



Decision and Reasons for Decision

Application Number: 310954

Applicant: Abbot

Respondent: The University of Queensland

Decision Date: 16 October 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for information relating to an irregularity in a university admission process - whether disclosure of university senate meeting minutes and draft public statements would prejudice relevant deliberative processes - whether access may be refused to information on the basis that disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied to The University of Queensland (**UQ**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to information relating to an irregularity in an admission process at UQ, including an investigation report.
2. UQ released some information to the applicant and refused access to other information on the basis that it was subject to legal professional privilege or its disclosure would, on balance, be contrary to the public interest. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of UQ's refusal of access decision.
3. On external review, UQ agreed to release further information to the applicant and the applicant elected not to pursue access to information (including the investigation report) which OIC considered to be exempt¹ on the basis of a related investigation by the Crime and Misconduct Commission (**CMC**)².
4. The information remaining in issue, which is the subject of this decision, comprises parts of (i) the minutes of a UQ Senate meeting (ii) a draft message from the Chancellor to the UQ community and (iii) a draft media statement. UQ contends that disclosure of this information would, on balance, be contrary to the public interest primarily due to the resulting prejudice UQ's relevant deliberative processes.

¹ Under schedule 3, section 10(4) of the RTI Act.

² See <http://www.cmc.qld.gov.au/news-and-media/media-releases/cmc-to-prepare-public-report-on-university-of-queensland-investigation-2014-28.05.2012>.

5. For the reasons set out below, disclosure of the information remaining in issue would not, on balance, be contrary to the public interest and therefore, access to it may not be refused under section 47(3)(b) of the RTI Act.

Background

6. Significant procedural steps relating to the application and external review are set out in the Appendix to these reasons.

Reviewable decision

7. The decision under review is UQ's decision dated 23 January 2012 to refuse access to information under sections 47(3)(a) and 47(3)(b) of the RTI Act.³

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

9. The information remaining in issue in this review comprises:
 - parts of the minutes of a UQ Senate meeting (**Senate Minutes**);⁴ and
 - parts of a draft message from the Chancellor to the UQ community and parts of a draft media statement (**Draft Public Statements**).⁵

Relevant law

10. Under the RTI Act, an individual has a right to be given access to documents of an agency.⁶ Access should be given to a document unless disclosure would, on balance, be contrary to the public interest.⁷
11. The right of access is subject to some limitations, including the grounds on which access may be refused.⁸ One ground for refusing access is where disclosure would, on balance, be contrary to the public interest.⁹ The RTI Act lists various public interest factors for and against disclosure¹⁰ and explains the steps to take¹¹ in deciding where the public interest lies, 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 in issue would, on balance, be contrary to the public interest.

³ The information to which access was refused under section 47(3)(a) of the RTI Act is not dealt with in this decision as the applicant accepted the Office of the Information Commissioner's (OIC) preliminary view that access to that information may be refused – see the Appendix.

⁴ Document 2 (folios 32 - 33).

⁵ Document 7 (folios 15 - 16 and 23 - 24).

⁶ Section 23(1) of the RTI Act.

⁷ Section 44(1) of the RTI Act. This is referred to as the *pro-disclosure bias* in deciding access to documents.

⁸ Listed in section 47(3)(b) of the RTI Act. Section 47(2) of the RTI Act provides that these grounds are to be interpreted narrowly and an agency may give access to a document even if a ground for refusal of access applies.

⁹ Section 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.

¹⁰ In schedule 4 of the RTI Act. This list is not exhaustive and therefore, other factors may be relevant in a particular case.

¹¹ Section 49(3) of the RTI Act.

12. 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.¹²

Findings

13. In this review, UQ has the onus of establishing that access to the Senate Minutes and Draft Public Statements should be refused on the basis that disclosure would, on balance, be contrary to the public interest.
14. For the reasons set out below, I find that disclosure of the Senate Minutes and Draft Public Statements would not, on balance, be contrary to the public interest. I am satisfied that no irrelevant factors arise in the circumstances of this case.

