

**OMBUDSMAN TASMANIA**  
**DECISION**



**Right to Information Act Review**      **Case Reference: R2208-020**

**Names of Parties:** Robert Hogan and the University of Tasmania

**Reasons for decision:** s48(3)

**Provisions considered:** s26, s35, s37, s38 and s40

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**Background**

- 1 The University of Tasmania (the University) announced a decision to relocate its longstanding campus in Sandy Bay to central Hobart in 2019. This decision sparked a high level of public interest and debate. Mr Robert Hogan is strongly opposed to the University's decision, is a member of the Save UTAS Campus group and has launched a website regarding the campus move.
- 2 On 24 March 2022, Mr Hogan made an application for assessed disclosure under the *Right to Information Act 2009* (the Act) to the University as follows:

*I request copies of the minutes of all meetings of the UTAS Council conducted between 1 January 2015 and 24 March 2022.*
- 3 The scope of Mr Hogan's request was changed by the University on 16 May 2022 to the following:

*Copies of the minutes of all meetings of the UTAS Council conducted between 1 January 2015 and 24 March 2022 that relate to University decision making on the move to a city centric campus.*
- 4 Mr Hogan disputed the way in which the scope of his request was changed by the University, as he did not consent to the change.
- 5 On 27 May 2022 Mr Simon Perraton, a delegate under the Act for the University, released a decision to Mr Hogan. In his decision Mr Perraton agreed to release the majority of the Council minutes, finding it was in the public interest to do so, but he found parts of the information to be exempt under ss37 and 38 of the Act.
- 6 Mr Hogan applied for internal review of this decision on 27 June 2022. In his request for internal review, Mr Hogan asserted that ... *the Act makes no provision for a decision maker to unilaterally vary the scope of an application and I consider it entirely inappropriate, if not beyond power, for Mr Perraton to have done so.*

- 7 On 18 July 2022, Ms Jane Beaumont, a delegate under the Act, released a further decision to Mr Hogan, which affirmed Mr Perraton's decision. Ms Beaumont also justified the University's actions in relation to scope negotiations by saying:

*Given the volume of information you were requesting in your original scope and your refusal to refine the scope of your application through negotiations, the delegated RTI Officer as decision-maker could either (i) refuse your application on the basis that it would be unreasonable, [sic] (ii) accept your application and interpret the scope of your request to relate to the subject matter you are interest [sic] in. [highlighted in yellow in the University's decision]*

- 8 On 12 August 2022, Mr Hogan sought external review of the University's decisions. This office accepted his application under s44 of the Act on the basis he was in receipt of an internal review decision, the fee had been paid and his application for external review was submitted within 20 working days after receipt of that decision.
- 9 Mr Hogan applied to have his external review request expedited and I agreed to grant priority to this matter. This was due to the high degree of public interest in the University's proposed move, and several approaching deadlines, including: the City of Hobart's poll of ratepayers on the proposed move, the University's consultation phase on the CBD move, a rezoning application for the Sandy Bay campus, and the Legislative Council's inquiry into the *University of Tasmania Act 1992*, which Mr Hogan said *will inevitably involve consideration of the proposed move*.
- 10 The University's actions in reducing the scope of Mr Hogan's application resulted in a significant gap between the information he requested in his original application for assessed disclosure and the information that was assessed in the decisions by Mr Perraton and Ms Beaumont. In his submissions supporting his application for external review, Mr Hogan also raised inconsistencies in the redacted information provided to him which may have indicated relevant information was missing, giving rise to potential further grounds for external review under s45(1)(e) of the Act in relation to the sufficiency of the University's search for information.
- 11 It is clear the University entered into scope negotiations with Mr Hogan given it was considering whether to refuse his application under s19(2) of the Act on the grounds that *the work involved in providing the information would substantially and unreasonably divert the resources of the University from its other work*. The University was entitled to undertake scope negotiations on that basis and it was also entitled to refuse Mr Hogan's application under s19 if the requirements of that provision were met. However, the Act does not permit a public authority to unilaterally excise parts of an application for assessed disclosure without the agreement of the applicant.

- 12 For these reasons, on 5 December 2022, my office asked the University to consider issuing a fresh decision to Mr Hogan, which would assess any information responsive to Mr Hogan's original request for information which had not already been assessed. On 8 December 2022, the University agreed to provide a fresh decision to Mr Hogan on that basis and the decision was issued on 16 January 2023. That decision (referred to in this decision as the fresh decision) is largely independent of this decision but overlaps to an extent where the University reconsidered some of the same information. The fresh decision will only be referred to here in relation to the exclusion of further information released or where additional reasons for exemption were claimed by the University.
- 13 It is unnecessary to further consider the issues raised regarding scope, aside from the comments I make in the Analysis, as the issuing of a fresh decision has addressed that matter.

### **Issues for Determination**

- 14 I must determine whether the information is eligible for exemption under ss26, 35, 37, 38 or 40 or any other relevant section of the Act.
- 15 As ss35, 37, 38 and 40 are contained in Division 2 of Part 3 of the Act, my assessment is subject to the public interest test in s33, including consideration of the matters in Schedule 1. This means that, should I determine that the information is prima facie exempt under this section, I must then determine whether it is contrary to the public interest to disclose it.

### **Relevant legislation**

- 16 I attach copies of ss26, 35, 37, 38 and 40 to this decision at Attachment 1.
- 17 Copies of s33 and Schedule 1 of the Act are also attached.

### **Submissions**

#### *The University*

- 18 The University did not make any submissions beyond the reasoning in its decisions, which is set out as follows.
- 19 At the outset, in his original decision dated 27 May 2022, Mr Perraton said:

*It is my view that disclosure of relevant information of minutes of all meetings of the UTAS Council conducted between 1 January 2015 and 24 March 2022 that relate to the University decision making on the move to a city centric campus is in the public interest and can be released. It is my view that disclosure of information that would be likely to expose third parties to competitive disadvantage or information that relates to the business affairs of the University that would be likely to expose the University to competitive disadvantage is not in the public interest and will not be released.*

- 20 In relation to s37, after referring to the wording in the section, Mr Perraton said:

*Information on amounts spent on construction, works, purchases of buildings and professional services is commercially sensitive information and publishing this information would expose third parties to competitive disadvantage.*

- 21 In relation to s38, after referring to the wording in the section, Mr Perraton said:

*Referring to the Court's decision in Forestry Tasmania v Ombudsman [2010] TASSC 39, one way in which a competitive disadvantage may arise is where a competitor acquires information which gives it a negotiating advantage leading to financial detriment. In order to provide space to meet the University's functions, the University is required to compete in a local and national property market. Releasing commercially valuable information such [sic] commercial yields, details of financing arrangements, details of construction contracts, would result in market competitors such as large-scale property investors and other higher education providers having information that they would not ordinarily have access to. This information is 'blacked out' in a separate column in Schedule 2.*

*It is my conclusion that the definition of 'competitive disadvantage' is met and the information may be exempt.*

- 22 Mr Perraton then addressed the matters in Schedule I in relation to the public interest test. These are also considered in the Analysis under the *Public Interest Test* relating to s38 below.

