



Decision and Reasons for Decision

Citation: *Swiatek and The University of Southern Queensland* [2017] QICmr 57 (8 December 2017)

Application Number: 313127

Applicant: Swiatek

Respondent: The University of Southern Queensland

Decision Date: 8 December 2017

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - application for access to student assignment marks - names and student numbers removed - whether the identities of other students are reasonably ascertainable - definition of 'personal information' in section 12 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - marks awarded to a student cohort in two assignments - enhance accountability of the University - advance administration of justice for the applicant - effect of disclosure on the University's reputation and financial affairs - potential prejudice to the University's deliberative processes and/or testing procedures - whether disclosure would, on balance, be contrary to the public interest - whether access to the information may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The University of Southern Queensland (**USQ**) received an application, under the *Right to Information Act 2009* (Qld) (**RTI Act**), from the applicant, a current student, for access to the individual marks awarded to all of the students in his class, in two assignments, according to the specified marking criteria. In his application, the applicant confirmed that he did not seek access to the names and student numbers of any students, ie. he was seeking a '*deidentified*' list of assignment marks.
2. USQ located six pages and refused access to all of the information on the basis that disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of

the RTI Act. In its decision, USQ relied on the prejudice to its commercial or financial affairs, and the effectiveness of its testing and examination procedures, that it considered would arise from disclosure of the assignment marks.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of USQ's decision submitting, *inter alia*, that disclosure of the assignment marks would contribute to the administration of justice, would advance his fair treatment and reveal potential deficiencies in USQ's conduct.
4. Throughout the external review, USQ has strenuously defended its decision. USQ firmly believes that individual students could reasonably be identified from the list of assignment marks and that therefore, disclosure of the information would reveal the students' personal information and infringe their privacy. USQ has also submitted that its commercial and financial affairs, testing and examination procedures, deliberative processes and the future supply of confidential information, would be prejudiced through disclosure of the assignment marks.
5. For the reasons set out below, I set aside the decision under review. In substitution, I find that, on balance, the public interest favours disclosure of the assignment marks and that therefore, access may not be refused to the information under section 47(3)(b) of the RTI Act.

Background

6. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

7. The decision under review is USQ's decision dated 15 December 2016.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).¹

Information in issue

9. The information to which USQ refused access comprises the individual marks awarded to 121 students in two assignments in a particular subject (**Assignment Marks**).² The marks are displayed in a basic table format, are broken down across the five marking criteria for each assignment, and include the total assignment mark awarded to each student.³ The tables of Assignment Marks do not contain any student names or student numbers. Rather, the marks are attributed to rows numbered 1-121, in no apparent order.

Issues for determination

10. The primary issue to be determined in this review is whether disclosure of the Assignment Marks would, on balance, be contrary to the public interest under the RTI Act. Within this refusal of access issue, is the threshold issue of whether the Assignment Marks comprise the '*personal information*' of the USQ students. I have chosen to deal

¹ The applicant and USQ made extensive written submissions to OIC during the review. To the extent those submissions are relevant to the issues for determination in this review, I have considered them in these reasons.

² Six pages.

³ Pages 1-3 relate to Assignment 1 and pages 4-6 relate to Assignment 2.

with the personal information question first, as my finding on that issue impacts the public interest factors which I consider are relevant in this case.

11. USQ also sought to raise a scope issue to the effect that the access application sought access to more than just the six pages of Assignment Marks.⁴ Having carefully considered the terms of the access application, I am satisfied that the applicant's request for '*marked assessment criteria sheet...for each student*' was included as an **alternative** request, had USQ not been able to generate the Assignment Marks in table format. As USQ located the Assignment Marks and correctly identified these as responding to the access application, I consider there was no need to address the alternative limb of the access application, by looking for any further documents. I also note that the applicant has not sought, at any stage, to raise this as a '*sufficiency of search*' issue, which tends to indicate that he was satisfied with the extent of documentation located by USQ.⁵ Accordingly, I have not considered this scope issue, or USQ's related submissions, any further, in these reasons for decision.