Factors favouring disclosure

Accountability and transparency in decision-making

15. The subject matter of the information in issue, that is, the irregularity in an admission process at UQ, has been the subject of wide media coverage.¹³ To the extent the Senate Minutes and Draft Public Statements reveal how UQ handled the irregularity, I consider the following public interest factors apply in favour of disclosure:
 - promote open discussion of public affairs and enhance accountability;¹⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.¹⁵
16. Given that the admission irregularity was internally investigated, referred to the CMC and resulted in the resignation of two senior UQ staff members, I am satisfied that the public interest in enhancing accountability and increasing transparency in decision-making carries very significant weight in favour of disclosure.
17. UQ submits¹⁶ that the amount of information already published by UQ and other organisations and the actions of the CMC reduce the weight to be attributed to the public interest factors favouring disclosure relating to accountability and transparency in decision-making.
18. I acknowledge that UQ has published information about the admission irregularity.¹⁷ The publications show that UQ responded to the allegations by retaining a barrister to investigate the matter and then referring it to the CMC. I consider that the information already released by UQ, either through published statements or under the RTI Act on this application, has served to enhance its accountability and reveal some of the reasons for or background/contextual information that informed its decision. On this basis, I find that the weight of these public interest factors is somewhat reduced.
19. However, the fact that the CMC is investigating the admission irregularity matter does not, in my view, further reduce the weight of these public interest factors. As noted above, these factors are relevant to the extent the Senate Minutes and Draft Public Statements show how UQ internally handled the irregularity and in disclosing the reasons for and/or background/contextual information that informed UQ's decision-

¹² Section 87(1) of the RTI Act.

¹³ See for example <http://www.couriermail.com.au/news/queensland/favouritism-probe-at-uq/story-e6freoof-1226186284276>.

¹⁴ Schedule 4, part 2, item 1 of the RTI Act.

¹⁵ Schedule 4, part 2, item 11 of the RTI Act.

¹⁶ UQ's submission to OIC dated 23 August 2012.

¹⁷ See for example <http://www.uq.edu.au/news/?article=24023>; <http://www.uq.edu.au/news/?article=24189>; and <http://www.uq.edu.au/news/?article=24033>.

making on the matter, whereas the CMC investigation commenced after UQ internally dealt with the irregularity.¹⁸

20. For the above reasons, I find that the public interest factors set out in paragraph 15 above should be afforded significant weight in favour of disclosure.

Factors favouring nondisclosure

Deliberative process

21. UQ submits that disclosure of the Senate Minutes and Draft Public Statements would be prejudicial and/or harmful to the deliberative processes of the Senate at its meetings, and UQ generally in deciding how to communicate information regarding internal matters, such as the admission irregularity, to the wider community.¹⁹
22. The RTI Act recognises that that the public interest will favour nondisclosure of information where disclosure could reasonably be expected to:
- prejudice a deliberative process of government (**Nondisclosure Factor**);²⁰ and
 - cause a public interest harm through disclosure of a consultation or deliberation that has taken place in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**).²¹
23. 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*'.²²
24. For the above factors to apply, the information in issue must constitute deliberative process information. Once this is established, the Harm Factor will apply and it is then relevant to consider the nature and extent of the public interest harm that may result through disclosure.²³ For the Nondisclosure Factor to apply, a reasonable expectation of prejudice to the relevant deliberative process must be established.

(i) Senate Minutes

25. The Senate Minutes list certain matters discussed at a meeting concerning the admission irregularity and related investigation report. They also set out the Senate's assessment of the relevant measures taken and identify potential further actions required. I am satisfied that this information constitutes deliberative process information.
26. In support of its submission that disclosing the Senate Minutes would prejudice and/or cause harm to its deliberative processes, UQ submits²⁴ that:

¹⁸ I also note that UQ's submission to OIC dated 13 June 2012 confirmed that the Senate Minutes and Draft Public Statements were not obtained, used or prepared by the CMC for the purpose of its investigation and for this reason, UQ did not maintain its claim that the documents were subject to the exemption in schedule 3, section 10(4) of the RTI Act.

¹⁹ UQ's submission to OIC dated 23 August 2012.

²⁰ Schedule 4, part 3, item 20 of the RTI Act.

²¹ Schedule 4, part 4, item 4 of the RTI Act. This public interest *harm factor* is similar to the previous exemption in section 41(1) of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**).

²² *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 (**Eccleston**) at [28-30] citing with approval the definition given in *Re Waterford and Department of Treasury (No.2)* (1984) 5 ALD 588 at [606].

²³ In *Trustees of the De La Salle Brothers and Queensland Corrective Services Commission* (1996) 3 QAR 206 at [14] the Information Commissioner considered, in the context of the equivalent FOI Act exemption, that '*specific and tangible harm to an identifiable public interest would result from disclosure*'. I consider that this is a relevant consideration when applying the Harm Factor under the RTI Act.