- 23 I note Ms Beaumont's reasoning in her internal review decision dated 18 July 2022 was brief and mainly focused on the dispute regarding scope and s19. In relation to sections 37 and 38, Ms Beaumont only said:

*I have also reviewed the information redacted in the information provided to you from the original decision (attached in Annexure I of this letter). The information redacted which relates to business affairs of a third party if disclosed which may expose the third party to competitive disadvantage. Information is also redacted which relates to business affairs of a public authority involved in trade or commerce. When the University is required to purchase property for its facilities it does so in a competitive property market and to expose details of its decision making thresholds would expose it to competitive disadvantage. Further comments are embedded in the Annexure I which provide more insight into the reasons for each redaction. For these reasons I have decided to affirm the decision as it relates to exemptions relied on for exempt information.*

Mr Hogan

- 24 In his internal review request dated 27 June 2022, Mr Hogan referred to a number of issues stemming from Mr Perraton's original decision. First, he raised the fact Mr Perraton did not refer to my previous decision in *Humphries*<sup>1</sup>. He noted that given its recency [sic] and relevancy, [he] would have expected Mr Perraton, and UTAS generally, to draw significant guidance from this decision.
- 25 Mr Hogan also referred to the format of the *UTAS Council minutes* provided to him and made the following additional points:
- *UTAS Council minutes are of a kind that record decisions only rather than also summarising discussion; and*
  - *Having carefully reviewed the extract from minutes [sic], I believe that most of the material contained could not [Mr Hogan's emphasis] be considered Exempt Information on any grounds under the Act.*

*Taken together, these points indicate that it should have been a relatively straightforward task to consider the full UTAS Council minutes, as I requested, for release.*

- 26 In relation to the University's application of ss37 and 38, Mr Hogan said:

*... there is no indication that Mr Perraton undertook the redactions in the extract from the minutes in a considered way; rather he has simply referred to Sections 37 and 38 of the Act in a broad-brush manner. This is at odds with the position of the Ombudsman that the onus is on UTAS to show that information is exempt and to consider public interest factors in some depth and in a balanced way. (eg, O paras 44 and 52-53)*

*The redactions in the extract from the minutes appear to have been made in accordance with certain blanket principles, without consideration of the issues. Two that are clearly observable are the redaction of any dollar (\$) amounts and the names of any third parties, particularly consultants, even where this cannot possibly have any warrant and/or the information is already in the public domain. (see also O, paras 15-16, 81, 82 and 87).*

*... In sum, I believe that Mr Perraton has erred in his decision making and request that the full UTAS Council minutes for the period 1 January 2015 to 24 March 2022 be provided to me with redactions only where exemptions apply and public interest factors have been considered in a balanced way.*

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<sup>1</sup> See *Alexandra Humphries and University of Tasmania* (24 February 2022), available at [www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions](http://www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions).

27 In Mr Hogan's further submissions dated 9 September 2022, he first outlined a number of significant developments relating to an increased level of public interest in the University's proposed move. These include:

- the closing of submissions for the *Legislative Council Select Committee Inquiry into the Provisions of the University of Tasmania Act 1992*, where 135 of 149 submissions are opposed to the proposed move;
- the commencement of campaigning with respect to the *Hobart City Council Elector Poll on UTAS' proposed move*;
- a heightened level of public interest in the information contained in the *UTAS Council Minutes*; and
- the establishment of a website – *utaspapers.com*, on which Mr Hogan said he intended to publish a number of relevant documents to inform public debate.

28 Mr Hogan then addressed the University's application of s19 by saying:

*I also do not believe that UTAS could have relied on Section 19 of the RTI Act to refuse my RTI application in full, or that it can (implicitly) rely on Section 19 to effectively refuse part of my RTI application. For refusal to be maintained, the agency involved should establish that the work involved in providing the information requested would substantially and unreasonably divert the resources of the public authority from its other work (Section 19(1)(a) of the RTI Act) This decision must be made having regard to the factors listed in Schedule 3 of the RTI Act. Of particular relevance to this application are Schedule 3.1(a)-(d)...*

*... Dealing with each of these in turn:*

*(a) My request was precise, providing for immediate identification and location of the documents sought.*

*(b) As indicated in my request for priority consideration to the Ombudsman, my RTI applications have been made with the aim of informing public debate and serving the public interest. The UTAS Council Minutes are critical in this regard, as they provide a record of the UTAS Council's decision making process and the degree to which relevant factors were (or were not) considered in this process.*

*(c)-(d) As I have noted above, on Ms Beaumont's revised estimate, the UTAS Council Minutes were approximately 750 pages.*

*...UTAS is a large public authority with a Legal Office, well used to handling RTI requests*

*...The application is not complex nor costly... As previously stated, I understand that copies of the UTAS Council Minutes were readily available through the UTAS Council secretariat.*

*...My RTI application is not complex because the documents requested are neither raw nor unsorted (far from it), nor could it be argued that it is costly having regard to UTAS' income.*

- 29 In relation to the redacted extract of the University's Council Minutes provided to Mr Hogan by Mr Perraton on 27 May 2022, with added notations by Ms Beaumont on 18 July 2022, Mr Hogan first referred to an *apparent lack of internal consistency*. I note these assertions have been addressed separately with the University, as outlined above in the Background. Mr Hogan then specifically addressed the University's *claims for exemption under sections 33, 37 and 38*. He first addressed the University's application of s33 in relation to the vote record entry dated 5 April 2019 and said:

*It is unclear why UTAS has relied on section 33 of the RTI Act in respect of Item 14. Section 33 sets out the public interest test and UTAS has not offered any information as to why it would not be in the public interest to release this information. It is clear that the statutory office holder whose identity has been redacted has declared an intention for "his" disapproval of the City-Centric Campus model as a matter of record. Disapproval votes are extremely rare for the UTAS Council (UTAS could provide the Ombudsman with any other examples). If a member of the UTAS Council has requested that "his" vote be recorded in the UTAS Council Minutes then UTAS needs to conclusively demonstrate why it is not in the public interest for this information to be released.*

- 30 Mr Hogan then made further submissions specifically related to the public interest matters in Schedule I, which will be considered in the Analysis under the *Public Interest Test* relating to s38 below.