Relevant law

12. The primary object of the RTI Act is to give a right of access to information, in the possession or under the control of a government agency⁶ unless, on balance, it is contrary to the public interest to give access.⁷ The RTI Act is to be administered with a pro-disclosure bias.⁸
13. The right of access is subject to some limitations, including the grounds on which access may be refused.⁹ Relevantly, access to information may be refused where disclosure would, on balance, be contrary to the public interest.¹⁰
14. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest¹¹ and explains the steps that a decision-maker must take in deciding the public interest as follows:¹²
 - 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 information in issue would, on balance, be contrary to the public interest.
15. On external review, the agency has the onus of establishing that its decision was justified or that the Information Commissioner should give a decision adverse to the applicant.¹³

⁴ Submission to OIC dated 10 July 2017 at [5]-[6].

⁵ Generally, there is a practical onus on applicants to raise sufficiency of search issues—it is not incumbent on agencies.

⁶ USQ was established by *University of Southern Queensland Act 1998* (Qld) for a public purpose. It is not contested that USQ is a '*public authority*' and therefore, an '*agency*' for the purposes of the RTI Act: section 14 and section 16 of the RTI Act, and see also section 10 of the *Right to Information Regulation 2009* (Qld).

⁷ Section 3 of the RTI Act.

⁸ Section 44 of the RTI Act.

⁹ Section 47 of the RTI Act.

¹⁰ Section 47(3)(b) of the RTI Act.

¹¹ Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest. This list is not exhaustive and therefore, other factors may also be relevant in a particular case.

¹² Section 49(3) of the RTI Act.

¹³ Section 87 of the RTI Act. In this review, USQ has relied on the ground for refusing access in section 47(3)(b) of the RTI Act and as such, I have not considered whether access may be refused to the Assignment Marks on any other ground.

Findings

Do the Assignment Marks contain ‘personal information’?

16. No, for the reasons set out below.

17. The term ‘personal information’ is defined as follows in the RTI Act:¹⁴

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.

[emphasis added]

18. In determining whether information is personal information for the purposes of the RTI Act, the first issue to consider is whether an individual can be identified from the information.¹⁵ Information about an individual which includes their name will ordinarily be identifying.¹⁶ Information other than a name, such as a photograph, or a detailed identifying description may also identify an individual.¹⁷

19. In this review, the Assignment Marks do not *identify* the students—names, student numbers, photographs or other identifying information does not appear on the face of the documents. However, even where a person’s identity is not readily apparent, it may be possible with the assistance of additional information to identify a person.¹⁸ In *Mahoney*,¹⁹ the then Right to Information Commissioner found that the question of whether an individual’s identity can reasonably be ascertained will depend on a number of factors:

- how available the additional information is
- how difficult it is to obtain
- how many steps are required to identify the individual
- how certain the identification will be
- whether it will identify one specific individual or a group of people; and
- whether the individual receiving the information can use it to identify the individual.

20. USQ submits that students can be readily identified from the Assignment Marks on the basis that the cohort of 121 students talk to each other.²⁰ I acknowledge that students may discuss their results. I have also considered USQ’s submission that *‘asking as few as 5 students as secondary sources will produce a high probability that one can correlate marks with an individual, irrespective of the de-identified data’*.²¹ I also acknowledge USQ’s submission that the access applicant is a member of the student cohort and may have knowledge of other students’ historical marks.

21. USQ considers that the identities of students could reasonably be ascertainable from the Assignment Marks on the basis that students will often *‘share information about their assessment with other students, including ... specific grades’* and that in this regard,

¹⁴ See schedule 5 of the RTI Act which refers to section 12 of the *Information Privacy Act 2009* (Qld).

¹⁵ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (*Mahoney*) at [19].

¹⁶ *Mahoney* at [20].

¹⁷ *Ibid.*

¹⁸ *Mahoney* at [21], cited with approval in *Marchant and Queensland Police Service* (Unreported, Queensland Information Commissioner, 10 September 2013) (*Marchant*) at [15]-[16]. In *Marchant*, the Assistant Information Commissioner found that the date and reasons for police callouts to a women’s hostel was not the personal information of individuals resident at the time (approximately 16 women), as their identities were not reasonably ascertainable from the information.

¹⁹ *Ibid.*

²⁰ Submission to OIC dated 1 March 2017, paragraph 1.3.6(i).

²¹ Submission dated 1 March 2017, paragraph 1.3.6(ii).