²⁴ UQ's submission to OIC dated 13 June 2012.

- the Senate members present at the meeting were encouraged to speak fairly and frankly on this matter and members would consider what they said in a closed meeting would be kept out of the public arena
- the deliberative part of any meeting will cause robust debate as members express their views and not everything which is said in this process will find its way to the final decisions as members change their minds and compromises are made; and
- if the relevant information is disclosed, members will be less inclined to speak frankly and the minutes will record less detail and this would be detrimental to UQ's governance, given that the Senate is UQ's ultimate governing body.

27. In *Eccleston*²⁵ the Information Commissioner considered whether disclosure would inhibit candour and frankness in future communications and found that:

- such claims should be disregarded unless a very particular factual basis is laid for the claim and tangible harm to the public interest will result from that inhibition;²⁶ and
- even if some diminution in candour and frankness caused by the prospect of disclosure is conceded, the real issue is whether the efficiency and quality of a deliberative process is thereby likely to suffer to an extent which is contrary to the public interest.²⁷

28. UQ submits²⁸ that this case can be distinguished from *Eccleston* as it concerns different types of documents. While I acknowledge that the nature of the information in issue in this review is different to what was considered in *Eccleston*²⁹, I consider the Information Commissioner's comments in paragraph 27 above are relevant to the extent that they provide guidance on assessing whether disclosure would generally inhibit candour and frankness in future communications within an agency.

29. UQ further submits³⁰ that:

- the Senate Minutes reveal matters considered by the Senate when considering the investigation report and are inherently sensitive as they raise various issues of concern to members of the Senate arising out of the investigation report and the options available to deal with the investigation report
- UQ has made numerous public statements about the investigation report to explain the Senate's decisions but at no time has UQ or the Senate published information about the actual decision-making process and the specific factors that the Senate took into account when deciding how to deal with the investigation report; and
- disclosure could lead to harm to the Vice-Chancellor and Senior Deputy Vice-Chancellor, harm to the Senate by disclosing its deliberations publicly and potential harm to the student at the centre of the enrolment irregularity.

30. UQ has also made various submissions about how disclosing the role of particular individuals in the deliberations would prejudice the Senate's deliberative processes.³¹

²⁵ This case considered the application of the *deliberative process* exemption in section 41(1) of the repealed FOI Act and ultimately found that the exemption did not apply as disclosure would not be contrary to the public interest – at [185]. The Information Commissioner's reasoning in *Eccleston* was later followed in *Hewitt and Queensland Law Society* (1998) 4 QAR 328 where the Information Commissioner stated that he was not satisfied that 'the substance or quality of advice prepared by staff ... would be materially altered for the worse, by the threat of disclosure under the FOI Act.' at [139].

²⁶ At [132].

²⁷ At [134].

²⁸ UQ's submission to OIC dated 23 August 2012.

²⁹ The documents in issue in *Eccleston* comprised internal memoranda, letters to another agency and a brief for the Minister relating to advice on the consequences of a High Court decision for the Queensland Government, at [2] and [76].

³⁰ UQ's submission to OIC dated 23 August 2012.

³¹ UQ's submissions to OIC dated 23 August 2012. Section 108(3) of the RTI Act prevents me from setting out these submissions in detail.

31. I have carefully reviewed the content of the Senate Minutes in the context of UQ's above submissions. In my view, the Senate Minutes are set out in general terms, akin to a list of discussion items, with some items having been published in comparative terms in public statements. For these reasons, I do not consider the Senate Minutes can be described as particularly sensitive in nature. I am also satisfied that the Senate Minutes do not reveal the personal views of individual members or show that members changed their minds or made compromises on particular matters. Further, I do not consider that there is any evidence of 'robust debate' within the Senate Minutes, as UQ has submitted. For these reasons, I am not persuaded that disclosure of the Senate Minutes would reveal internal thinking processes of the Senate, or that the substance or quality of future deliberations would be prejudiced by disclosure.³²
32. Various public statements refer directly to the Senate as having reviewed the admission irregularity matter, initiated an independent investigation and taken corresponding action in relation to the resignations of the relevant staff members.³³ In my view, this confirms that the Senate's decision-making role in relation to the admission irregularity matter is publicly known. I consider it is reasonable to expect that this governing body would be required to consider matters, such as those set out in the Senate Minutes, to ensure an issue of this nature was dealt with thoroughly and appropriately. Therefore, I am not persuaded that the efficiency or quality of Senate deliberations in the future would be likely to suffer to such an extent that would be contrary to the public interest, if the Senate Minutes were disclosed.
33. In the circumstances, I am unable to identify how the potential harm to particular individuals, as submitted by UQ, could reasonably be expected to be prejudicial and/or harmful to the Senate's deliberative processes.
34. For the reasons set out above, I find that, in relation to the Senate Minutes:
- the Harm Factor applies but there is no specific or tangible harm to the relevant deliberative processes of the Senate that could reasonably be expected to be caused by disclosure and therefore, this factor carries only minimal weight in favour of nondisclosure; and
 - the Nondisclosure Factor does not apply as disclosure could not reasonably be expected to prejudice the Senate's deliberative processes.