## **Analysis**

### **Comments relating to Scope Negotiations**

- 31 At the outset, although not reviewable by way of the external review process under the Act, I wish to comment on the process undertaken by the University in relation to its scope negotiations with Mr Hogan pursuant to s13(7) of the Act. The facts relating to the process are outlined in the Background above.
- 32 As noted, the University's action in amending the scope of Mr Hogan's application for assessed disclosure without his consent is not permitted under the Act. The Act does not require applicants to negotiate the scope of their requests for assessed disclosure, rather s13(7) is provided for voluntary negotiations and applicants are entitled to refuse to engage in scope negotiations with the public authority. Section 19 or other refusal provisions are available if the refusal to negotiate on scope leads to a request that the processing of which would result in an unreasonable diversion of resources from a public authority's other work.

- 33 The University's actions in this regard resulted in Mr Hogan expressing a justifiable and significant degree of dissatisfaction with the University's handling of the matter. Although the University is to be commended for promptly agreeing to rectify the problem by issuing a fresh decision, it is unfortunate that considerable resources were required to be expended by this office, the University and Mr Hogan in resolving the issue, which could have been avoided had the University applied the Act correctly in the first place. I hope that the University will act more carefully in future to ensure it complies with its legislative obligations, including compliance with s3(4)(b) of the Act *to facilitate and promote...the provision of the maximum amount of official information at the lowest reasonable cost.*

### **Section 38 – Business Affairs of a Public Authority**

- 34 The University has claimed that most information responsive to Mr Hogan's request, which has not been released to him, is exempt under s38 due to it relating to the business affairs of a public authority. Section 38 is contained in Division 2 of Part 3 of the Act, so that any information responsive to this request, if it is prima facie exempt under this section, is subject to the public interest test found in s33 of the Act.

- 35 Section 38(a)(ii) of the Act provides that:

*Information is exempt information –*

*(a) if it is –*

*(ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature that would, if disclosed under this Act, be likely to expose the public authority to competitive disadvantage...*

*Is the University a public authority engaged in trade or commerce?*

- 36 As I set out when determining the same question in my previous decision of *Alexandra Humphries and University of Tasmania*,<sup>2</sup> given ss6 and 7 of the *University of Tasmania Act 1992*, I am satisfied that the University is a public authority which can engage in trade and commerce. The fact that its functions relate to education and learning do not preclude it from undertaking activities which would be considered commercial to achieve its objectives.

*Is the information responsive to the request that of a business, commercial or financial nature that would, if released, be likely to expose UTAS to competitive disadvantage?*

- 37 I now turn to whether the information responsive to the request is of a business, commercial or financial nature that would, if released, be likely to expose the public authority to competitive disadvantage. If I am satisfied that this is the case, the information will be prima facie exempt pursuant to s38.

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<sup>2</sup> (24 February 2022) at [24-26], available at [www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions](http://www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions).



38 As I outlined in *Humphries* and other earlier decisions, in relation to likely competitive disadvantage, when considering the equivalent provision under the now repealed *Freedom of Information Act 1991*, the Supreme Court of Tasmania in *Forestry Tasmania v Ombudsman* [2010] TASSC 39, held that:

*52. For the information to be exempt its disclosure needs to be likely to expose the undertaking or agency not to any disadvantage, but a disadvantage which relates to or is characterised by competition. The requirements in ss31 and 32 of the Act that the disadvantage relate to competition may have the preservation of the competitive process as a broad ultimate goal, but primarily the provisions are concerned with the potential impact on the undertaking or agency acting as a competitor in the market...*

39 The Court further held that:

*59. ...The application of the correct approach involves an assessment of the facts, and findings as to likely exposure to the relevant disadvantage...*

40 At paragraph 41 the Court interpreted *likely* to mean that there must be a *real or not remote chance or possibility*, rather than *more probable than not*.

41 As I have further outlined in previous decisions, given I am not subject to the supervisory jurisdiction of the Tasmanian Supreme Court, the value of *Forestry Tasmania v Ombudsman* as a precedent is confined to the holdings of the learned judge in relation to the narrow nature of exemptions and the meaning of the phrases ‘competitive disadvantage’ and ‘likely to expose’, all of which are instructive and with which I agree. This means there must be a *real or not remote chance or possibility* that the public authority will be exposed to a *disadvantage which relates to or is characterised by competition* in the market.<sup>3</sup>

42 I will now assess the individual instances in which the University has sought to exempt information pursuant to s38.

*Council Meeting notes 9 May 2014*

43 This entry concerns the purchase of the *Websters* site and the information claimed to be exempt pursuant to s38 is:

- a percentage amount relating to a *weighted average yield* threshold;
- a purchase threshold relating to the delegated authority of the Vice-Chancellor; and
- a funding amount for Stage I of the Southern Campuses Revitalisation and Activation Project (SCRAP).

44 The first two redactions relate to the planned spending on a new site and also provide information relating to the financial strategy of the University, release of which is likely to have an impact on future commercial negotiations and

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<sup>3</sup> *Forestry Tasmania v Ombudsman* [2010] TASSC 39 at [41] and [52].

competition in a commercial market. I agree with the University that they involve *information on decision making around purchases that have to be made in a commercial market* and I am satisfied they are of a business, commercial and financial nature, release of which is likely to expose the University to competitive disadvantage. Accordingly, this information is prima facie exempt under s38, subject to consideration of the public interest test.

- 45 I am not satisfied the University has discharged its onus under s47(4) in relation to the third redaction and this information is to be released to Mr Hogan. The release of an approved funding amount dating back to 2014 is unlikely to expose the University to competitive disadvantage given the passage of time. If it were a more recent entry I would accept the release of a funding amount in relation to a current project could be likely to expose the University to competitive disadvantage, given it has the potential to negatively impact its negotiating power. As over eight years have passed, however, it is not apparent why there is any reasonable likelihood of competitive disadvantage. This information is not exempt and should be released to Mr Hogan.

*Council Meeting notes 8 May 2015*

- 46 The redactions in this entry include further approved funding amounts in relation to specified aspects of the SCRAP project. Again, given this entry dates back to 2015, for the same reasons as the entry above, I am not satisfied the University has discharged its onus under s47(4). This information is not exempt under s38.
- 47 The University further claimed this information to be exempt under s35 (internal deliberative information) in its fresh decision, saying it relates to an *opinion, advice or recommendation - deliberative in nature – not a final decision*. It provided very limited reasoning in the body of the fresh decision regarding why this information was claimed to be exempt under s35. As the redactions appear to be records of a concluded decision rather than being a record of recommendations or thinking processes, however, the University has not discharged its onus under s47(4) to show that this information should not be disclosed. Accordingly, the information is not exempt under s35 and is to be released to Mr Hogan.

