



## Decision and Reasons for Decision

---

<b>Citation:</b>	<b><i>Hansen and TAFE Queensland</i> [2017] QICmr 58 (19 December 2017)</b>
<b>Application Number:</b>	<b>313208</b>
<b>Applicant:</b>	<b>Hansen</b>
<b>Respondent:</b>	<b>TAFE Queensland</b>
<b>Decision Date:</b>	<b>19 December 2017</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - PARTIAL REFUSAL OF ACCESS TO DOCUMENTS - information concerning the applicant's employment and investigation of allegations against applicant - whether releasing the information would be contrary to public interest - section 67 of the <i>Information Privacy Act 2009</i> (Qld) sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to TAFE Queensland (**TAFE**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for all documents held by TAFE related to his employment with the Australia-Pacific Technical College (**APTC**) regarding a workplace investigation and his application for reinstatement.
2. TAFE decided<sup>2</sup> to:
  - grant access to 20 documents<sup>3</sup>
  - refuse access to 23 documents<sup>4</sup> in full or part on the ground that disclosure of this information would be contrary to the public interest; and
  - refuse access to 22 documents<sup>5</sup> on the ground that the applicant already had access to them.<sup>6</sup>

---

<sup>1</sup> Access application dated 14 November 2016 received by TAFE Queensland on 18 November 2016.

<sup>2</sup> TAFE's original decision dated 23 December 2016. This decision incorrectly referred to the access application as being made under the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>3</sup> Constituting 78 pages in total.

<sup>4</sup> Constituting 264 pages in total. Fifteen of the 23 documents referred to by TAFE are attachments to an investigation report, and other documents are attached to emails and a briefing note. On consideration of the attachments as part of these documents rather than as separate documents, the number of documents is, on OIC's count, 5 documents.

<sup>5</sup> Constituting 275 pages in total.

<sup>6</sup> These documents are no longer in issue on external review—see paragraph 12 below.

3. The applicant sought internal review<sup>7</sup> of this decision and, on internal review, TAFE affirmed its original decision.<sup>8</sup>
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the internal review decision.<sup>9</sup>
5. In relation to the information remaining in issue, for the reasons set out below, I affirm TAFE's decision and find that disclosure of this information would, on balance, be contrary to the public interest.

## Background

6. According to APTC's website:

*APTC is an Australian Government initiative announced at the Pacific Islands Forum in 2006 and welcomed by Pacific Island leaders. We are funded by the Australian Government through the Department of Foreign Affairs and Trade and managed by TAFE Queensland (RTO 0275).*<sup>10</sup>

...

*TAFE Queensland is the Registered Training Organisation (RTO) who issues the APTC qualifications and is also the Managing Contractor for the APTC project.*<sup>11</sup>

7. The applicant was a trainer at one of APTC's facilities. APTC appointed Ashdale Workplace Solutions (**Investigator**) to investigate allegations of misconduct regarding the applicant and another APTC trainer. The applicant was notified of the investigation by letter from APTC dated 3 November 2014 and resigned from his role with APTC by letter of the same date.<sup>12</sup>
8. The Investigator examined whether the applicant and the other APTC trainer had breached APTC's Code of Conduct. The applicant was interviewed as part of the investigation on 5 November 2014. While his resignation became effective on 21 November 2014, the investigation continued and, in December 2014, the Investigator provided APTC with a report setting out the Investigator's investigation and findings (**Report**).
9. The Appendix to these reasons for decision sets out the significant procedural steps taken during the external review.

## Reviewable decision

10. The decision under review is TAFE's internal review decision dated 6 February 2017.

## Evidence considered

11. The evidence, submissions, legislation and other material I have considered in reaching this decision are as disclosed in these reasons (including the Appendix).

---

<sup>7</sup> Internal review application dated 6 January 2017.

<sup>8</sup> Internal review decision dated 6 February 2017.

<sup>9</sup> External review application dated 13 February 2017.

<sup>10</sup> At <<https://www.aptc.edu.au/about/us>>, viewed 15 December 2017.

<sup>11</sup> At <<https://www.aptc.edu.au/about/australian-education-system>>, viewed 15 December 2017.

