

Ms Jane Beaumont
General Counsel and Executive Director Risk
University of Tasmania
By email: jane.beaumont@utas.edu.au

Dear Ms Beaumont

Request for Internal Review of Decision relating to a Right to Information Application

I am writing to you in your capacity as a delegate of the Principal Officer of the University of Tasmania (UTAS), under the *Right to Information Act 2009* (the RTI Act), to request an internal review of a decision made regarding a Right to Information (RTI) application that I lodged on 11 August 2022. In short, my application sought information relating to the appointment of Rufus Black as Vice-Chancellor (VC) of UTAS. Given that the VC is also the Principal Officer of UTAS, I agreed with the UTAS legal office that it would be appropriate to direct this request to you rather than to the VC, as is the normal process. A copy of my application is at [Attachment A](#).

After I lodged my application, it was passed to Simon Perraton in UTAS' legal office for decision. After an approach by Mr Perraton, I agreed a variation to the scope of my application (see email thread in [Attachment B](#)). Mr Perraton confirmed the scope variation in a letter he sent me on 19 August ([Attachment C](#)). On 23 September, Mr Perraton wrote to me to advise that third party consultation was necessary ([Attachment D](#)). On 17 October, Mr Perraton provided me with his decision letter, attaching released information/documents ([Attachment E](#)).

Public interest in the appointment of VC Black

It is clear from documents now on the public record that VC Peter Rathjen had determined to relocate UTAS' Sandy Bay campus to the Hobart CBD by 2016 and probably 2015. By early 2017 he had received support for his plans from Premier Will Hodgman (November 2016 at the latest), and the Lord Mayor of Hobart, Sue Hickey (March 2017 at the latest), and felt confident enough to make his plan public by 19 July 2017.

This was well in advance of formal decision making by the UTAS Council, which did not vote on relocation until 5 April 2019, and preceded any public consultation process about a UTAS move to the Hobart CBD.

It is an open question as to what extent the UTAS Council or, perhaps more accurately, individual members of the UTAS Council, were aware/supportive by mid-2017 of VC Rathjen's seemingly pre-emptive decision to move UTAS to the Hobart CBD.

This is a matter of intense public interest, as it raises questions about due process within the UTAS Council and about accountability and transparency both from UTAS to the Government and from the Government to the Parliament and people of Tasmania. Against this background, the appointment of Rufus Black as VC takes on heightened significance.

As Mr Perraton has acknowledged in his decision letter, "the appointment of a Vice-Chancellor of a University is of public significance." However, Mr Perraton also stated in his letter that, "The appointment of Rufus Black as the Vice-Chancellor is not to my knowledge a matter of any controversy or public debate."

While Mr Perraton may not be aware of it, the appointment of Professor Black as Vice-Chancellor is a matter of considerable controversy and public debate. For example, on page 12 of his submission to the Legislative Council Select Committee Inquiry into the Provisions of the *University of Tasmania Act 1992*, Emeritus Professor Jeff Malpas raises significant questions about Rufus Black's qualifications for the position of VC. Beyond this, it is widely believed within the community that Rufus Black's selection as VC owed significantly to his willingness to implement VC Rathjen's plan to move UTAS to the Hobart CBD.

Indeed, two aspects of Mr Perraton's decision letter support this belief.

First, documents provided by Mr Perraton with his letter suggest that a UTAS move to the Hobart CBD was in clear contemplation. The brochure entitled *Appointment of the Vice-Chancellor and President: Information for candidates* can be read as envisaging a move of UTAS to the Hobart CBD. More particularly, the draft newspaper advertisement (with the name of the consultancy firm Cordiner King on it) includes the following:

"The University is set to enter an exciting new era with major plans to redevelop campuses in both Launceston and Hobart creating significant education and research hubs in both of Tasmania's major cities."

This paragraph was conspicuously missing from the final advertisement placed in *The Australian, Higher Education Supplement*, on Wednesday 2 August 2017 and presumably, *The Times Higher Education* (UK) on-line and *The Chronicle* (North America) on-line, in which it was also placed. This may well indicate sensitivity over such a categorical statement being placed in the open press and the potential for a backlash from UTAS staff and the broader community.

Second, and more importantly, in response to my request for any briefing material indicating that "Rufus Black sought to form his own appraisal of VC Rathjen's plan to move UTAS to the Hobart CBD", Mr Perraton states **unequivocally** in Schedule 2 (referring to my request number 4) that he had "not found any information." This strongly indicates that, from the time of his appointment, VC Black was intent on executing VC Rathjen's plan for relocation of the Sandy Bay campus to the Hobart CBD and that, at no stage, did he seriously consider other options.

Relevant material

I note that in listing material that he considered relevant in his decision making, Mr Perraton does not reference the Ombudsman's decision in respect of *Alexandra Humphries (ABC) and UTAS of 24 February 2022 (Humphries)*. I find this extraordinary, the more so as I believe this decision has not been referenced in any of UTAS' decisions on my other RTI applications. As I have said in correspondence to the UTAS legal team, I would have thought that UTAS would seek to draw guidance from this decision, as it involved UTAS.

Material sought but not provided

I acknowledge that Mr Perraton has provided some of the information I sought, but I note the following key areas where he has not provided the information that I sought:

- (1) The briefs/documents numbered 2, 3, 5 and 6 in *Schedule 3 – Information Spreadsheet* to Mr Perraton's letter. Mr Perraton has cited sections 38 ("Information relating to the business affairs of public authority") and 39 ("Information obtained in confidence") of the RTI Act as the basis for these documents being exempted in their entirety. Based on his letter (3rd page), I believe that Mr Perraton may also have intended to cite section 35 ("Internal deliberative information") of the RTI Act, in relation to exemption of the four documents.