*Council Meeting notes 26 June 2015*

- 48 The redactions in this entry are similar to the first entry dated 9 May 2014, in that they involve the acquisition of the *Websters site* and set out an estimated yield percentage amount and purchase price threshold amounts. Further redactions include threshold amounts for the sale of the *UniPrint site*. Information other than the monetary amounts was initially redacted; however, it was subsequently released in the fresh decision so that information is no longer in question in this external review.
- 49 I accept the University's assertion that these redactions relate to *negotiations in a commercial market and release may... damage [the] ability of [the] University to*

*negotiate future sales in [a] commercial market.* Accordingly, these redactions are prima facie exempt pursuant to s38, subject to consideration of the public interest test.

- 50 The University raised s40, in addition to s38, for this entry in its fresh decision, saying it related to *Information on procedures and criteria used in certain negotiations of public authority.* Given the redacted entries are only dollar figures and a yield percentage amount, rather than information on procedures and criteria, I am not satisfied that the University has discharged its onus as to why this information would be exempt from disclosure under s40. Accordingly, I find that this information is not exempt pursuant to s40 but my finding under s38 remains.

*Council Meeting notes 11 September 2015*

- 51 The redactions in this entry include an approved monetary amount for works on the Academy of Creative Industries and Performing Arts (ACIPA) site and the name of a construction company carrying out the works. The University has said this is *information of [a] commercially sensitive nature* and I agree with this assertion in relation to the approved monetary amount, which is prima facie exempt subject to the public interest test.
- 52 However, I do not agree with the University's comments in relation to the name of the construction company. I cannot see how the release of the name of the construction company would be likely to expose the University to competitive disadvantage. This information is not exempt and is to be released to Mr Hogan.
- 53 The University again raised s35 (internal deliberative information), in addition to s38, in its fresh decision, saying it relates to *Internal deliberative information, Opinion, advice or recommendation - deliberative nature – not a final decision.* I am not satisfied, however, that the University has discharged its onus under s47(4) to show why this minimal information would be exempt under s35. It does not appear to be preliminary thinking but a finalised decision regarding a payment for the commencement of works to the relevant company and my above findings remain.

*Council Meeting notes 11 December 2015*

- 54 The redactions in this entry include details of a proposed lease, including the term of the lease, to the State Government in accordance with the development agreement of the ACIPA project. Following the release of the fresh decision, the only redaction that remains is the term of the lease. It is entirely unclear how the lease of a publicly owned property to another public entity would cause competitive disadvantage. The University has not discharged its onus under s47(4) to show why this information would be exempt under s38 and it is to be released to Mr Hogan.

*Council Meeting notes January 2016 (via circulation)*

- 55 The bulk of this entry is claimed to be exempt and it relates to details of a State Government cabinet meeting in respect of the ACIPA development. It mainly consists of details relating to funding committed to the project by the State Government, with some other figures regarding allocation of cash and property to fund the project. The ACIPA project is a public project, the public sector is not a commercial market and it is unclear what competitive disadvantage is likely to result if financial details of such a project are revealed. I note that the funding commitment of the State Government has been publicly announced and the project is now complete.<sup>4</sup> Accordingly, I am not satisfied that this information is exempt and it is to be released to Mr Hogan.
- 56 The University raised s26(1)(d), in addition to s38, in its fresh decision, saying *Information is a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Cabinet (and not a record by which a decision of Cabinet was officially published)*. Given this is not a record of the Cabinet meeting itself, but rather a notation within the Council meeting, as well as the fact the relevant Cabinet deliberation has been publicly announced, I do not consider that the University has discharged its onus under s47(4) and my above finding remains. I also note the University did not provide any reasoning regarding its use of s26 in the fresh decision, aside from a brief notation in a table.

*Council Meeting notes February 2016 (via circulation)*

- 57 The redaction in this entry is of a threshold amount approved for the purchase of the Theatre Royal Hotel. I am satisfied this is prima facie exempt for the same reasons outlined above in similar entries. I note that although the purchase price is publicly available on the Land Information System Tasmania (the LIST) and has been reported in the media,<sup>5</sup> this involves the amount paid, not the threshold amount.

*Council Meeting notes 23 September 2016*

- 58 The only remaining redaction in this entry following the fresh decision is a threshold amount approved in relation to the purchase of the Philip Smith Centre.
- 59 Again, although the purchase price of the Philip Smith Centre may be publicly available on the LIST, it does not include the threshold amount approved, which is the part that relates to commercially sensitive information. I am satisfied that the figure redacted in the third bullet point is prima facie exempt, subject to consideration of the public interest test.

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<sup>4</sup> Media release dated 9 August 2021, *The Hedberg performing arts precinct officially opened*, available at [www.premier.tas.gov.au](http://www.premier.tas.gov.au), accessed 10 February 2023.

<sup>5</sup> Howard, J., *Meeting of minds at Theatre Royal Hotel after UTAS adds pub to portfolio* (12 March 2016), *The Mercury*, [www.themercury.com.au/realestate/meeting-of-minds-at-theatre-royal-hotel-after-utas-adds-pub-to-portfolio/news-story/10951f10960eb269e64eb9ab96cb298e](http://www.themercury.com.au/realestate/meeting-of-minds-at-theatre-royal-hotel-after-utas-adds-pub-to-portfolio/news-story/10951f10960eb269e64eb9ab96cb298e)

- 60 The information discussed above is repeated in a second entry regarding the meeting of 23 September 2016, and my findings above applies to the repeated information.

*Council Meeting notes 19 May 2017*

- 61 This is a redacted threshold approval amount relating to the purchase of the Red Cross site and is prima facie exempt for the same reasons outlined previously, subject to consideration of the public interest test.
- 62 The University raised s40 in its fresh decision, saying this was *Information on procedures and criteria used in certain negotiations of public authority*. I consider that the University has not discharged its onus under s47(4) in relation to this provision, for the same reasons outlined above in the entry dated 26 June 2015. My finding under s38 remains.

*Council meeting minutes 21 September 2018*

- 63 These are two instances of a redacted threshold approval amount relating to the purchase of 79-83 Melville Street (ex-Forestry buildings). Although the purchase price may be available online<sup>6</sup> and potentially via the LIST, as I have noted above, there are different considerations relating to threshold amounts as opposed to the actual purchase price. I am satisfied that this is prima facie exempt pursuant to s38, subject to consideration of the public interest test.

