required to document their interactions in a standard format.
- provided OIC with two search certifications completed by Professor A; and
- confirmed that CQU's Information Technology Department (**IT Department**) had conducted searches of Professor A's CQU user profile and email account, and CQU Student B's CQU student profile and email account.

104. I will address each of these aspects of CQU's response in turn.

Communications between PhD student and supervisor

105. The initial searches conducted by CQU during the processing period located some emails between Professor A and Student B which included reference to rain or rainfall or forecasting or prediction. These emails constitute communications related to the publication of the Article, including amendments to the abstract, to ensure that it was compliant with the publisher's requirements. The initial searches did not, however, locate a high volume of documents evidencing communications between Professor A and Student B or the PhD research more generally.

106. Given this position, OIC made enquiries with CQU about communications between a PhD student and their supervisor. CQU submitted that there is no expectation that email correspondence, file notes or other documentation will detail every interaction between those parties.

Professor A's email account

107. Three separate searches for documents were undertaken in respect of Professor A's CQU user profile and CQU email account.

108. Professor A was initially requested to undertake searches on 20 September 2016. He conducted searches of his office computer and email account between 23 and 26 September 2016. The search certification⁸⁹ indicates that:

- a. no documents were located on Professor A's office computer and, in relation to this outcome, Professor A noted that he '*very rarely uses his office computer for storing research students' documents*' and '*there is no research grant application in this area*'; and
- b. seven documents were located in Professor A's email account using the search terms of the applicants' names, 'rainfall', 'forecasting/prediction'.

109. On external view, OIC requested⁹⁰ that Professor A conduct further searches of '*any and all emails to or from [Student B]*' which '*in any way (either explicitly or implicitly) relates to [the Article]*'. In his search certification⁹¹ provided in response to this request, Professor A indicated that he had '*already provided some relevant emails. The papers are normally discussed in our weekly student-supervisor meetings.*'

⁸⁹ Dated 27 September 2016.

⁹⁰ Email to CQU dated 4 May 2017.

⁹¹ Dated 15 May 2017.

110. OIC also requested that CQU's IT Department conduct searches⁹² of Professor A's email account for emails to and from three known email accounts of Student B.⁹³ As a result of these searches, CQU located five additional emails and provided copies of them to OIC.
111. Of the five additional emails that were located, OIC identified four contained no reference to the terms rain, rainfall, forecasting or prediction and therefore fell outside the scope of the access application. One email was taken to fall within the scope of the application, due to the fact that it contained the term forecasting. CQU accepted that no grounds of refusal under the RTI Act applied to this email, and therefore released a copy of it to the applicants.⁹⁴

Student B's email account

112. CQU's RTI/IP Unit requested that its IT department conduct searches⁹⁵ of the relevant servers and backups for any emails and files which form part of Student B's CQU email account and student user profile dated between 1 March 2015 and 26 August 2016.
113. The search certification⁹⁶ for these searches identified that searches were conducted of:
- a. the entire content of Student B's home drive; and
 - b. Student B's email mailbox and email archive.
114. The searches of the email mailbox and archive were specifically for the terms of rain, rainfall, forecasting or prediction in respect of the subject and content of the emails.
115. The searches located 346 files on Student B's home drive, 5 emails in the mailbox and 26 emails in the email archive.

Search 2

116. The above outcome of the searches regarding Student B's email account related to all emails in that account, regardless of sender or recipient—and therefore applies to emails between Student B and the applicants, as well as emails between Student B and Professor A.
117. The applicants have submitted⁹⁷ that they are in possession of a number of emails sent to them by Student B which, in their view, CQU should have located in its searches. I have carefully considered these emails and am satisfied that this is not the case. Most of these emails contain no reference to the terms rain, rainfall, forecasting or prediction and therefore cannot be within the scope of the access application. Further, noting that Student B corresponded with the applicants using both his CQU email account and other personal email accounts (for example, a Gmail account),⁹⁸ it is not clear whether some of the emails raised by the applicants were sent to or from Student B's CQU email account. Any emails sent to or from Student B using email accounts other than his CQU email account would not be held by or be available to CQU, and therefore cannot

⁹² These searches were not undertaken by the IT Department at the same time as it conducted searches regarding Student B (see paragraph 112).

⁹³ As identified among the information located by CQU.

⁹⁴ On 17 November 2017.