'students are just as likely as they are unlikely to confirm their assignment result'.²² USQ has pointed to various online student support platforms which students and staff use to share information about coursework and study.

22. USQ argues that 'as few as one data point is required to potentially allow identification to occur' and that this is particularly so due to the small class sizes in its regional campuses. USQ submits that it would be 'easy to obtain data by students simply asking other students to reveal their numerical mark or score', that this would 'only involve one step' and given the limited size of the cohort, an individual could be identified from the 'precise numerical mark or score'.²³
23. As set out above, the Assignment Marks comprise the results awarded to 121 students in a particular subject, in two assignments, broken down across five marking criteria for each assignment—each row in the table of results contains five separate numerical marks, across the five criteria. Given the way in which the Assignment Marks are presented, I am unable to accept USQ's submission that it would only take 'one step' or 'one data point' to ascertain the identify of a student. To the contrary, I consider it would require the voluntary disclosure, by multiple students, of the full breakdown of their assignment marks, to a single source, before accurate identification of any students could be achieved, with any certainty.
24. There is however, no certainty that students would even engage in any voluntary disclosure of their marks. As USQ submits, students often consider this information to be relatively private. Furthermore, in any instances where students have been awarded the same marks across criteria, there is no way, on the face of the Assignment Marks, to distinguish them from other students. Also, the marks are numerical only,²⁴ and contain no qualitative comments that could be used to distinguish one student from another, and students are numbered from 1 through to 121 in no apparent order, rather than listing the students by their student number. This means that the Assignment Marks contain less information specific to each student than is permitted by USQ's own policy concerning assessment, which provides that results for individual assessment items 'shall be displayed or published using Student number only'.²⁵ Other than relying on voluntary disclosure by the individual students, there appears to be no mechanism to begin a cross-referencing process, eg. there is no other publicly available listing or database of the Assignment Marks.
25. During the review, USQ raised the case of *6XY7LE and child of 6XY7LE and Department of Education, Training and Employment*²⁶ to support its submission.²⁷ I am satisfied that the information that was in issue in *6XY7LE* was of an entirely different character in that it comprised 'opinions of third parties ... in relation to students and parents at a primary school'²⁸ in circumstances where the applicant contended that the identity of third parties was known to him.²⁹ In contrast, the Assignment Marks are numerical, not descriptive, and could only be cross-referenced if multiple students were to volunteer the breakdown of their individual marks, as discussed above. Therefore, in my view, *6XY7LE* can readily be distinguished from the facts of this review.

²² Submission to OIC dated 10 July 2017 at [8].

²³ Submission to OIC dated 10 July 2017 at [9].

²⁴ With the exception of a small number of comments that do not relate to the content of students' work, but rather, relate to whether an assignment was submitted or whether there was a marking rubric available.

²⁵ USQ Assessment Procedure (10 July 2017) <http://policy.usq.edu.au/documents/14749PL> (USQ Assessment Procedure) at [4.3.13] (accessed on 1 December 2017).

²⁶ [2014] QICmr 1 (15 January 2014) (*6XY7LE*).

²⁷ Submission dated 1 March 2017, paragraph 1.3.3.

²⁸ *6XY7LE* at [20].

²⁹ *6XY7LE* at [32].

26. Having considered the factors set out in *Mahoney*,³⁰ I find that the identities of individual students are not reasonably ascertainable from the Assignment Marks and that therefore, the Assignment Marks do not comprise the personal information of USQ students. Accordingly, in assessing the public interest factors below, I have found that the nondisclosure factors relating to personal information and privacy, do not apply in the circumstances of this case.

Irrelevant factors

27. USQ submits that if the Assignment Marks are released, they could be manipulated and disseminated and this will result in people drawing incorrect conclusions from the data.³¹ Under the RTI Act, whether disclosure will result in misunderstanding or misinterpretation is specifically prescribed as an irrelevant factor³² and therefore, I have not taken USQ's submissions in this regard into consideration.
28. Further, mischievous conduct by the applicant that could result from disclosure is also prescribed by the RTI Act as an irrelevant factor.³³ To the extent USQ has submitted that manipulating the data in Excel '*would be a very bad misuse of statistical concepts*',³⁴ I consider that submission seeks to raise a factor that is prescribed as irrelevant, and therefore, I have disregarded it in making this decision.