*Council meeting minutes 14 December 2018*

- 65 This is a redacted threshold approval amount relating to the purchase of the Fountainside Hotel and two redacted funding amounts for refurbishments of the Fountainside and Theatre Royal hotels. I am satisfied that all entries are prima facie exempt subject to the public interest test.
- 66 The University raised s35, in addition to s38, in its fresh decision, saying it is an *Opinion, advice or recommendation – deliberative nature – not a final decision*. I consider s35 is not applicable for the same reasons as the entry above, dated 11 September 2015, and my finding under s38 remains.

*Council meeting minutes 27 March 2019 (via circulation)*

- 67 The redaction in this entry is no longer in question, as it was released in the fresh decision.

*Council meeting minutes 5 April 2019*

- 68 The first redaction in this entry relates to *Future of the Southern Campus* and involves the redaction of the name of one of the members of the University Council in the context of the member wanting *his vote against the city option recorded in the minutes*. The University has not discharged its onus under s47(4) to show why this information should be exempt and the member is on record

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<sup>6</sup> Humphries, A., *UTAS's growing Hobart CBD property portfolio under fire after Forestry building price revealed*, (13 February 2019), ABC News, [www.abc.net.au/news/2019-02-12/utas-paying-three-times-value-of-forestry-building/10804612](http://www.abc.net.au/news/2019-02-12/utas-paying-three-times-value-of-forestry-building/10804612).

in other fora regarding his opposition to the campus move.<sup>7</sup> Accordingly, this information is to be released to Mr Hogan.

- 69 The second redaction in this entry relates to the *Southern Infrastructure Funding Strategy* and following the fresh decision the only redaction remaining is the name of the proposed advisers for the sale and leaseback transaction relating to the STEM building. I agree with the University that this information is prima facie exempt, subject to the public interest test, given it *relates to negotiations in a commercial market and release may ... damage [the] ability of [the] University to negotiate future sales in [a] commercial market.*
- 70 The third redaction in this entry relates to *Binding offer – Acquisition of Kemp & Denning (K&D) site* and is a threshold approval amount relating to the acquisition of the site. I am satisfied it is prima facie exempt, subject to the public interest test, for the same reasons outlined above in relation to previous entries involving threshold approval amounts.
- 71 The fourth redaction in this entry relates to *Strategic Property Purchases – 31-33, 35-37 Bathurst Street and 65 Argyle Street Hobart*. Given these also involve threshold approval amounts they are prima facie exempt, subject to the public interest test, as above.

*Council meeting minutes 3 May 2019*

- 72 This entry was released to Mr Hogan in the fresh decision, so I will not consider it further.

*Council meeting minutes 30 August 2019*

- 73 The first redactions in this entry relate to *The Hedberg funding and status report* and include threshold approval amounts for spending on this project. The dollar figures are prima facie exempt, subject to the public interest test, as they relate to the allocation of funds rather than actual expenditure. Disclosure of such amounts would have a likelihood of causing harm to the University's competitive position in negotiating contracts to undertake works on this project. The remaining redactions in this entry were released in the fresh decision and no longer require consideration. The second redaction in this entry relates to the *Southern Transformation – Finance Committee report* and includes similar threshold approval amounts, as well as the name of a construction consultancy business proposed to be engaged as advisers to the University. The threshold amounts are all prima facie exempt, subject to the public interest test, for the same reasons outlined above.
- 74 It is unclear why the disclosure of the name of the consultancy business would cause any competitive disadvantage to the University or that business. The University has the onus to show why this information should be exempt,

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<sup>7</sup> Holmes, A., *Hobart looks to have voted 'no' to the UTAS move – so what happens now?* (28 October 2022), ABC News, <https://www.abc.net.au/news/2022-10-28/utas-move-to-hobart-cbd-voted-down-in-electoral-poll/101584808>.

pursuant to s47(4) and I am not satisfied that it has done so. The name of the construction consultancy is not exempt and is to be released to Mr Hogan.

*Council meeting minutes 22 May 2020*

- 75 The redactions in this entry all relate to the *Hedberg Project Budget Status* and include funding amounts in the first nine bullet points as well as a threshold approval amount in the final bullet point. It initially also included explanatory words other than a funding amount in the eighth bullet point; however, given these words were released in the fresh decision, they no longer require consideration.
- 76 Although I found the University had not discharged its onus in relation to funding amounts in the entries dating back to 2014 and 2015, this entry can be distinguished by the fact it is only two years old, as opposed to seven or eight years old. The passage of time is not so relevant in this instance and, given there is the likelihood that some of these projects are still current, I agree with the University that the *information [is] of [a] commercially sensitive nature with [the] potential to damage [the] ability of [the] University to negotiate future transactions*. The monetary amounts are therefore all prima facie exempt under s38, subject to the public interest test.
- 77 The University raised s35 (internal deliberative information) in its fresh decision for the same reasons as previous entries. I consider that this exemption does not apply for the same reasons outlined above and my finding under s38 remains.

*Council meeting minutes 4 December 2020*

- 78 The redactions in this entry relate to *Southern Campus Funding* and, rather than threshold amounts, they involve details of the University's financial strategy in this context. I agree with the University that this information is of a *commercially sensitive nature* and there is a likelihood its release would expose the University to competitive disadvantage. Accordingly, this information is prima facie exempt under s38, subject to the public interest test. I note a small amount of information in this entry was released in the fresh decision, including the introductory sentence before the bullet points, *cessary [sic] steps to* from the first bullet point, and the last bullet point. That information no longer requires consideration in this review.

*Council meeting minutes 30 April 2021*

- 79 The redaction in this entry includes a monetary amount for the *intended acquisition* of the *Freedom Furniture* site. Again, although the final purchase price is publicly available,<sup>8</sup> the redacted amount relates to an *intended acquisition*

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<sup>8</sup> Peterson, B., *University of Tasmania extends property portfolio with \$9m purchase of Freedom Furniture building*, (9 May 2021), *The Mercury*, [www.themercury.com.au/education/university-of-tasmania-extends-property-portfolio-with-9m-purchase-of-freedom-furniture-building/news-story/671f933cd7313f4680b7e98fef818a49](http://www.themercury.com.au/education/university-of-tasmania-extends-property-portfolio-with-9m-purchase-of-freedom-furniture-building/news-story/671f933cd7313f4680b7e98fef818a49)

amount rather than the actual purchase price. This entry is accordingly prima facie exempt subject to the public interest test.

*Council meeting minutes 25 June 2021*

- 80 The redaction in this entry, which involved the name of the architect appointed in relation to the *Sandy Bay Masterplan*, was released in the fresh decision so this information is no longer in question in this review.