(ii) Draft Public Statements

35. UQ submits that the Draft Public Statements reflect the deliberative process of UQ in deciding how to communicate the outcomes of the investigation report to the wider community and that, due to the sensitivity of the report, numerous press releases were drafted.³⁴
36. I consider that the Draft Public Statements comprise deliberations that occurred to decide upon the appropriate form of public statement for UQ to make in relation to the admission irregularity and related matters. I am satisfied that these documents constitute deliberative process information.
37. In *Criminal Justice Commission and Director of Public Prosecutions; Harris (Third Party) (Harris)*³⁵ the Information Commissioner considered whether a draft public

³² I acknowledge that there may be cases in which minutes of UQ Senate meetings may be of sufficiently sensitive nature which, if disclosed, could reasonably be expected to prejudice future deliberations of the Senate. However, in this case, I am not satisfied that the Senate Minutes are of such a nature.

³³ See UQ online news articles dated 9 November and 9 December 2011 referred to at footnote 17 above. For example, the 9 December article states that "The Senate has acted decisively and promptly every step of the way and has not shirked from making some extremely tough decisions".

³⁴ UQ's submission to OIC dated 23 August 2012.

³⁵ (1996) 3 QAR 299 (28 June 1996).

statement satisfied the requirements of the deliberative process exemption under the repealed *Freedom of Information Act 1992 (Qld)*.³⁶ In *Harris*, the Information Commissioner found³⁷ that while the draft statement constituted deliberative process information, there could be no public interest factor weighing against release of any parts of the statement which had already been made public. In considering the parts of the draft statement which had not formed part of the final public statement, the Information Commissioner stated:

I am confident that members of the public are sufficiently aware of the procedures adopted by government organisations to be able to distinguish the significance of draft documents from final expressions of the approach of an organisation. Documents prepared to express the position of an organisation on matters of public importance may go through many stages of development before being finally adopted by an agency. Often there will be input from numerous officers of an agency ... I do not consider that disclosure of draft documents to the public must be assumed in every case to represent a danger to this process.

On the contrary, I consider that there may be significant benefits to the public in obtaining access to draft material, so as to further the accountability, and public understanding of, the operations of government organisations... In my view, disclosure of this type of material allows members of the public to examine the processes by which an agency has come to its final conclusion ...

*... I consider that public access to pre-decisional processes of agencies, even well after the event, may, in appropriate cases, be valuable in furthering accountability, and public understanding, of the operations of government agencies.*³⁸

38. During the review, UQ agreed to release certain parts of the Draft Public Statements which it considered reflected the content of the final published statements. However, UQ has maintained that the Draft Public Statements contain some information which does not appear in the final versions and considers that its disclosure would prejudice and/or cause harm to, its deliberative processes. In relation to the parts of the Draft Public Statements which remain in issue, I am unable to identify any specific harm or prejudice which disclosure could reasonably be expected to cause to the deliberative processes of UQ. In contrast, I consider that disclosure would further public understanding of UQ's handling of the matter, thereby reducing the weight to be attributed to this factor.
39. On the basis of the above, I find that, in relation to the Draft Public Statements:
- the Harm Factor applies but there is no specific or tangible harm to the relevant deliberative processes of UQ that could reasonably be expected to be caused by disclosure and therefore, this factor carries only minimal weight in favour of nondisclosure; and
 - the Nondisclosure Factor does not apply as disclosure could not reasonably be expected to prejudice the relevant deliberative processes of UQ.