Factors favouring disclosure

29. USQ receives government funding and provides public education for approximately 27,000 students.³⁵ In my view, there is a public interest in USQ being accountable in the performance of its functions, including the way academic staff attribute marks to students in pieces of assessment, thereby raising two factors in favour of disclosure.³⁶
30. USQ submits that disclosing the Assignment Marks will not further contribute to its accountability because the applicant is already aware of the University's grading standard, or rubric.³⁷ USQ further submits that '*significant material and effort has been dedicated towards ensuring the assessment marking standards are objective and transparent, and that students are aware of the process and deliberations involved*'.³⁸
31. While the applicant may already be aware of certain information about the University's grading policies, in my view the Assignment Marks would provide evidence of how the marks were attributed across the specific marking criteria in the two assignments. In affording moderate weight to the relevant factors,³⁹ I have also taken into account the marking rubric information already available to the applicant and the fact that the Assignment Marks only relate to one subject, for one course, in one semester, rather than demonstrating USQ's accountability at a broader university-wide level.
32. I also find that disclosure of the Assignment Marks could reasonably be expected to contribute to the administration of justice for the applicant as it would provide him with access to additional information that may form relevant evidence in any appeal/complaint

³⁰ At paragraph 19 above.

³¹ Submission to OIC dated 1 March 2017, paragraphs 4.1.3 - 4.1.4.

³² Schedule 4, part 1, item 2 of the RTI Act.

³³ Schedule 4, part 1, item 3 of the RTI Act.

³⁴ Submission to OIC dated 1 March 2017, paragraph 4.1.4.

³⁵ USQ's 2016 Annual Report, available at <https://www.usq.edu.au/about-usq/governance-management/plans-reports/annual-report> (accessed on 24 November 2017).

³⁶ Schedule 4, part 2, item 1 and 11 of the RTI Act.

³⁷ Submission dated 1 March 2017, paragraph 5.1.1.

³⁸ Submission to OIC dated 10 July 2017 at [13].

³⁹ Schedule 4, part 2, item 1 and 11 of the RTI Act.

process that he wishes to pursue.⁴⁰ However, I attribute only limited weight to this factor as commencing an appeal/complaint process is not entirely dependent on the applicant having access to the Assignment Marks. Further, it is likely that any appeal/complaint bodies would have broad powers to otherwise access relevant evidence to assess the merits of the applicant's case.

33. During the review, the applicant raised a number of other public interest factors which he submitted favoured disclosure of the Assignment Marks.⁴¹ In the circumstances of this case, I do not consider they apply. In any event, I am satisfied that the public interest factors discussed above, carry sufficient weight in this case to favour disclosure of the Assignment Marks, without examining any further disclosure factors. That is, my decision not to consider any other factors favouring disclosure, has not disadvantaged the applicant as the final decision is favourable to him.

Factors favouring nondisclosure

34. For the reasons given at paragraphs 16 to 26 above, I have found that the Assignment Marks do not comprise the personal information of other students, and therefore, I am satisfied that the nondisclosure factors concerning personal information and privacy⁴² do not apply in this case.
35. USQ has submitted that disclosure of the Assignment Marks will have an adverse effect on its financial affairs and prejudice its business, commercial and/or financial affairs.⁴³ USQ is concerned about the potential for it to be negatively perceived if it is seen to be releasing student results⁴⁴, that this may have a detrimental impact on student attitudes surrounding USQ and its law program⁴⁵ and that USQ may suffer reduced enrolments as a result.⁴⁶ In this regard, USQ specifically submitted as follows:

*The University submits that it is indeed reasonably foreseeable, on the basis that the University draws much of its enrolment from mature entry students, many of whom are first-in-family tertiary students, or from low socioeconomic status backgrounds. A common characteristic of these students is a lack of confidence in their ability to cope with University course assessment. Knowing in advance that their peers could have access to specific marks and comments will create a deeper barrier to pursuing study.*⁴⁷

36. Reputational damage has previously been found to prejudice business and financial affairs if it will ultimately result in pecuniary damage, such as loss of income or profits through loss of customers.⁴⁸ In this review, I must consider whether this kind of reputational damage 'could reasonably be expected to' result from disclosure of the Assignment Marks.⁴⁹ The expectation must arise as a result of disclosure of the

⁴⁰ Schedule 4, part 2, item 17 of the RTI Act. I note USQ's submissions dated 10 July 2017, which state that too much weight has been attributed to this factor, and that 'marking has far more of the characteristics of a deliberative process rather than an administrative decision'. This submission is misconceived. The factors concerning administration of justice do not relate solely to 'administrative decisions', and may apply in relation to a variety of legal processes, including complaints proceedings, appeal processes, quasi-judicial and judicial proceedings.