<sup>12</sup> The applicant's resignation letter dated 3 November 2014 was attached to TAFE's submission to QIRC dated 26 August 2015, which was among the documents located by TAFE, but excluded from consideration on external review (as noted at paragraph 12 below).

## Information in issue

12. On external review, OIC facilitated the release of 10 full pages and parts of 17 pages<sup>13</sup> which TAFE had previously refused to disclose. Further, the applicant confirmed<sup>14</sup> that he did not wish to pursue access to:
- copies of documents that he was already able to access, such as letters and emails which had been sent by or to him; and
  - copies of information already known by him, such as the transcript of his interview with the Investigator.
13. Otherwise, the applicant confirmed that he was seeking a full copy of the Investigator's Report and copies of any evidence relied upon by the Investigator. Accordingly, the information remaining for consideration in this review (**Information in Issue**) comprises parts of 5 documents,<sup>15</sup> specifically:
- parts of the Report relating to the investigation of—
    - the applicant, comprising the personal information of the applicant intertwined with the personal information of other individuals; and
    - the other trainer, including the personal information of the applicant intertwined with the personal information of that trainer,and attachments to the Report, which may generally be described as—
    - correspondence with the other trainer
    - a medical certificate about an individual other than the applicant; and
    - transcripts of interviews with the other trainer and other individuals
  - a briefing note from TAFE to the Investigator regarding the investigation into the conduct of the applicant and the other trainer, and an attachment thereto (including parts of the executive summary to the Report); and
  - three series of email correspondence from APTC to TAFE and within TAFE, and attachments to one of those series (again including parts of the executive summary to the Report).

## Issue for determination

14. The issue for determination in this review is whether access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

## Relevant law

15. The IP Act confers on an individual a right to access documents of an agency, to the extent they contain the individual's personal information.<sup>16</sup> This right of access is subject to limitations, including grounds for refusal of access.<sup>17</sup>

---

<sup>13</sup> Page 2-4, 7-8, 10, 18-19 and 21-22 and parts of pages 9, 20, 23-29, 34-35, 40-43, 45 and 48-49. Of these pages, page 4 and 10 are blank pages.

<sup>14</sup> In a telephone conversation on 4 July 2017 and email correspondence dated 6 July 2017.

<sup>15</sup> Constituting 201 pages in total.

<sup>16</sup> Section 40(1)(a) of the IP Act. Section 12 of the IP Act defines personal information as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

<sup>17</sup> Grounds for refusal of access are set out in section 47(3) of the RTI Act. Section 67(1) of the IP Act provides that access to information may be refused under the IP Act on the same grounds as in section 47 of the RTI Act.

16. Access to information may be refused where disclosure would, on balance, be contrary to the public interest. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>18</sup> and explains the steps that a decision-maker must take into account in deciding the public interest as follows:
- 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 would, on balance, be contrary to the public interest.<sup>19</sup>
17. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs<sup>20</sup> 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.

## Findings

### *Irrelevant factors*

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

### *Factors favouring disclosure*

#### **Personal information of the applicant**

19. The applicant has submitted:

*All I ask for is the information provided to APTC or their investigator which pertains to me.*<sup>21</sup>

20. Where information comprises the personal information of an applicant, this gives rise to a factor favouring disclosure.<sup>22</sup>
21. The Report records the Investigator's investigation of the allegations against the applicant and another trainer, and the resulting findings regarding the two parties. Those parts of the Report relating solely to the applicant have either been released to him<sup>23</sup> or comprise information that he no longer wishes to access.<sup>24</sup>
22. In terms of the Information in Issue, a large portion of this information comprises the applicant's personal information, in that it relates to the applicant's employment and an investigation into the applicant's conduct in the workplace. Generally, this information comprises statements provided to the Investigator by former colleagues of the applicant in relation to his conduct, and the Investigator's analysis of these statements. Here, the applicant's personal information is intertwined with the former colleagues' personal

---

<sup>18</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these factors are not exhaustive; in other words, factors that are not listed may also be relevant.

<sup>19</sup> Section 49(3) of the RTI Act.