Confidentiality

40. UQ has submitted that the Senate Minutes are confidential.³⁹ To support this submission, UQ referred to provisions of the *University of Queensland Act 1998 (Qld)* concerning the operation of the Senate, particularly the provision which entitles the

³⁶ Section 41 of the repealed FOI Act.

³⁷ At [25 and 27].

³⁸ At [36 – 38].

³⁹ UQ's submission to OIC dated 23 August 2012. I have addressed UQ's submissions on confidentiality in the context of public interest factors favouring nondisclosure. As UQ did not make any submissions on the application of the breach of confidence exemption in schedule 3, section 8 of the RTI Act, I have not considered that exemption in these reasons for decision.

Senate to *'regulate its proceedings in meetings as it considers appropriate'*.⁴⁰ UQ further explained⁴¹ that:

Pursuant to section 29 of the UQ Act, the Senate has passed standing orders, which deals specifically with the handling of confidential information, and requires these confidential minutes to be kept separately to other minutes. The University is of the view that the corporate structure of the University and the role of Senate is analogous to that of a board of a private corporation, and accordingly, the general presumption that board minutes are confidential should also apply to confidential minutes of Senate.

41. The relevant standing order⁴² relied on by UQ in the above submission states that *'The minutes of those proceedings or classes of proceedings that Senate or the Vice-Chancellor decides are confidential, must be kept separately'*.
42. The RTI Act recognises that the public interest will favour nondisclosure of information where disclosure could reasonably be expected to:
 - prejudice an agency's ability to obtain confidential information (**Nondisclosure Factor**);⁴³ or
 - cause a public interest harm (**Harm Factor**) if:
 - the information consists of information of a confidential nature that was communicated in confidence; and
 - disclosure could reasonably be expected to prejudice the future supply of information of this type.⁴⁴
43. Information will have a necessary quality of confidence if it is not trivial or useless and has a sufficient degree of secrecy.⁴⁵
44. The Senate Minutes are marked as 'confidential'. I acknowledge that this indicates that the Senate intended for them to be dealt with under the relevant standing order. However, I do not consider that being subject to the standing order assigns confidentiality to the Senate Minutes—the standing order simply concerns appropriate storage measures for Senate Minutes. In my view, this is not relevant to the issue of confidentiality.
45. In view of the subject matter of the Senate Minutes, I find that they are not trivial in nature. I also accept that the Senate Minutes have not been published, at least not in their entirety. There are however, some *parts* of the Senate Minutes which appear, in comparative terms, in public statements made by UQ in relation to the admission irregularity matter. Accordingly, while I acknowledge that the Senate Minutes were marked as 'confidential', I find that those parts which appear in publications in similar terms, are no longer sufficiently secret to attract confidentiality. However, in view of my findings below in relation to the other elements of the Harm Factor, I have not specifically identified in these reasons, the parts which I am satisfied are of a confidential nature.⁴⁶

⁴⁰ Section 29 of the *University of Queensland Act 1998* (Qld).

⁴¹ UQ's submission to OIC dated 23 August 2012.

⁴² Number 9.5.

⁴³ Schedule 4, part 3, item 16 of the RTI Act.

⁴⁴ Schedule 4, part 4, item 8 of the RTI Act.

⁴⁵ This test was set out in *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (**Re B**) in the context of section 46(1)(a) of the repealed FOI Act. In *Re B*, at [71], the Information Commissioner considered the requirement that information be of a confidential nature under an equitable action in breach of confidence, is the same as in section 46(1)(b) of the repealed FOI Act. The Harm Factor is framed in equivalent terms to section 46(1)(b) of the repealed FOI Act and therefore, I am satisfied that this test can be applied under the RTI Act. See also *Macrossan & Amiet Solicitors and Queensland Health* (Unreported, Queensland Information Commissioner, 27 February 2002) (**Macrossan**) at [60].

⁴⁶ I am also prevented from disclosing, in these reasons for decision, information which UQ claims is contrary to the public interest – see section 108(3) of the RTI Act.