⁴¹ Schedule 4, part 2, items 5, 6, 10, 12 and 16 of the RTI Act.

⁴² Schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.

⁴³ Schedule 4, part 4, section 7(c) and schedule 4, part 3, item 2 of the RTI Act.

⁴⁴ USQ's decision dated 15 December 2016.

⁴⁵ Submission dated 1 March 2017, paragraph 4.1.7 – 4.1.10.

⁴⁶ Submission to OIC dated 10 July 2017 at [17].

⁴⁷ Ibid. USQ further argued that it should be allowed an opportunity to conduct a survey of relevant students 'to ascertain whether the University's assertions are correct' with respect to the anticipated prejudice to its financial affairs. In the circumstances of this case, I did not consider this was a necessary, or appropriate step to take, in the conduct of this external review—section 95 of the RTI Act—particularly given that the USQ Assessment Procedure explicitly provides (at 4.3.13) that results for individual assessment items should be displayed or published by student number.

⁴⁸ *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at [82]. Schedule 4, part 3, item 2 and part 4, section 7(1)(c)(ii) of the RTI Act.

⁴⁹ The expectation must be reasonably based and not irrational, absurd or ridiculous (*Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106), not a mere possibility (*Murphy and Treasury Department* (1995) 2 QAR 744 (*Murphy*) at [44]).

Assignment Marks, rather than from other circumstances.⁵⁰ While I accept that there may be particular students who may disagree, in principle, with the publication of assessment marks more generally, I do not consider that the disclosure of the Assignment Marks could reasonably be expected to lead to students entirely abandoning their tertiary studies at USQ.⁵¹ I find that it is not reasonably foreseeable that USQ would suffer reduced enrolments, or any other form of financial disadvantage, due to the release of de-identified marks for one subject, in one course, in one semester. Accordingly, I am satisfied that the nondisclosure factors concerning adverse effect/prejudice to USQ's business, commercial and/or financial affairs do not apply in this case.

37. USQ also submits that if the Assignment Marks are released, students will be reluctant to provide their personal information to USQ in future and it will be forced to amend its collection notice. I do not accept this submission for two reasons. Firstly, as stated earlier in these reasons, I have found that the Assignment Marks do not comprise personal information. Secondly, the argument that disclosure of the Assignment Marks could '*prejudice the future supply of information of this type to government*'⁵² is somewhat misconceived as the marks are generated internally by USQ academic staff who are required to mark assignments as part of their employment.⁵³
38. USQ sought to clarify this submission by arguing that the word '*supply*' should not be interpreted narrowly and that, while the Assignment Marks are generated internally by USQ staff, their creation is dependent on the provision of assessment items by students for marking.⁵⁴ I find that this submission is also flawed as it is premised on the basis that students submit assessment on a voluntary basis. The fact of the matter is that students submit assessment in order to achieve a pass mark, or better, in the course in which they are enrolled. While there may be instances in which students do not submit assessment, USQ's policy is that students are required to complete assessment items as part of their course, and in relation to assignments, failure to submit by the deadline results in a penalty, and may ultimately result in a failing Final Grade.⁵⁵ Accordingly, I am not satisfied that there could reasonably be expected to be any relevant prejudice to the supply of information to USQ, and I do not consider the nondisclosure factor set out in schedule 4, part 4, section 7(1)(c) of the RTI Act applies in this case.
39. USQ has submitted that disclosure of the Assignment Marks could also reasonably be expected to prejudice, or cause harm to, its deliberative processes.⁵⁶ USQ has correctly submitted that '*deliberative processes*' involved in the functions of government have been defined as '*...thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action*'.⁵⁷ It has also been defined as '*careful consideration with a view to decision*'.⁵⁸

⁵⁰ Murphy at [54].