*Council meeting minutes 10 September 2021*

- 81 The redaction in this entry includes a threshold approval amount in relation to a *Contract for the refurbishment of the former Forestry Building* and is prima facie exempt, subject to the public interest test, for the same reasons outlined for similar information above.

*Council meeting minutes 3 December 2021*

- 82 The redaction in this entry is the same as the entry dated 10 September 2021 and is also prima facie exempt, subject to the public interest test, for the same reasons.

- 83 The University again raised s35, in addition to s38, in its fresh decision; however, for the same reasons outlined above this information is not exempt under s35 and my finding under s38 remains.

*Public Interest Test*

- 84 When determining where the public interest lies, regard must be had to, at least, the 25 matters contained in Schedule I of the Act.
- 85 In relation to these matters, Mr Perraton, in his decision dated 27 May 2022, said:

*In considering the public interest test I particularly considered:*

*Factors in favour of disclosure*

- *The University contributes significantly to the economic value of the State. The University Strategic Vision 2019-2024 emphasises a place-based mission serving an entire State with a view to being globally connected, right-sized and responsive, regionally networked to provide quality and access, and being people-centred. As part of this mission, the University is creating a southern campus in the city of Hobart that is more accessible, with a single heart, where we are more connected to our partners and each other.*
- *There is a portion of the community who express public concern over the perceived economic and societal impacts of the University of Tasmania Southern Campus Transformation.*
- *The University as a public institution has an obligation and a desire to share the evidence and rationale for the University's decision surrounding the University of Tasmania Southern Campus*



*Transformation with the community in order that the community can gain a better understanding of how the University reached this decision.*

*Factors against disclosure*

- *Referring to the decision in *Forestry Tasmania v Ombudsman* [2010] TASSC 39, the disclosure of information on commercial arrangements the University enters into would expose the University to competitive disadvantage when dealing in the competitive Tasmanian property market. This in turn would give a competitive advantage to private investors who are not subject to the information disclosure requirements of the RTI Act and who also do not provide other public interest outcomes that the University provides to the State of Tasmania including education, provision and maintenance of public open space, public availability of research results and other benefits that the University provides to the public.*
- *The economic contribution the University to [sic] the Tasmanian economy is significant and the University competes in a national market of higher education and research providers. Disclosure of information that may cause commercial damage to the University or to organisations the University does business with may make Tasmania less competitive in comparison to other jurisdictions and therefore may have an adverse effect on the harm the [sic] economic development of the State.*
- *Disclosure of information about commercial arrangements such as construction contracts or payments for properties and payments made on properties would confer a competitive advantage on other higher education providers [sic] and other private competitors in the property market.*

*In my view disclosure of details of commercial arrangements is not in the public interest because this information is not relevant to decision making on the Southern Campus move and is highly commercial in nature.*

- 86 Ms Beaumont did not provide any specific comments in relation to the public interest factors in Schedule I, setting out only that she had *decided to affirm the decision as it relates to exemptions relied on for exempt information*. She did make additional comments corresponding to each individual entry in the schedule of information redacted, most of which indicated that the information was of a *commercially sensitive nature with [the] potential to damage [the] ability of [the] University to negotiate future transactions*.
- 87 Ms Beaumont's comments in relation to the public interest test in the fresh decision were almost exactly the same as those in Mr Perraton's decision. The only additions were a reference to *the general right for information to be available*

and her indication that *much of the decision-making information provides important context regarding the University's economic contribution to Tasmania.*

- 88 In addressing the public interest matters in his submissions dated 19 September 2022, Mr Hogan first referred to: *Information that could qualify for exemption under Sections 37 and 38 but ought to be released in light of the public interest and previous Ombudsman decisions. He specifically addressed construction/refurbishment prices and, after referring to Humphries, he said:*

*The same factors should be applied to the construction and refurbishment costs in the UTAS Council Minutes. Applying the reasoning from Humphries it is in the public interest for this information to be disclosed. UTAS is a public institution and there is considerable public interest in the proposed move to the Hobart CBD along with the fiscal merits of purchase and refurbishment of central Hobart properties.*

*...In light of these facts and applying the Humphries reasoning, the Ombudsman should put strong weight in favour of disclosure. Additionally, the fact that the costs are highly specific to each building and the length of time that has passed in most cases since the costs were approved undermines the argument against disclosure. Information has a variable half-life of sensitivity and information of this type loses that sensitivity very quickly.*

- 89 Following this, Mr Hogan referred to: *Information that may qualify under the Sections 37 and 38 but is in the public interest to release. In this regard he said:*

#### *Broad Project Information*

*It is important to note that it is difficult to place this information in any category because it is very unclear what this information actually contains. If UTAS' arguments are accepted that this information qualifies under section 37 and/or 38, it is likely that it would be in the public interest that it should be disclosed. This information likely goes to the heart of the future of UTAS and its impact on its surrounding areas. UTAS is the most significant provider of tertiary education in Tasmania, meaning that it has a near monopoly and its actions have greater impact than the actions of an institution which has competition. The public interest factor of (a) the public need for this information would be relevant and should be given strong weight in line with Humphries.*

#### *Information that is Entirely Redacted*

*Again, it is difficult to determine whether the University has validly relied on section 37 and 38 for this information because it is impossible to determine what it is. Even if UTAS' arguments are accepted it is unlikely that all of this information has been validly redacted. The broad-brush approach of completely redacting entries goes against the presumption of disclosure found in Section 4(b) of the RTI Act. This section provides*

*that the discretions provided for in the RTI Act should be exercised to provide the maximum amount of official information. UTAS should be attempting to provide information and only redacting where absolutely necessary. This has not occurred in the sections which are entirely redacted. There is even a section where the topic has been redacted that gives no indication whatsoever of what is being discussed (item 18).*

*Information that is Redacted to the Point Where it is Unclear What the Information is*

*This information appears as separate points in the UTAS Council Minutes which are partially redacted. It is redacted to the point where it is unclear what the information is. The same points I mentioned above apply to this information, while it appears alongside information that is not redacted, redacting entire points does not give an indication of what the information is.*