46. For the Harm Factor to apply, the information must have been communicated in confidence. For information to be communicated in confidence it must be imparted in circumstances where the information supplier's need or desire for confidential treatment has been expressly or implicitly conveyed (or otherwise apparent to the recipient) and has been understood or accepted by the recipient, giving rise to an express or implicit mutual understanding that the relevant information would be treated in confidence.⁴⁷
47. I am not satisfied that UQ's submissions demonstrate that members of the Senate participated in the meeting on the understanding that matters discussed would be treated in confidence. I have considered the fact that the Senate Minutes are marked as 'confidential' however, the Information Commissioner has previously found that it is not possible to unilaterally impose confidentiality through labelling information as such.⁴⁸ For these reasons, I find that the Senate Minutes were not communicated in confidence.
48. Even if I had been satisfied that the Senate Minutes were communicated in confidence, for the reasons set out at paragraphs 31-32 above, I do not consider that disclosure of the Senate Minutes could reasonably be expected to prejudice the future supply of this type of information.⁴⁹ I also rely on the reasons at paragraphs 31-32 above to explain why I am satisfied that UQ's ability to obtain confidential information from Senate members at its meetings would similarly, not be prejudiced through disclosure.
49. For the reasons set out above, I find that the requirements of the Harm Factor and Nondisclosure Factor have not been established in this case and therefore, I am satisfied that these factors do not apply to disclosure of the Senate Minutes.

Personal information and privacy

50. UQ submits that the information in issue contains personal information of UQ staff including allegations of possible wrongdoing.⁵⁰
51. The RTI Act recognises that protecting other people's personal information⁵¹ raises a public interest factor favouring nondisclosure due to the public interest harm in disclosure.⁵² Where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, this will also raise a public interest favouring nondisclosure.⁵³
52. As the information in issue names several UQ staff members in the context of issues relating to their employment, I am satisfied that this constitutes their personal information.⁵⁴ The information relates to the staff members' involvement in the admission irregularity and resulting resignations and therefore, I am satisfied that this is

⁴⁷ *Re McCann and Queensland Police Service* (1997) 4 QAR 30 at [34]. This test was set out in the context of section 46(1)(b) of the repealed FOI Act which is framed in equivalent terms to the Harm Factor and therefore, the same approach can be applied.

⁴⁸ *Re B* at [91]. I also note that in *Macrossan* at [51], the Information Commissioner found that delivering documents to a government agency in boxes marked "Private & Confidential" was not sufficient to impose an obligation of confidence on the recipient of the documents.

⁴⁹ In view of my finding that the requirements of the Harm Factor have not been established, I have not considered whether the exception in schedule 4, part 4, item 8(2) of the RTI Act applies. I note however that the information in issue is deliberative process information to which the exception relates.

⁵⁰ UQ's submissions to OIC dated 13 June 2012 and 23 August 2012.

⁵¹ Section 12 of the *Information Privacy Act 2009* (Qld) 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.*

⁵² Schedule 4, part 4, item 6 of the RTI Act.

⁵³ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁴ However, I do not consider that any personal information of UQ students appears in the information in issue as no students are specifically named. I am also satisfied that student identities could not reasonably be ascertained from disclosure of the information in issue.

not *routine personal work information*⁵⁵ and that there is a level of privacy associated with it. However, I consider that similar, and in some cases, identical information about the staff members has been published by UQ in online news articles.⁵⁶ I consider that this significantly reduces the privacy interest attaching to the information and similarly, any harm that may result from disclosing the personal information would be negligible.

53. For the reasons set out above, I afford the public interest factors identified at paragraph 51 very low weight in favour of nondisclosure.

Balancing the public interest

54. As the information in issue concerns an irregularity in a university admission process which was internally investigated, referred to the CMC and resulted in the resignation of two university staff members, the public interest in enhancing accountability and increasing transparency in decision-making is particularly high in this case. However, the weight of these factors is somewhat reduced as UQ has already released/published information which reveals some of the measures it took to handle the matter.
55. While I accept that the Senate Minutes and Draft Public Statements comprise deliberative process information, I do not consider that disclosing the information could reasonably be expected to cause a specific and tangible harm to the relevant deliberative processes and therefore, attribute only minimal weight to this factor in favour of nondisclosure. I also give only very low weight to the public interest in protecting the personal information and privacy of individuals concerned, due to the significant amount of publicly available information relating to the staffing matters connected with the admission irregularity.
56. For the above reasons and taking into account the pro-disclosure bias in deciding access to information under the RTI Act, I am satisfied that the public interest factors favouring nondisclosure are outweighed by the factors favouring disclosure and that therefore, disclosure of the information in issue would not, on balance, be contrary to the public interest.