⁹⁵ As Student B is not a CQU employee, he was not asked to conduct any searches himself.

⁹⁶ Dated 7 November 2016 and completed by the Data Centre Operations Manager of CQU's IT department.

⁹⁷ Submissions dated 10 April 2017.

⁹⁸ Submissions dated 10 April 2017 and 30 October 2017.

comprise documents of CQU⁹⁹ for the purpose of the applicants' access application under the RTI Act.

CQU's searches generally

118. As stated at paragraph 98, OIC considered that CQU's initial searches appeared appropriately targeted and comprehensive. OIC requested that CQU undertake Searches 1 and 2, due to the fact that Student B and Professor A were located in different geographical locations.
119. In their most recent submissions,¹⁰⁰ the applicants raised the following documents:
1. *Correspondence relating to generation of results for publication of [the Article], including any communication with the publisher; and*
 2. *Any correspondence that relates to applications for, or distribution of, grants or other financial gain, on the basis of publication or anticipated publication of [the Article].*
120. In response, OIC had CQU's IT Department undertaken further searches of Professor A's CQU email account for emails containing the words 'rain', 'rainfall', 'forecasting' or 'prediction'—that is, Search 3.
121. Searches 1, 2 and 3 have each involved CQU conducting searches of emails. This was considered appropriate, given the scope of the application specifies documents 'sent by or to' Professor A and Student B¹⁰¹ or 'exchanged between' parties including Professor A and Student B;¹⁰² and also given low likelihood that any correspondence occurred by other means such as post or facsimile.
122. In assessing the sufficiency of the searches conducted by CQU, I have noted the 2670 pages of responsive information initially located by CQU, and the locations searched, the individuals who conducted the searches, and the search terms used to locate these pages. I have also noted the further searches conducted for emails—that is, Searches 1, 2 and 3—and the fact that these searches located five additional emails, one of which fell within the scope of the access application and has been released.
123. Further, I have noted the relevance of the terms used in the scope of the access application, which confine responsive documents to documents containing references to the applicants, or the words 'rain', 'rainfall', 'forecasting' or 'prediction'. Also, I have noted the relevance of the words 'sent by or to' or 'exchanged between', which necessarily limit items 3. to 7. of the scope to correspondence between specified parties, rather than other types of documents. I have, as indicated above, considered it unlikely that any such correspondence occurred by means other than email. In this regard, I also consider it relatively likely that communications between Professor A and Student B occurred, at times, by telephone rather than via correspondence. Finally, as stated at paragraph 117 above, I have noted that, at times, Student B used personal email accounts (for example, a Gmail account) rather than his CQU email account.
124. Taking the above considerations into account, I am satisfied that CQU has ensured that appropriate staff have conducted comprehensive, appropriately targeted searches of

⁹⁹ Section 12 of the RTI Act.

¹⁰⁰ Submissions dated 6 November 2017.

¹⁰¹ Items 3., 4., and 5. of the scope as set out at paragraph 1.

¹⁰² Items 6. And 7. of the scope as set out at paragraph 1.

locations where it was reasonable to expect that responsive documents, including those raised by the applicants on external review, would be found.

Conclusion

125. In these circumstances, I am satisfied that:

- a. CQU has taken all reasonable steps to locate documents falling within the scope of the access application responsive to the applicants' sufficiency of search concerns, including concerns related to:
 - o the generation of results for publication of the Article; and
 - o applications for, or distribution of, grants or other financial gain, on the basis of publication or anticipated publication of the Article; and
- there are reasonable grounds to be satisfied that any additional documents responsive to the scope of the access application are nonexistent or unlocatable, and may be refused on this ground.¹⁰³

DECISION

126. I vary the decision CQU is deemed to have made refusing access to the Information in Issue and find:

- the 229 pages of Information in Issue may be refused under section 47(3)(b) of the RTI Act on the ground its disclosure would, on balance, be contrary to the public interest; and
- any further documents the applicants contend CQU should have located may be refused under section 47(3)(e) of the RTI Act on the ground that they are nonexistent or unlocatable.