- 90 In accordance with *Humphries* and having considered the matters in Schedule 1 of the Act, I am of the view that matters (a) – *the general public need for government information to be accessible*, (b) – *whether the disclosure would inform a person about the reasons for a decision* and (f) – *whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation* favour release. I am satisfied that the information, if released, would address Mr Hogan’s and the general public’s need for accessible government information, would contribute to public debate, and would enhance scrutiny of the University’s decision-making processes and thereby improve accountability and community participation. The proposed relocation of the University from its Sandy Bay campus to the city has sparked immense public debate, which appears to have recently reached a peak, as identified by Mr Hogan. As I discussed in *Humphries*, this is a matter of legitimate public interest and as a public educational institution, the University receives significant public funding and its business activities are not its primary purpose. These factors therefore substantially weigh in favour of release.
- 91 I note Mr Perraton’s submissions relating to the public interest also loosely align with this view, as he refers to *a portion of the community who express public concern over the perceived economic and societal impacts of the University of Tasmania Southern Campus Transformation*. He further acknowledges that *the University as a public institution has an obligation and a desire to share the evidence and rationale for the University’s decision surrounding the University of Tasmania*.
- 92 I am also of the view that matters (c) – *whether the disclosure would inform a person about the reasons for a decision* and (d) – *whether the disclosure would provide the contextual information to aid in the understanding of government decisions* are relevant and are also in favour of release. In Mr Hogan’s original application for assessed disclosure he applied for Council meeting minutes *that relate to University decision making on the move to a city centric campus in order to write an article (or series of articles) on how this proposal [the proposed move of UTAS’ southern campus into the Hobart CBS [sic] and the redevelopment of the*

*Sandy Bay campus] developed over time. However, I am of the view that these matters have lower weight given the release of much of the information that has been redacted by the University, particularly the threshold approval amounts for spending, would not assist in informing Mr Hogan and the general public about the reasons for the University's decision to relocate its campus to the city. Although it may provide some context, I do not believe the contextual information is of significant value in this instance given there is little direct relationship between the threshold approval amounts and other exempt information, and the University's decision to relocate. I accept Mr Perraton's comments in this regard that disclosure of details of commercial arrangements is not in the public interest because this information is not relevant to decision making on the Southern Campus move and is highly commercial in nature.*

- 93 Also in accordance with my decision in *Humphries*, I am of the view that matter (s) – *whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation* favours exemption and I acknowledge there are valid concerns that the release of this information could cause harm to the business or financial interests of the University. In this regard I accept Ms Beaumont's comments that much of the information is of a *commercially sensitive nature with [the] potential to damage [the] ability of [the] University to negotiate future transactions*. The reality is that if threshold approval amounts are known to third parties with whom the University is negotiating contracts of sale, this would significantly reduce the University's bargaining power. Similarly, if allocated funding amounts are known to third parties with whom the University is negotiating building or refurbishment contracts, the University's ability to achieve competitive prices may be reduced and there is the potential for quotations to be over-inflated. Although its business activities are not its primary purpose, the success of those activities is important for the financial stability of the University and its future prospects.
- 94 In this regard I agree with Mr Perraton's comments that disclosure could give a *competitive advantage to private investors who are not subject to the information disclosure requirements of the RTI Act*. I also agree with his comments that *disclosure may make Tasmania less competitive in comparison to other jurisdictions and that disclosure in relation to construction contracts or property purchases would confer a competitive advantage on other higher education providers [sic] and other private competitors in the property market*.
- 95 I note Mr Hogan's submissions that *applying the reasoning from Humphries it is in the public interest for the construction and refurbishment costs to be disclosed*. However, the majority of my findings in *Humphries* can be distinguished from the facts of this case in that the information found to be exempt is predominantly threshold approval amounts for proposed spending rather than construction and refurbishment costs which have actually been incurred. I agree with Mr Hogan that *the length of time that has passed in most cases since the costs were approved undermines the argument against disclosure*, and further that *information of this type loses that sensitivity very quickly*; however, only in relation to the funding amounts dating back to 2014 and 2015. As I have

outlined above, these factors weighed heavily in my decision to find that information did not satisfy the requirements of s38 and is to be released to Mr Hogan. I do not agree that information involving threshold approval amounts loses that sensitivity very quickly given they relate to an overall financial strategy when examined in the context of actual purchase prices, and remain likely to place the University at a competitive disadvantage for future commercial transactions.

- 96 I also note Mr Hogan's comments in relation to *Broad Project Information and Information that is Entirely Redacted* but I note that there are some instances where the information does not go to the heart of the future of UTAS and its impact on its surrounding areas. The entry dated 4 December 2020, which is entirely redacted, is a good example of this. It contains detailed information regarding the University's commercial and financial strategies. It does not go to the heart of the future of the University, nor does it shed any particularly valuable light on the University's decision to relocate. While I understand his view, I do not accept Mr Hogan's position that a *broad-brush approach of completely redacting entries goes against the presumption of disclosure found in Section [3]4(b) of the RTI Act*. Releasing the maximum amount of official information means providing as much as possible after information which is appropriately exempt is excluded. In some instances this can involve extensive redaction and this is not necessarily at all inconsistent with s3(4)(b). In this case, while I have overturned the exemption of some information, there have been valid claims for exemption made over other information. In relation to entries such as those relating to 4 December 2020, the potential detriment to the commercial success of the University if the information were to be disclosed outweighs the factors favouring release.
- 97 Overall, after weighing the relevant public interest factors, I determine that, on balance, it would be contrary to the public interest to release all entries that I have found to be prima facie exempt under s38. This information remains exempt under s38 and is not required to be provided to Mr Hogan.

### **Section 37 – Business affairs of a Third Party**

- 98 For information to be exempt under this section, I must be satisfied that its disclosure would disclose information related to business affairs acquired by the University from a third party and that –
- (a) the information relates to trade secrets; or
  - (b) the disclosure of the information under this Act would be likely to expose the third party to competitive disadvantage.
- 99 Whilst the University sought to rely upon s37 in the alternative for almost all redacted entries, it has not discharged its onus under s47(4) given it has not clearly stated who the third parties are, nor has it referenced any details of third party consultation under s37(2). Even in instances where the third parties

are identifiable, the University has not provided sufficient explanation to discharge its onus to show why those details should be exempt under s37. I am unable to see how the release of names of third party businesses such as advisers and architects would expose those businesses to competitive disadvantage.

100 In terms of information relating to the purchase of particular property sites from third parties, again I cannot see how this would expose those third parties to competitive disadvantage given the fact of the purchase is on the public record and the associated information is not recent, involving commercial transactions dating back to 2015.

101 I am not satisfied that any information responsive to Mr Hogan's request is exempt pursuant to s37.

### **Preliminary Conclusion**

102 For the reasons given above, I determine that:

- exemptions claimed by the University under s37 are not made out; and
- exemptions claimed by the University under s38 are varied.

### **Conclusion**

103 As the above preliminary conclusion was adverse to the University, it was made available to the University under s48(1)(a) of the Act to seek its input before finalising the decision.

