



Decision and Reasons for Decision

Citation:	<i>78FGQI and 3KT15K and Central Queensland University; D56CNT (Third Party) [2018] QICmr 4 (1 February 2018)</i>
Application Number:	313467 and 313468
Applicants:	78FGQI and 3KT15K
Respondent:	Central Queensland University
Third Party:	<i>D56CNT</i>
Decision Date:	1 February 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE OF CONCERN TO THIRD PARTIES - third parties consulted by agency objected to disclosure of their personal information - agency decided to partially release documents contrary to third parties' objections - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. An individual (**Access Applicant**)¹ applied to the Central Queensland University (**CQU**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for documents about him, particularly in the context of his enrolment, which had recently been cancelled by CQU.²
2. In processing the access application, CQU consulted two CQU staff members (**Third Parties**)³ in relation to the disclosure of emails and notes concerning the Access Applicant's enrolment.⁴ The Third Parties objected to disclosure due to concerns about being identified. CQU decided⁵ to release the emails to the Access Applicant, subject to deletion of the mobile phone numbers of the Third Parties and some of their personal information. CQU also decided to release the handwritten notes without any redactions.

¹ Listed as the Third Party in the headnote to this decision.

² Access application dated 30 June 2017.

³ Listed as the Applicants in the headnote to this decision.

⁴ CQU sought the views of 78FGQI in relation to the disclosure of three pages (external review 313467) and 3KT15K in relation to two of the three pages (external review 313468).

⁵ Decision dated 18 August 2017.

3. Both of the Third Parties applied to the Office of the Information Commissioner (**OIC**) for external review of CQU's disclosure decision.
4. On external review, OIC formed the view that access to additional information could be refused on the basis that its disclosure would, on balance, be contrary to the public interest. CQU and the Third Parties accepted OIC's view and CQU released the relevant documents to the Access Applicant, subject to redaction of the identifying information. After considering the redacted documents, the Access Applicant maintained that he should be given access to the identifying information.⁶
5. For the reasons set out below, I vary CQU's decisions and find that access to some further information in the emails and notes may be refused on the basis that its disclosure would on balance, be contrary to the public interest.⁷

Background

6. Significant procedural steps taken by OIC in conducting these two external reviews (concurrently) are set out in the Appendix to these reasons.
7. The Access Applicant also applied to OIC for external review of CQU's decision to refuse him access to information, including parts of the emails. That review has also been finalised by a related decision.⁸

Reviewable decision

8. The decisions under review are CQU's decisions dated 18 August 2017 to disclose information in the emails and notes contrary to the objections of the Third Parties.

Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching my decision is disclosed in these reasons (including footnotes and Appendix).

Information in issue

10. The information in issue appears on two pages of emails and one page of handwritten notes⁹ and comprises the names of CQU staff, job titles, personal pronouns and contact details appearing in email signature blocks. The Access Applicant has been given access to these pages, subject to the deletion of the information that remains in issue in this review, ie. the identities of the Third Parties or information from which the Third Parties' identities could reasonably be ascertained (**Information in Issue**). As such, the Access Applicant is aware of the context in which the information appears and the nature of the communications in the emails and notes.
11. As CQU decided to disclose the Information in Issue contrary to the objections of the Third Parties, the Third Parties, as the external review applicants, have the onus of establishing that access to the Information in Issue should be refused under the IP Act.¹⁰

⁶ Therefore, the Access Applicant was joined as a participant to these reviews. As such, a formal decision is required to dispose of these two reviews as the Access Applicant is an adversely affected party.

⁷ Section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁸ *D56CNT and Central Queensland University* [2017] QICmr 3 (1 February 2018).

⁹ Documents numbered 29, 34 and 79.

¹⁰ Section 100 of the IP Act.

12. As set out above, the Access Applicant has been joined as a participant to the Third Parties' review processes given that, during the review process, OIC formed a preliminary view that was adverse to the Access Applicant. Accordingly, in these reasons for decision, submissions made by the Access Applicant in favour of disclosure of the Information in Issue are examined, together with submissions of the Third Parties advancing their objections to disclosure.

Relevant law

13. Under the IP Act a person has a right to be given access to documents of an agency to the extent they contain the applicant's personal information.¹¹ However, this right is subject to other provisions of the IP Act and the RTI Act including the grounds on which an agency may refuse access to documents.¹² One ground for refusing access is where disclosure would, on balance, be contrary to the public interest.¹³
14. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the wellbeing of citizens generally. This means that ordinarily, a public interest consideration is one which is common to all members, 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.
15. To decide the balance of the public interest, I must:¹⁴
- identify any irrelevant factors and disregard them¹⁵
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosing the information would, on balance, be contrary to the public interest.
16. Schedule 4 of the RTI Act lists various factors favouring disclosure and nondisclosure.¹⁶ The RTI Act specifically recognises that disclosure of another individual's '*personal information*' is a factor favouring nondisclosure¹⁷ which could reasonably be expected to lead to a public interest harm.¹⁸ The term '*personal information*' is defined in section 12 of the IP Act as follows:

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

Findings

17. The Access Applicant has submitted to OIC that CQU did not undertake an appropriate or fair process in deciding to cancel his enrolment and therefore, full disclosure of the documents, including the identifying information of the Third Parties is warranted.¹⁹

¹¹ Section 40 of the IP Act.

¹² Section 67 of the IP Act provides access may be refused in the same way and to the same extent as under section 47 of the RTI Act.

¹³ Section 47(3)(b) and 49 of the RTI Act.