<sup>20</sup> As TAFE is established under the *TAFE Queensland Act 2013* (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. It is therefore part of the 'Government' referred to in some of the factors in schedule 4 of the RTI Act.

<sup>21</sup> Page 1 of the applicant's submission dated 28 April 2017.

<sup>22</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>23</sup> Pursuant to TAFE's original decision or on external review—see paragraph 12 above.

<sup>24</sup> Again, see paragraph 12 above.

information, in that these individuals are providing personal opinions about the applicant which are shaped by their experiences and observations. This is relevant to factors favouring nondisclosure discussed below.

23. Other Information in Issue, comprising information provided by the applicant regarding the investigation into the other trainer's conduct, is also the applicant's personal information. Again, the applicant's personal information is intertwined with the personal information of others, and this is relevant to factors favouring nondisclosure discussed below.
24. Insofar as the Information in Issue is the applicant's personal information, I acknowledge the importance of providing individuals with access to their own personal information held by the government, and I afford this factor significant weight.

### **Accountability and transparency**

25. The applicant has submitted:

*The processes and procedures followed by APTC in my case were far outside the requirements of APTC's own policies and procedures.<sup>25</sup>*

...

*... "investigations" performed by contractors to the public service organisations are, in most cases, performed under the conditions that the outcome is already decided and the "investigation" must follow the pre-decided outcome. If the "investigation" was carried out professionally and in an impartial manner, there is again nothing to be concerned about in respect to the public interest ... .<sup>26</sup>*

26. 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 the Government's accountability;<sup>27</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>28</sup>
27. Generally, there is a public interest in workplace investigations being conducted with as sufficient a degree of transparency and accountability as possible to provide the relevant parties (and the public generally) with an understanding of the outcome and conclusions of the investigation.
28. As mentioned above, the Report is a report regarding an investigation about whether two APTC trainers—one being the applicant—breached APTC's Code of Conduct,<sup>29</sup> and the Information in Issue comprises parts of the Report and documents related to the Report.<sup>30</sup>
29. I note that the applicant has received the following parts of the Report related to him, except for portions of information where the applicant's personal information is intertwined with that of other individuals:

---

<sup>25</sup> Page 2 of the applicant's submission dated 28 April 2017.

<sup>26</sup> Pages 3 and 4 of the applicant's submission dated 19 May 2017.

<sup>27</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>29</sup> See paragraph 8.

<sup>30</sup> See paragraph 13.

- background information
- summary of findings
- information about who authorised the investigation
- scope and purpose of the investigation
- a précis of complaints and allegations that were made against him
- legislation considered by the Investigator
- information about the complaints—except for information identifying complainants and witnesses
- information about the investigation—specifically, the methodology and evidence identified as relevant (comprised by emails and interviews with various individuals); and
- the analysis and conclusions of the Investigator.

30. I appreciate that the applicant is dissatisfied with the manner in which the investigation of what he recognises to be ‘*serious misconduct allegations*’<sup>31</sup> against him was conducted, and therefore wishes to examine all of the evidence relied upon in that investigation. However, in light of the parts of the Report released to the applicant (as set out above), I consider that he has received a substantial amount of information about the investigation and the reasons for its findings regarding the allegations against him. In my opinion, this information significantly discharges the public interest in accountability and transparency.

31. In these circumstances, I consider that releasing the Information in Issue would enhance the accountability and transparency of TAFE in relation to the workplace investigation only a marginal degree further. Accordingly, I afford these public interest factors low weight.

### **Deficiencies in conduct**

32. I have also considered whether disclosure could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official or other person;<sup>32</sup> and
- reveal or substantiate that an agency or official or other person has engaged in misconduct or negligent, improper or unlawful conduct.<sup>33</sup>

33. While the applicant has not explicitly raised these factors, the applicant has submitted:

*It is important ... that I understand what was said, why it was said and how it affected the results of the, in my belief, inaccurate and unprofessional report made by APTC’s so-called independent investigator.*<sup>34</sup>

...

*...I believe that the investigations in my case have been grossly unfair. It is evident from the very limited information provided to me thus far, that the investigation was conducted in an atmosphere of prejudice, harassment and bullying so that the preferred outcome could be justified.*<sup>35</sup>

...