⁵¹ Given that release of the Assignment Marks would constitute disclosure of less information than is permitted under the USQ Assessment Procedure (see footnotes 25 and 47 above) it is difficult to see how release in this case could reasonably be expected to result in students abandoning their studies, or in any other relevant adverse impact.

⁵² Schedule 4, part 4, section 7(c)(ii) of the RTI Act, as submitted by USQ at paragraph 4.1.1 of its 1 March 2017 submissions.

⁵³ Generally, this factor will be more relevant where information that is provided to government by an external third party, eg. a commercial entity contracting with government. See for example, *Quandamooka Yoolooburrabee Aboriginal Corporation and Department of Natural Resources and Mines; Sibelco Australia Ltd (Third Party)* [2014] QICmr [47] (19 November 2014) at [92]-[100].

⁵⁴ Submission to OIC dated 10 July 2017 at [18].

⁵⁵ *USQ Assessment Procedure* at [4.1] and [4.2.2]. Under this procedure, assignments presented after the deadline are subject to penalty unless an extension of time has been approved by the Course Examiner. If there is no student effort to address the requirements of the assignment, no mark is recorded for that assessment item, and this also impacts on eligibility for '*Supplementary Assessment*' (which is ordinarily available if a Student has failed to achieve a passing Final Grade by 5% or less).

⁵⁶ Schedule 4, part 3, item 20 and schedule 4, part 4, section 4 of the RTI Act.

⁵⁷ *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 at [28-30] citing with approval the definition given in *Re Waterford and Department of Treasury* (No.2) (1984) 5 ALD 588 at 606.

⁵⁸ *Ibid.*

40. USQ submits that in this case, the relevant '*deliberative process*' is:⁵⁹

...undertaken by University staff, in which the relevant marker undertakes a process of thinking and reflection upon the information contained with each students' assessment item (with reference to the relevant marking criteria and guidance), with a view to making a decision as to whether the assessment item conforms with specific requirements, as a part of a broader undertaking by the University to assess students' compliance with the requirements of their respective academic programs.

41. To the extent that this submission appears to suggest that the relevant deliberative process is comprised of a student's entire academic program, I do not accept it. Rather, in this context, the relevant '*thinking process*' is reflecting on and considering a student's work to determine the appropriate mark in *each* assessment task. Given that this process is complete, I cannot identify any relevant prejudice. I do not accept that disclosure of the Assignment Marks in this case will reduce a '*future inclination towards appropriate pedagogical candour, honesty and forthrightness*' as suggested by USQ.⁶⁰ Further, the Assignment Marks represent a *decision* after a thinking process, not information prepared⁶¹ in the course of, or for, this thinking process. Accordingly, I am satisfied that neither of the nondisclosure factors concerning deliberative process apply in this case.
42. USQ also submitted that disclosure of the Assignment Marks could reasonably be expected to prejudice the effectiveness of a method or procedure for the conduct of its tests, examinations or audits.⁶² USQ's submission is that the Assignment Marks are comprised of a significant amount of information and this information could be used by a student to '*formulate a method to exploit or undermine the University's assessment procedures, and thus "game the system"*'. I am satisfied that the Assignment Marks do not contain information that would allow students to confine their studies in a particular way, rote learn answers, or otherwise allow for students to achieve marks that do not reflect their educational attainment.⁶³ Further, I am unable to accept the submission that disclosing marks for two assignments⁶⁴ would allow a student to '*game the system*'. Accordingly, I do not consider that schedule 4, part 4, section 3(a) of the RTI Act applies in relation to the Assignment Marks.⁶⁵
43. USQ has also raised concerns that disclosure of the information would create an unacceptable precedent, and that other aggrieved students may repeatedly submit similar access applications, diverting USQ's resources from its core business.⁶⁶ I note that even if this were the case, the RTI Act provides an information access regime that is to be applied with a '*pro-disclosure bias*',⁶⁷ and USQ is required to consider an access application on its own merits.⁶⁸ Accordingly, I am not satisfied that USQ's concerns in this regard give rise to a relevant factor favouring nondisclosure.

⁵⁹ Submission dated 10 July 2017 at [20].