DECISION

57. For the reasons set out above, I set aside UQ's decision to refuse access to information under section 47(3)(b) of the RTI Act. In substitution, I find that disclosure of the Senate Minutes and Draft Public Statements remaining in issue in this review would not, on balance, be contrary to the public interest.
58. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 16 October 2012

⁵⁵ As discussed in the OIC guideline *Routine Personal Work Information and Public Sector Employees* available at <http://www.oic.qld.gov.au/information-and-resources/guidelines-ip/routine-personal-work-information-public-sector-employees>.

⁵⁶ UQ news articles available at <http://www.uq.edu.au/news> dated 9 and 11 November and 9 December 2011.

APPENDIX**Significant procedural steps**

Date	Event
25 November 2011	UQ received the access application.
23 January 2012	UQ issued its decision, granting access to some information and refusing access to other information under sections 47(3)(a) and (b) of the RTI Act.
17 February 2012	OIC received the external review application and asked UQ to provide relevant preliminary documents to OIC.
1 March 2012	OIC notified the applicant and UQ that the application had been accepted for review. OIC asked UQ for a copy of the documents to which it had refused access and a further submission supporting its reasons for refusing access to information, particularly in relation to schedule 3, section 10(4) of the RTI Act.
19 March 2012	UQ provided OIC with a copy of the documents to which it had refused access.
21 March 2012	The applicant asked OIC for an update on the progress of the review.
27 March 2012	OIC provided the applicant with an update on the status of the external review.
30 March 2012	OIC received UQ's further submissions. OIC asked UQ for further information in relation to the related CMC investigation.
31 March 2012	The applicant asked OIC to provide a response to procedural issues relating to the application.
2 April 2012	OIC responded to the applicant's procedural inquiries and provided an update on the status of the external review.
16 April 2012	OIC asked UQ to provide further submissions in relation to schedule 3, section 10(4) of the RTI Act.
27 April 2012	OIC received UQ's submissions and provided the applicant with an update on the status of the external review.
28 April 2012	The applicant provided submissions to OIC regarding the review timeframe.
1 May 2012	OIC directed UQ to provide further submissions in relation to schedule 3, section 10(4) of the RTI Act.
8 May 2012	OIC received further submissions from UQ.
22 May 2012	OIC received correspondence from the CMC in relation to its investigation.
29 May 2012	OIC issued a written preliminary view to the applicant that some of the documents in issue were exempt under schedule 3, section 10(4) of the RTI Act due to the related CMC investigation. OIC invited the applicant to provide submissions supporting his case if he did not accept the preliminary view.
30 May 2012	OIC conveyed a preliminary view to UQ that certain documents in issue were not exempt under schedule 3, section 10(4) of the RTI Act. OIC invited UQ to provide submissions supporting its decision to refuse access to information if it did not accept the preliminary view.
4 June 2012	The applicant contacted OIC by telephone in relation to the preliminary view and external review timeframes. OIC confirmed to the applicant the due date for written submissions, if he wished to contest the preliminary view.
13 June 2012	OIC received submissions from UQ in which it agreed to release some information to the applicant.
25 June 2012	OIC asked UQ to release the additional information to the applicant. OIC confirmed, by letter to the applicant, the outstanding issues in the review, in view of UQ's agreement to release information and the absence of any submissions from the applicant in response to the preliminary view.

Date	Event
27 June and 31 July 2012	OIC provided the applicant with an update on the status of the external review.
10 August 2012	OIC conveyed a further preliminary view to UQ on the remaining information in issue and invited UQ to provide submissions if it did not accept the view.
24 August 2012	<p>OIC received UQ's submissions in response to the preliminary view. UQ agreed to release some additional information to the applicant which OIC asked UQ to send to the applicant.</p> <p>OIC provided the applicant with an update on the status of the external review and asked the applicant if, in view of the additional information released to him by UQ, he wished to pursue access to the remaining information in issue.</p>
31 August 2012	The applicant confirmed that he wished to pursue access to the remaining information in issue and asked OIC to clarify a procedural issue.
3 September 2012	UQ confirmed to OIC that it had sent the additional information to the applicant. OIC provided the applicant with an update on the status of the external review and information regarding external review procedures.
7 September 2012	The applicant confirmed to OIC that he had received the additional information from UQ and wished to proceed with the formal review process.
10 October 2012	OIC provided the applicant with an update on the status of the external review.