¹⁴ Section 49(3) of the RTI Act.

¹⁵ I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied that I have not taken into account any irrelevant factors in reaching my decision.

¹⁶ However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

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

¹⁸ Schedule 4, part 4, section 6 of the RTI Act.

¹⁹ Submissions to OIC dated 26 October 2017.

18. During the external review process, the Access Applicant was given access to the emails and notes, subject only to the redaction of the Information in Issue. I accept that obtaining unredacted versions of the documents would enhance CQU's transparency,²⁰ though only marginally, given the limited nature of the Information in Issue. Therefore, I afford the relevant factor only marginal weight in favour of disclosure.
19. While the Information in Issue appears in the context of communications about the Access Applicant and his enrolment at CQU, it is limited to information identifying the Third Parties—it does not disclose anything about the Access Applicant personally or CQU's decision making process. Further, the Access Applicant is aware of the nature and content of the communications given what has already been released to him. For these reasons, I do not consider disclosure would reveal the Access Applicant's personal information,²¹ advance the Access Applicant's fair treatment,²² contribute to the administration of justice or procedural fairness generally, or for the Access Applicant,²³ or reveal the reason for a government decision.²⁴ I am therefore satisfied that these factors do not apply in favour of disclosure of the Information in Issue.
20. I am satisfied that the Information in Issue is the personal information of CQU staff as it directly identifies them or comprises information from which their identities could reasonably be ascertained. The RTI Act recognises that disclosing other individuals' personal information as a factor favouring nondisclosure, which could reasonably be expected to cause a public interest harm.²⁵ The RTI Act also seeks to safeguard the privacy of other individuals through a nondisclosure factor.²⁶
21. The Information in Issue was created in the context of CQU staff communicating about the Access Applicant's criminal history and his previous employment, in the context of his enrolment at CQU—the emails essentially take the form of background briefing notes between staff which are then escalated to senior management. Generally, information created in the course of a public officer's day to day employment is considered to be their routine personal work information²⁷ and as such, does not attract a high privacy interest and the harm arising from disclosure is generally considered to be low.
22. I accept that it would generally not be the case that the email signature block of an officer employed by a public body would be redacted in its entirety, however, regard must be had to the circumstances of the case, which are unique. Given the particularly sensitive context in which the Information in Issue appears, I am satisfied that the information identifying the CQU staff members is not routine in nature. Also, taking into account the concerns raised by the Third Parties about their identities being revealed, I consider disclosure would be a moderate intrusion into the privacy of the Third Parties. Accordingly, I afford moderate weight to these factors in favour of nondisclosure.
23. In the circumstances of this case, I am satisfied that the weight of the factors which serve to safeguard the privacy and personal information of other individuals exceeds the weight to be afforded to enhancing CQU's transparency. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

²⁰ Schedule 4, part 2, item 1 of the RTI Act.

²¹ Schedule 4, part 2, item 7 of the RTI Act.

²² Schedule 4, part 2, item 10 of the RTI Act.

²³ Schedule 4, part 2, items 16 and 17 of the RTI Act.

²⁴ Schedule 4, part 2, item 11 of the RTI Act.

²⁵ Schedule 4, part 4, section 6 of the RTI Act.

²⁶ Schedule 4, part 3, item 3 of the RTI Act.

²⁷ Routine personal work information is information that is solely and wholly relates to the routine day to day work duties and responsibilities of a public service officer. See *Jose and Queensland Police Service* [2014] QICmr 7 (7 March 2014) at [30].

DECISION

24. I vary CQU's decision and find that access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act.
25. 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: 1 February 2018

APPENDIX

Significant procedural steps

Date	Event
24 August 2017	OIC received the Third Party external review applications.
25 August 2017	OIC notified CQU that the external reviews had been received and requested various procedural documents.
28 August 2017	OIC received the requested documents from CQU.
1 September 2017	OIC notified CQU and the Third Parties that the Third Party external review applications had been accepted and requested further information from CQU.
12 September 2017	OIC spoke to the Third Parties and provided them with an update on the status of the reviews.
22 September 2017	OIC spoke to CQU and provided them with an update on the status of the reviews.
27 September 2017	OIC conveyed a preliminary view to CQU that access to some additional information could be refused, and requested submissions in response.
24 October 2017	OIC received submissions from CQU accepting the preliminary view.
26 October 2017	OIC conveyed a preliminary view to the Access Applicant and requested submissions in response. The Access Applicant did not accept the preliminary view and provided submissions in response.
27 October 2017	OIC spoke to CQU and provided an update on the status of the reviews.
31 October 2017	OIC provided the Third Parties with an update on the status of the reviews.
30 November 2017	OIC confirmed in writing with CQU that it accepted the preliminary view and provided additional information. OIC conveyed preliminary views to the Third Parties.
4 December 2017	OIC received additional submissions from CQU.
5 December 2017	OIC clarified the additional information with CQU and the Third Parties.
10 December 2017	OIC received confirmation from the Third Party relevant to external review 313468 that they accepted the preliminary view.
19 December 2017	OIC provided the Access Applicant with an update on the status of the review.
20 December 2017	OIC spoke to and received confirmation from the Third Party relevant to external review 313467 that they accepted the preliminary view. OIC provided the Access Applicant and CQU with an update on the status of the review. OIC received additional submissions from CQU.
27 December 2017	OIC received additional submissions from the Access Applicant.
16 January 2018	OIC provided the Access Applicant and the Third Parties with an update on the status of the review.