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

A Rickard
Assistant Information Commissioner

Date: 21 November 2017

¹⁰³ Under sections 47(3)(e) and 52(1) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
21 November 2016	OIC received the application for external review.
21 November 2016	OIC requested copies of the processing documents from CQU.
21 November 2016	OIC acknowledged the receipt of the external review application to the applicants.
22 November 2016	OIC received processing documents from CQU.
7 December 2016	OIC communicated acceptance of the external review application to CQU and requested that CQU provide the documents responsive to the access application which it had located.
8 December 2016	OIC communicated acceptance of the external review application to the applicants.
8 December 2016	By email, the applicants notified OIC of Applicant 1's absence and the date of his return.
17 January 2017	OIC received documents as requested from CQU.
22 February 2017	By telephone, OIC requested that CQU provide a document that was missing from the copies CQU had provided to OIC.
22 February 2017	By email, CQU provided the missing document to OIC.
8 March 2017	By email, OIC requested that the applicants clarify the scope of their application.
9 March 2017	By telephone, the applicants conveyed to OIC that they did not wish to narrow the scope of the external review application.
10 March 2017	By telephone, OIC requested further documents from CQU.
10 March 2017	CQU provided the further documents to OIC.
13 March 2017	By telephone, OIC requested further documents from CQU.
14 March 2017	CQU provided the further documents to OIC.
10 April 2017	By email, the applicants provided submissions in relation to the review.
21 April 2017	By telephone and email, OIC requested that CQU provide further documents to assist the external review.
21 April 2017	CQU provided the further documents to OIC.
4 May 2017	OIC requested that CQU undertake further searches for responsive documents.
16 May 2017	OIC received submissions from CQU regarding the further searches undertaken by it.
13 June 2017	By telephone, OIC confirmed to CQU that: <ul style="list-style-type: none"> • the access application will be processed under the RTI Act only; and • the CQU was unable to claim some information as irrelevant information, as it is within the scope of the access application.
19 July 2017	By telephone, OIC contacted CQU to confirm the confirmation of candidature process and whether Student B had completed the PhD.
25 September 2017	OIC conveyed a preliminary view to CQU and requested that it respond by 4 October 2017 if it wished to make any submissions.
30 September 2009	By email, the applicants contacted OIC seeking an update on the review.
3 October 2017	By telephone, OIC provided the applicants with an update.
5 October 2017	By telephone, CQU requested an extension of time for its response to OIC's preliminary view.

Date	Event
6 October 2017	OIC received a response from CQU stating that it accepted OIC's preliminary view.
6 October 2017	By telephone, OIC advised the applicants that CQU had accepted OIC's preliminary view and discussed the next steps in the review.
19 October 2017	OIC conveyed a preliminary view to the applicants and requested that they respond by 2 November 2017 if they wished to make any submissions.
20 October 2017	OIC asked that CQU release the information it had agreed to release to the applicants and confirm the release to OIC.
25 October 2017	By telephone, OIC contacted the applicants to confirm the applicants' address.
25 October 2017	By telephone, CQU confirmed that the information it had agreed to release to the applicants had been sent to the applicants.
30 October 2017	The applicants provided submissions in response to the preliminary view and requested an extension of time to review and consider the information CQU had released to them.
31 October 2017	OIC granted the applicants an extension of time until 6 November 2017 to allow for their delayed receipt of the information CQU had released to them.
1 November 2017	OIC requested CQU conduct further searches in relation to Professor A's email account.
6 November 2017	The applicants provided further submissions and requested a further extension of time.
6 November 2017	CQU provided all search certificates related to Professor A's email and confirmed that five additional emails had been located.
8 November 2017	CQU confirmed that the additional searches had been completed and no additional documents beyond the emails provided to OIC on 6 November were located.
8 November 2017	By telephone, OIC contacted the applicants to discuss their submissions responding to OIC's preliminary view received on 30 October 2017 and 6 November 2017 and their request for a further extension of time to provide further submissions.
8 November 2017	By email, OIC wrote to the applicants noting that their submissions appeared to relate only to the sufficiency of CQU's searches and the 229 pages referred to in OIC's preliminary view as Category E Information. OIC advised the applicants that, in absence of any further submissions to the contrary, they would be taken to accept OIC's views regarding the four other categories of information referred to in OIC's preliminary view as Categories A to D Information. The applicants were invited to make any further submissions they wished to make in response to OIC's preliminary view by 13 November 2017.
14 November 2017	OIC issued a preliminary view to CQU in relation to the additional information which was located and provided to OIC on 6 November 2017.
17 November 2017	OIC requested that CQU release an additional document to the applicants.