*If, by withholding the information, you wish to protect people who have made errors of judgement or untruthful statements, that, in my opinion, is against the public interest. If the*

<sup>31</sup> As described by the applicant in his access application.

<sup>32</sup> Schedule 4, part 2, item 5 of the RTI Act. While ‘other person’ is not specified in this item, it is possible to consider this public interest factor in terms of other persons, as well as agencies and officials, given the factors favouring disclosure in schedule 4 are non-exhaustive—see section 49(3)(b) of the RTI Act.

<sup>33</sup> Schedule 4, part 2, item 6 of the RTI Act. In terms of ‘other person’, see footnote 32.

<sup>34</sup> Page 1 of the applicant’s submission dated 28 April 2017.

<sup>35</sup> Page 2 of the applicant’s submission dated 28 April 2017.

*information is factual and provided honestly, my feelings are that there is nothing of a private nature to withhold...*

...

*None of the things that occurred were witnessed by people outside my very personal colleagues. It is my belief that they only gave information which was coerced from them under very uncomfortable conditions and this information, I believe, they would most certainly want me to have access to.<sup>36</sup>*

34. It is evident that the applicant believes that the investigation into his conduct was not performed in accordance with APTC's policies and procedures nor, indeed, in a manner consistent with general standards of professionalism and integrity. However, for the above factors to be relevant, there must be a reasonable expectation that disclosing the Information in Issue would allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of TAFE, TAFE's employees, and/or any other person—which, in this case, includes APTC, APTC's employees, and/or the Investigator.
35. I have carefully considered the Information in Issue, together with the information which has been released to the applicant. I am unable to identify any deficiencies, or reasonably possible deficiencies, in the conduct of TAFE, TAFE's employees, APTC, APTC's employees, or the Investigator. Accordingly, there is nothing before me to give rise to an expectation that disclosing the Information in Issue would expose or enable examination of any possible deficiencies in the conduct of these parties. Rather, the information before me suggests that the workplace investigation process was instigated and progressed in accordance with the usual conduct of such matters. In these circumstances, on the material before me, I afford these factors low to no weight in terms of the conduct of TAFE, TAFE's employees, APTC, APTC's employees, and the Investigator.
36. The applicant's submissions did not, of course, raise deficiencies in conduct regarding his own conduct, nor did they raise deficiencies regarding the conduct of the other trainer. However, the Investigator found that some of the allegations addressed in the Report were substantiated. To the extent the Information in Issue relates to these allegations, I consider that the above factors are relevant. However, given the allegations in question have already been the subject of inquiry and substantiated, I am satisfied that the factors warrant limited weight. Accordingly, in this regard, I again afford these factors low to no weight.

#### **Procedural fairness and fair treatment**

37. As noted above, the applicant submits that the investigation was 'grossly unfair'.<sup>37</sup> He also submits:

*The practices and procedures of various individuals did not follow acceptable and fair interventions as should be expected in a professional organisation such as APTC.<sup>38</sup>*

38. In making these submissions, the applicant raises issues of procedural fairness and fair treatment. I have therefore considered whether disclosing the Information in Issue could reasonably be expected to:

- contribute to the administration of justice generally, including procedural fairness;<sup>39</sup> and

<sup>36</sup> Page 2 of the applicant submission dated 19 May 2017.

<sup>37</sup> Paragraph 33 above.

<sup>38</sup> Page 2 of the applicant's submission dated 28 April 2017.

<sup>39</sup> Schedule 4, part 2, item 16 of the RTI Act.