⁶⁰ To the extent that USQ's submission relates to concerns that students may gain '*exploitable insights*' and '*game the system*' this is dealt with at paragraph 42 below.

⁶¹ Or obtained, or recorded, or a consultation or deliberation that has taken place in the course of, or for, the deliberative processes. In contrast, notes prepared by the marker in relation to an assessment may constitute deliberative process information.

⁶² Schedule 4, part 4, section 3(a) of the RTI Act. This factor was relied upon in USQ's decision dated 15 December 2016, along with schedule 4, part 4, section 3(b) of the RTI Act. In its submissions to OIC dated 1 March 2017, USQ indicated that it no longer relied on these factors. In more recent submissions to OIC, USQ '*re-enlivened*' reliance on schedule 4, part 4, section 3(a).

⁶³ Compare to *Lucas and The University of Queensland* [2017] QICmr 14 (7 April 2017), where I found that disclosure of a marking guide (and extracts of this guide) in a particular course would, on balance, be contrary to the public interest.

⁶⁴ Including in relation to each of the five marking criteria.

⁶⁵ I have also considered the other factors relevant to prejudice to the effectiveness/objects of tests, examinations or audits (schedule 4, part 3, item 21 and schedule 4, part 4, section 3(b) of the RTI Act), and for the same reasons, I am satisfied that they do not apply to disclosure of the Assignment Marks.

⁶⁶ USQ's decision dated 15 December 2016 and in submissions made to OIC by telephone on 13 July 2017.

⁶⁷ As set out in section 39(1) and section 44(1) of the RTI Act.

⁶⁸ Section 41 of the RTI Act sets out the circumstances where an agency may refuse to deal with an application because of the effect on its resources. This provision was not relied upon by USQ, and does not arise for consideration in this case, given that the scope of the application was very narrow and the Assignment Marks are comprised of only six pages.

44. Finally, I have also considered USQ's submissions regarding potential breaches of the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act 1989* (Qld) to the extent they relate to the non-disclosure factor concerning the prohibition on disclosure by another Act.⁶⁹ I am however, unable to identify any provisions in those Acts, or any other legislation which could be interpreted as prohibiting publication of the Assignment Marks and therefore, I find that factor does not apply.

Balancing the relevant public interest factors

45. In summary, I find, in addition to the RTI Act's pro-disclosure bias, disclosure of the Assignment Marks is favoured by the moderate weight in enhancing USQ's accountability in the way its academic staff attribute marks to students in pieces of assessment, and the limited weight in advancing administration of justice for the applicant. While USQ has strongly argued for the application of various public interest factors favouring nondisclosure and I have carefully considered USQ's submissions, I find that no nondisclosure factors apply in the circumstances of this review.
46. Therefore, on balance, I am satisfied that the public interest weighs entirely in favour of disclosure of the Assignment Marks and access to the Assignment Marks may not be refused under section 47(3)(b) of the RTI Act.

DECISION

47. I set aside the decision under review. In substitution, I find that access to the Assignment Marks may not be refused under the RTI Act.
48. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act

Katie Shepherd
Assistant Information Commissioner

Date: 8 December 2017

⁶⁹ Schedule 4, part 3, item 22 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
18 December 2016	OIC received the external review application.
20 December 2016	OIC notified the applicant and USQ of receipt of the external review application and asked USQ to provide relevant procedural documents.
10 January 2017	USQ provided OIC with the requested documents.
13 January 2017	OIC notified the applicant and USQ that the external review application had been accepted and asked USQ to provide a copy of the located documents.
19 January 2017	OIC received the requested documents from USQ.
2 February 2017	OIC conveyed an oral preliminary view to USQ.
15 February 2017	OIC conveyed a written preliminary view to USQ.
1 March 2017	OIC received a written submission from USQ.
9 June 2017	OIC conveyed a further written preliminary view to USQ.
10 July 2017	OIC received a further written submission from USQ.
13 July 2017	OIC spoke to USQ about certain aspects of its submission.
23 August 2017	OIC provided the applicant with an update on the status of the review, by telephone.
5 October 2017	OIC provided the applicant with an update on the status of the review, by email.
10 October 2017	OIC provided USQ with an update on the status of the review, by telephone.
28 November 2017	OIC provided the applicant with an update on the status of the review, by email.