104 On 2 June 2023, the University advised that:

- *The fresh decision sought to correct the errors as regards scope in the first decision;*
- *The fresh decision released a significant amount of further information responsive to Mr Hogan's initial request.*
- *We have no further submissions to make regarding the exemptions applied in the first decision as our view is that these have been overtaken by the fresh decision, which is now with you for external review.*

105 Accordingly, for the reasons given above, I determine that:

- exemptions claimed by the University under s37 are not made out; and
- exemptions claimed by the University under s38 are varied.

**Dated:** 2 June 2023



**Richard Connock**  
**OMBUDSMAN**

## Attachment I - Relevant legislative provisions

### Section 26 – Cabinet Information

- (1) Information is exempt information if it is contained in –
  - (a) the official record of a deliberation or decision of the Cabinet; or
  - (b) a record proposed by a Minister for the purpose of being submitted to the Cabinet for consideration; or
  - (c) a record that is a copy of, or a copy of part of, a record referred to in paragraph (a) or (b); or
  - (d) a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Cabinet, other than a record by which a decision of the Cabinet was officially published.
- (2) Subsection (1) ceases to apply after the end of the period of 10 years commencing on the date on which the information referred to in that subsection was first considered by the Cabinet at a meeting of the Cabinet.
- (3) Subsection (1) does not include information solely because it –
  - (a) was submitted to the Cabinet for consideration; or
  - (b) is proposed by a Minister to be submitted to the Cabinet for consideration –if the information was not brought into existence for submission to the Cabinet for consideration.
- (4) Subsection (1) does not include purely factual information unless its disclosure would disclose a deliberation or decision of the Cabinet which has not been officially published.
- (5) Nothing in this section prevents the Premier from voluntarily disclosing information that is otherwise exempt information.
- (6) In this section –  
**the Cabinet** includes a committee of the Cabinet.

### Section 35 – Internal Deliberative Information

- (1) Information is exempt information if it consists of –
  - (a) an opinion, advice or recommendation prepared by an officer of a public authority; or
  - (b) a record of consultations or deliberations between officers of public authorities; or
  - (c) a record of consultations or deliberations between officers of public authorities and Ministers –

in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority, of a Minister or of the Government.

- (2) Subsection (1) does not include purely factual information.
- (3) Subsection (1) does not include –
  - (a) a final decision, order or ruling given in the exercise of an adjudicative function; or
  - (b) a reason which explains such a decision, order or ruling.
- (4) Subsection (1) ceases to apply after 10 years from the date of the creation of the information referred to in that subsection.

### **Section 37 – Information relating to business affairs of third party**

- (1) Information is exempt information if its disclosure under this Act would disclose information related to business affairs acquired by a public authority or Minister from a person or organisation other than the person making an application under section 13 (the "third party" ) and –
  - (a) the information relates to trade secrets; or
  - (b) the disclosure of the information under this Act would be likely to expose the third party to competitive disadvantage.
- (2) If –
  - (a) an application is made for information under this Act; and
  - (b) the information was provided to a public authority or Minister by a third party; and
  - (c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to be of substantial concern to the third party –

the principal officer or Minister must, before deciding whether the disclosure of the information under this Act would be likely to expose the third party that provided the information to substantial harm to the third party's competitive position, by notice in writing given to the third party –

- (d) notify the third party that the public authority or Minister has received an application for the information; and
  - (e) state the nature of the information applied for; and
  - (f) request that, within 15 working days from the date of the notice, the third party provide the third party's view as to whether the information should be provided.
- (3) If a public authority or Minister, after receipt of a third party's view referred to in subsection (2)(f), decides to disclose the



information, the public authority or Minister must, by notice in writing given to the third party, notify the third party of the decision.

- (4) A notice under subsection (3) is to –
- (a) state the nature of the information to be provided; and
  - (b) if the decision was made on behalf of a public authority, state the name and designation of the person who made the decision; and
  - (c) inform the third party of –
    - (i) its right to apply for a review of the decision; and
    - (ii) the authority to which the application for review can be made; and
    - (iii) the time within which the application must be made.
- (5) A public authority or Minister must not provide the information referred to in a notice given to a third party under subsection (3) –
- (a) until 10 working days have elapsed after the date of notification of the third party; or
  - (b) if during those 10 working days the third party applies for a review of the decision under section 43, until that review determines that the information should be provided; or
  - (c) until 20 working days after notification of an adverse decision under section 43; or
  - (d) if during those 20 workings days the person applies for a review of the decision under section 44, until that review determines that the information should be provided.

### **Section 38 - Information relating to business affairs of public authority**

Information is exempt information –

- (a) if it is –
  - (i) a trade secret of a public authority; or
  - (ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature that would, if disclosed under this Act, be likely to expose the public authority to competitive disadvantage; or
- (b) if it consists of the result of scientific or technical research undertaken by or on behalf of a public authority, and –
  - (i) the research could lead to a patentable invention; or
  - (ii) the disclosure of the results in an incomplete state would be likely to expose a business, commercial or financial undertaking unreasonably to disadvantage; or

(iii) the disclosure of the results before the completion of the research would be likely to expose the public authority or the person carrying out the research unreasonably to disadvantage; or

(c) if it is contained in –

(i) an examination, a submission by a student in respect of an examination, an examiner's report or any such similar record; and

(ii) the use for which the record was prepared has not been completed.

### **Section 40 – Information on procedures and criteria used in certain negotiations of public authority**

Information is exempt information if it consists of instructions for the guidance of officers of a public authority on the processes to be followed or the criteria to be applied –

(a) in negotiations, including financial, commercial and labour negotiations; or

(b) in the execution of contracts; or

(c) in the defence, prosecution and settlement of cases; or

(d) in similar activities –

relating to the financial, property or personnel management and assessment interests of the Crown or of a public authority.

### **33. Public interest test**

(1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.

(2) The matters which must be considered in deciding if the disclosure of the information is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.

(3) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of the information is contrary to the public interest.

### **SCHEDULE 1 - Matters Relevant to Assessment of Public Interest**

Sections 30(3) and 33(2)

I. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:

(a) the general public need for government information to be accessible;

- (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
- (c) whether the disclosure would inform a person about the reasons for a decision;
- (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
- (e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;
- (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
- (g) whether the disclosure would enhance scrutiny of government administrative processes;
- (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;
- (i) whether the disclosure would promote or harm public health or safety or both public health and safety;
- (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;
- (k) whether the disclosure would promote or harm the economic development of the State;
- (l) whether the disclosure would promote or harm the environment and or ecology of the State;
- (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
- (n) whether the disclosure would prejudice the ability to obtain similar information in the future;
- (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;
- (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;
- (q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;
- (r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;
- (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;
- (t) whether the applicant is resident in Australia;
- (u) whether the information is wrong or inaccurate;

- (v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;
- (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;
- (x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;
- (y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.