- advance the fair treatment of the applicant in accordance with the law in his dealings with agencies.<sup>40</sup>
39. In this regard, information located by TAFE that is no longer in issue<sup>41</sup> is, in my view, relevant. This information indicates that the applicant was informed of the nature of the workplace investigation in the letter received by him on 3 November 2014. Further, he was interviewed by the Investigator for approximately two hours on 5 November 2014, during which time he was given the opportunity to respond to the allegations. Also, following APTC's receipt of the Report, APTC wrote to the applicant on 12 December 2014 and gave him an opportunity to respond to the Report's findings regarding the allegations against him before APTC made a determination about those allegations.
40. I note that the applicant resigned from his role with APTC, citing a '*personal situation beyond [his] control*',<sup>42</sup> prior to the workplace investigation being finalised. While it appears that the applicant may now consider that he was constructively dismissed from his position, there is no information before me to suggest that he was not afforded procedural fairness during and following the workplace investigation.
41. In these circumstances, I am satisfied that the applicant has been afforded a degree of procedural fairness during the workplace investigation sufficient to afford him the opportunity to make effective representations in response to the allegations. Accordingly, procedural fairness does not, in my opinion, require that the applicant be provided with the Information in Issue. Further, disclosure of the Information in Issue would not, in my view, advance the applicant's fair treatment in his dealings with TAFE or APTC.
42. For these reasons, I afford low to no weight to the procedural fairness and fair treatment factors favouring disclosure.

### **Administration of justice for the applicant**

43. The applicant submits:

*The only person to have been adversely affected so far has been me. And this is the very reason for the release and review of the documents which have been used against me for reasons I am unclear.*<sup>43</sup>

44. It is my understanding that the applicant seeks the Information in Issue so that he may commence legal proceedings regarding issues related to the circumstances examined in the Report, or assess the viability of such proceedings. I have therefore considered whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice for a person, namely the applicant.<sup>44</sup>
45. In determining whether the public interest factor regarding administration of justice for a person—in this case, the applicant—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

---

<sup>40</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>41</sup> See paragraph 12.

<sup>42</sup> In his resignation letter dated 3 November 2014, referred to at footnote 12 above.

<sup>43</sup> Page 3 of the applicant's submission dated 28 April 2017.

<sup>44</sup> Schedule 4, part 2, item 17 of the RTI Act.



- 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.<sup>45</sup>
46. The applicant considers that he has suffered loss in respect of his employment. In this regard, it is my understanding that the applicant may consider that he was constructively dismissed from his position with APTC.<sup>46</sup>
47. The material before me indicates that the applicant has already taken legal action regarding the end of his employment with APTC. Specifically, information released to the applicant in this matter indicates that, following his resignation, he made three applications for reinstatement as follows:
- one application to Queensland Industrial Relations Commission (**QIRC**) under section 74 of the *Industrial Relations Act 1999* (Qld) (**QIRC application**);<sup>47</sup> and
  - two applications to Fair Work Commission (**FWC**) for the FWC to deal with a general protection dismissal in accordance with section 365 of the *Fair Work Act 2009* (Cth) (**FWC applications**).<sup>48</sup>
48. In respect of the QIRC application, TAFE contended<sup>49</sup> that:
1. *The Applicant has no prospects of success in relation to reinstatement or re-employment, due to the fixed term nature of the contract.*
  2. *The Applicant's application for reinstatement was made some 180 days after the Applicant's employment came to an end, by his own hand, as a resignation.*
49. I note that QIRC issued a certificate under section 75 of the *Industrial Relations Act 1999* (Qld) which stated that QIRC was satisfied that all reasonable attempts to settle the matter by reconciliation were, or were likely to be, unsuccessful.<sup>50</sup> This certificate also stated that the applicant was required to take some action in relation to the application, otherwise the application would lapse. As there is no further information before me to indicate that the applicant took further action, and there are no decisions available on the QIRC website, it appears that the QIRC application has lapsed.
50. In respect of the FWC applications, I note that the applicant requested that FWC discontinue both of the applications.<sup>51</sup>
51. In terms of any further legal action that the applicant may wish to take regarding the end of his employment with APTC, I am unable to identify how disclosure of the Information in Issue could assist the applicant to commence any proceedings, or assess the viability of them. In this regard, I note that, given the extent of information released to the applicant, the applicant is generally informed about the allegations against him which were the subject of the investigation, how the investigation was conducted, the findings of the investigation, and a significant level of background information. Also, given the applicant's presence and involvement in the circumstances to which the allegations

---

<sup>45</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

<sup>46</sup> As noted at paragraph 40.

<sup>47</sup> Application dated 6 August 2015 and date stamped by the Industrial Registrar on 7 August 2015.

<sup>48</sup> Form F8-General Protections Application Involving Dismissal' signed by the applicant and dated 30 June 2015 and TAFE's 'Form 12B – Employer Response to Application for Reinstatement'.

<sup>49</sup> In the conclusion of its submissions to QIRC dated 26 August 2014.

<sup>50</sup> Certificate dated 3 September 2015.

<sup>51</sup> One application was discontinued on 5 August 2015 when the applicant telephoned FWC. TAFE's response to the QIRC application dated 26 August 2015 indicates that the second application was also discontinued. While the applicant's reasons for requesting that the two FWC applications be discontinued are not apparent from the material before me, I note the possibility that the FWC may not have had jurisdiction to hear the FWC applications, given the applicant was employed under the section 122 of the *Public Service Act 2008* (Qld).

relate, I consider it reasonable to expect that the applicant would, most likely, be aware of the identity of colleagues who provided evidence in the investigation. Further, taking into account the general information already in the possession of the applicant relative to the information in the statements themselves, I consider that the applicant is likely to be aware of the nature, if not the exact content, of their statements.

52. Finally, in the event that the applicant decides to commence any proceedings, I consider it reasonable to expect that he may utilise relevant court disclosure processes. In these circumstances, I consider the comments of the Information Commissioner in *Phyland and Department of Police*<sup>52</sup> 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 ...*

53. In light of the above considerations, I am unable to identify how disclosure of the Information in Issue could reasonably be expected to assist the applicant to pursue legal action against any particular individual or entity, or evaluate whether a legal remedy against any particular individual or entity is available or worth pursuing.
54. For these reasons, I afford this public interest factor low to no weight.

#### **Other factors favouring disclosure**

55. 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**

##### **Personal information and privacy of others**

56. The applicant has submitted:

*I do not require personal information of others but when it comes to names, I believe it is in the public interest that those who have made accusations against me, provided evidence against me, or written about me in respect to my concerns during my period ... with APTC are known.<sup>53</sup>*

...

*[I]t is my opinion that nobody involved in this action will be adversely affected by the release of the information I have requested. If they have been honest and conducted themselves fairly and professionally, they should be more than pleased to allow the release.<sup>54</sup>*

...

*If the information is factual and provided honestly, my feelings are that there is nothing of a private nature to withhold...*

...

*None of the things that occurred were witnessed by people outside my very personal colleagues. It is my belief that they only gave information which was coerced from them under very uncomfortable conditions and this information, I believe, they would most certainly want me to have access to.<sup>55</sup>*

...

<sup>52</sup> (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

<sup>53</sup> Page 1 of the applicant's submission dated 28 April 2017.

<sup>54</sup> Page 3 of the applicant's submission dated 28 April 2017.

<sup>55</sup> Page 2 of the applicant submission dated 19 May 2017.

*If the “investigation” was carried out professionally and in an impartial manner, there is again nothing to be concerned about in respect to the public interest or intruding on another’s privacy.<sup>56</sup>*

57. Given these submissions and the nature of the Information in Issue, I have considered whether disclosing the Information in Issue could reasonably be expected to:
- prejudice the protection of other individuals’ right to privacy;<sup>57</sup> or
  - cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>58</sup>
58. As noted at paragraphs 21 to 23 above, those parts of the Report relating solely to the applicant have either been released to him or comprise information that he no longer wishes to access. The Information in Issue comprises the personal information of other individuals, a large amount of which is intertwined with the applicant’s personal information. Specifically:
- Most of the Information in Issue relating to the allegations against the applicant comprises the personal information of other individuals (that is, the other trainer and witnesses) intertwined with that of the applicant. A small amount of this information is solely that of the other trainer and witnesses.
  - The Information in Issue relating to the allegations against the other trainer is the personal information of other individuals (that is, the other trainer and witnesses). To the extent that the applicant provided information regarding the allegations against the other trainer, or is referred to by witnesses in their statements, the personal information of others (again, the other trainer and witnesses) is intertwined with the applicant’s personal information.
59. I have considered whether the intertwined information can be separated, so that the personal information of the applicant may be released to him. However, this information generally comprises the personal opinions of other individuals about the applicant which are shaped by the experiences and observations of those individuals. Given the nature of such information, it cannot be separated.
60. I acknowledge the applicant’s advice that he is not seeking the names of the other individuals. However, as noted above,<sup>59</sup> the applicant is most likely aware of the identities of the colleagues who provided evidence as part of the workplace investigation. Given the small number of individuals who were privy to the circumstances relevant to the investigation, I consider that the applicant would be able to identify who provided the particular statements, even if the names were removed. Therefore, it is not possible to de-identify the statements and maintain the privacy of the individuals concerned.
61. The Information in Issue comprises sensitive personal statements given by other individuals in relation to the investigation of allegations against both the applicant and another trainer, as well as summaries and evaluations of these statements. I consider that the individuals who provided information to the investigation would have a reasonable expectation that their right to privacy would be preserved, other than to the extent necessary to afford procedural fairness to the applicant and the other trainer during the investigation.

---

<sup>56</sup> Pages 3 and 4 of the applicant’s submission dated 19 May 2017.

<sup>57</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>58</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>59</sup> At paragraph 51.

62. I also consider that the other trainer would have a reasonable expectation that information regarding the investigation of the allegations against him would not be provided to the applicant either during the investigation, or subsequently under the IP Act.
63. In terms of the medical certificate of another individual which appears in the Information in Issue, while this document does not provide any definitive information as to the individual's medical condition, I consider that disclosure of it would indicate that the individual visited a medical practitioner on a particular date, and would enable speculation about the reason for the individual doing so.
64. In conclusion, I consider that disclosure of the Information in Issue under the IP Act would be a significant intrusion into the privacy of the individuals concerned and cause significant public interest harm. While the applicant may be generally aware of the substance of Information in Issue, including the identity of the other trainer and witnesses, I consider that this only slightly reduces, and does not negate, the weight to be afforded to these factors. In the circumstances, I consider that the above factors warrant significant weight insofar as the Information in Issue records other individuals' involvement in a workplace investigation (either as a witness to or subject of the investigation). Further, in terms of the medical information, given the highly sensitive nature of this information, I afford very significant weight to the above factors.

#### **Agency's ability to obtain confidential information and management function**

65. The RTI Act recognises public interest factors favouring nondisclosure of information in circumstances where disclosing information could reasonably be expected to prejudice an agency's:
- management function;<sup>60</sup> and
  - ability to obtain confidential information.<sup>61</sup>

66. The applicant submits that:

*... it is my belief that...the flow of information would be advantaged because individuals would be enlightened in knowing that the information is going towards assisting the operations and administration of APTC thus improving their conditions in future deployments.<sup>62</sup>*

*I believe that management, in fact, will be advantaged as well. Rather than prejudicing a management function, release of the information and the benefits which will flow from this, will allow management functions to be enhanced in favour of a more inclusive and positive process and outcomes.<sup>63</sup>*

67. In terms of management functions and obtaining confidential information, these submissions contend that the capacity of TAFE, or by extension APTC, would be enhanced, rather than prejudiced, by disclosure of the Information in Issue. I have carefully considered these submissions, and consider that they are, in effect, relatively specific submissions that raise accountability and transparency factors favouring disclosure. Such factors have been addressed above, at paragraphs 25 to 31 of this decision.

---

<sup>60</sup> Schedule 4, part 3, item 19 of the RTI Act.

<sup>61</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>62</sup> Page 2 of the applicant's submission stated 28 April 2017.

<sup>63</sup> Page 2 of the applicant's submission dated 28 April 2017.

68. In terms of factors favouring nondisclosure regarding management functions and obtaining confidential information in the context of a workplace investigation, I note that information is usually provided by witnesses on the understanding that it will be treated confidentially, except to the extent that procedural fairness requires otherwise, and will only be used for the purposes of the investigation and any subsequent disciplinary action.<sup>64</sup> On this basis, it is expected that staff will cooperate in investigative processes and provide information in an open and honest manner.
69. To release the information provided to the Investigator, or information that reveals such information (for example, the Investigator's summaries and analyses of that information), outside of the investigation process under the IP Act, where there can be no restriction on its use, dissemination or republication, could reasonably be expected to make staff reluctant to fully participate in future investigations, and thereby prejudice the future flow of information to investigators. This, in turn, could reasonably be expected to adversely impact TAFE's ability to conduct or oversee workplace investigations and manage staff in future.<sup>65</sup>
70. There is a strong public interest in protecting the flow of information regarding the conduct and competency of employees paid with public monies. This is because agencies such as TAFE, and by extension APTC, rely on information provided to them in order to become aware of and, if necessary, investigate issues, and thereby maintain a high standard of conduct among their employees. Given these considerations, I afford both of these factors significant weight in favour of nondisclosure.

### ***Balancing the relevant factors***

71. The IP 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.<sup>66</sup>
72. On consideration of the nature of the Information in Issue, and taking into account the nature and extent of information the applicant has available to him regarding the investigation of the allegations against him, I consider that accountability and transparency factors favouring disclosure warrant only low weight. Further, I consider that the factors regarding deficiencies in conduct warrant low to no weight, both in terms of the conduct of TAFE, TAFE's employees, APTC, APTC's employees, and the Investigator, and also in terms of the applicant and other trainer. Also, I am satisfied that factors regarding the administration of justice—both in terms of procedural fairness and for an applicant—and fair treatment again warrant low to no weight.
73. To the extent that the Information in Issue is the applicant's personal information, I afford significant weight to the factor favouring disclosure. However, given that the Information in Issue also comprises the personal information of individuals other than the applicant, I consider that its disclosure under the IP Act would be a significant intrusion into the privacy of these individuals and there would be a reasonable expectation of public interest harm. I am satisfied that these factors should be afforded significant weight in terms of the information provided by or regarding other individuals who are witnesses in or the subject of the workplace investigation, and highly significant weight in terms of the medical information.

---

<sup>64</sup> *Hof and Rockhampton Regional Council* [2015] QICmr 8 (15 April 2015) at [53].

<sup>65</sup> *8A3BPQ and Queensland Police Service* [2014] QICmr 42 (30 October 2014) at [41-42].

<sup>66</sup> Section 64 of the IP Act.

74. I have also considered that disclosure could reasonably be expected to prejudice the ability to conduct workplace investigations and manage staff in the future. I have afforded significant weight to these factors favouring nondisclosure.
75. Taking into account all of the matters 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**

76. Based on the information before me, I am satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest<sup>67</sup> and, accordingly, it may be refused on this ground.

### **DECISION**

77. For the reasons set out above, I affirm the decision under review and find 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.<sup>68</sup>
78. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

---

**A Rickard**  
**Assistant Information Commissioner**

**Date: 19 December 2017**

---

<sup>67</sup> Under section 49 of the RTI Act.

<sup>68</sup> Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act

## APPENDIX

### Significant procedural steps

Date	Event
16 February 2017	<b>OIC received the access application dated 13 February 2017 for external review of TAFE's decision.</b>
16 February 2017	OIC informed the applicant and TAFE that the external review application had been accepted and requested procedural documents from TAFE.
23 February 2017	OIC received the requested procedural documents from TAFE.
1 March 2017	OIC requested that TAFE provide copies of the documents responsive to the access application.
4 April 2017	OIC proposed an informal resolution option to TAFE regarding the release of additional information.
13 April 2017	TAFE agreed to provide the applicant with the additional information identified in OIC's letter dated 4 April 2017.
26 April 2017	OIC contacted the applicant and explained that additional information was going to be released to him. TAFE confirmed to OIC that this information was released to the applicant on this date.
27 April 2017	The applicant contacted OIC to indicate that he wanted all remaining information responsive to his access application.
28 April 2017	The applicant made a submission to OIC regarding the Information in Issue.
11 May 2017	OIC conveyed a preliminary view to the applicant about the Information in Issue.
19 May 2017	The applicant made a submission in response to OIC's preliminary view.
6 July 2017	OIC provided the applicant with an update in relation to the progress of the external review, advising that OIC had considered his submissions but remained of the view that the Information in Issue may be refused.
24 August 2017	OIC updated the applicant on the progress of the external review.
13 November 2017	OIC updated the applicant on the progress of the external review.