(2) The names of members of the selection panel for the VC position in 2017. Mr Perraton has cited section 36 (“Personal information of person”) of the RTI Act as the basis for exempting these names from disclosure.

(3) The questions asked at either the first or second round of interviews, which Mr Perraton has stated are not available.

I will deal with each of these in turn.

(1) Briefs/documents

The four documents that have been listed in Schedule 3 as exempt are:

- Document 2 - Attachment A – COO Structure and Priorities
- Document 3 - Commercial Strategy Unit - 2018 Initiatives
- Documents 5 - Transformation VC Critical Issues brief
- Document 6 – Transformation VC Critical Issues brief Attachment 1

As the four documents have been found by Mr Perraton to be exempt in their entirety, I am not able to make a case for disclosure based on any detailed knowledge of the contents of the documents.

I therefore make the following general points.

First, the documents should not be considered as internal deliberative documents. They are analogous to internal briefing information of a Minister, which is covered by section 27 of the RTI Act. However, while section 27 of the RTI Act falls under the heading, “Division 1 – Exemptions not subject to the public interest test”, no such exemption is made for the Chief Executive of public authorities. I also note **anyway** that section 27 provides for the release of “purely factual material”.

Second, it is difficult to determine whether the University has validly relied on section 38 and 39 of the RTI Act for this information because it is not possible to precisely determine what it is. Even if UTAS’ arguments are accepted, it is unlikely that all the information contained in these documents has been validly withheld from disclosure. The broad-brush approach of exempting documents in their entirety goes against the presumption of disclosure found in section 3.(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.”

From the terms of my request, and the titles of the four documents (particularly 5 and 6), it is clear that their content goes to the heart of the future of the southern campus of UTAS and, possibly, 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. Accordingly, the public interest factor of Schedule 1.1(a) of the RTI Act “the general public need for government information to be accessible” should be very heavily weighted in this matter in line with *Humphries*.

In this regard it is also worth noting that the establishment of the Legislative Council Select Committee Inquiry into the Provisions of the *University of Tasmania Act 1992*, the 149 submissions to that inquiry, and debate around the Hobart elector poll and the Hobart City Council election have simply amplified and heightened the level of public interest in the information contained in the documents. UTAS has expended significant resources in hiring consultants/lobbyists, and undertaking expensive full-page advertising and television ads (including prime time in the AFL Grand Final) to support its intended move. This also adds to the weight in favour of UTAS making disclosure, **with only such redactions as are absolutely necessary and fully justifiable**.

Third, anticipating the argument that a process of redaction would require an unreasonable diversion of resources (section 19 of the RTI Act), I draw attention to the following factors:

- Where a public authority is very large, an RTI request may not be unreasonable even though processing the request would have a substantial effect on the public authority.¹ This is because such a public authority is likely to have adequate resources dedicated to processing RTI applications to reduce the impact that numerous and complex requests would have on the public authority's other work.² While not conceding that making such redactions as are necessary and fully justifiable to the four documents would have substantial effect on UTAS, I note that UTAS is a very large public authority with a dedicated legal office, well used to handling RTI applications.
- In assessing whether a refusal under Section 19 of the RTI Act is reasonable, it is relevant to ask whether the work involved in processing the RTI application is considerable having regard to all the steps that must be taken to process the request, and if processing the request would be beyond what is reasonable or fair having regard to the objects underpinning the RTI Act.³ This suggests that a RTI application would be less likely to be considered substantial and unreasonable where the information requested is sorted and arranged. This is because "having regard to all steps that must be taken", the effort required to locate the requested information would not be "considerable in amount". Finding documents that are raw and unsorted is more likely to be considered "considerable in amount". The four documents have been identified and must have been available to Mr Perraton when he made his decision to exempt them.
- In assessing whether a refusal under Section 19 of the RTI Act is reasonable, it is also relevant to consider the cost involved. In *Australian Centre for Independent Journalism and Australian Broadcasting Corporation [2005] AATA 1068 (14 October 2005)* the tribunal made a comparison between the total revenue of the agency and the cost of processing the Freedom of Information application. In finding refusal did not apply, the member noted:

"the Respondent's total revenue from ordinary activities in the year 2004 (including revenue from Government) was the sum of \$880,607,000.00. Against this sum the amount of \$17,917.38 is hardly 'substantial'".⁴

The income of UTAS in 2021 was \$857,770,000.

In short, I believe that there is an overwhelming public interest case in release of the four documents, with only such redactions as are necessary and fully justifiable. There would be no case for arguing that the process of redaction would require an unreasonable diversion of resources.

As a final point on the documents, I note that the document to which Document 2 is an Attachment appears not to have been identified. I seek clarification on this point.

¹ Relevant precedents can be found in relation to the Commonwealth *Freedom of Information Act 1982*, which has parallel provisions (Sections 24 and 24AA) to Section 19 and Schedule 3 of the RTI Act. In this instance, see *'WB' and Australian Human Rights Commission (Freedom of information) [2020] AICmr 58 (25 November 2020) [92]*

² *Ibid.*

³ *Morgan and Australian Building and Construction Commissioner [2020] AATA 651 (18 March 2020) [54]*

⁴ *Australian Centre for Independent Journalism and Australian Broadcasting Corporation [2005] AATA 1068 (14 October 2005) [20]*.

(2) Names of the selection panel

In Schedule 2 to his letter, Mr Perraton has provided the makeup of the selection panel in general terms stating that it was:

“a specially appointed selection committee and interview panel chaired by the Chancellor [Mr Field], and including Council members, higher education sector representation, a state government representative, and a commercial sector representative.”

However, Mr Perraton has exempted the names of the selection panel under section 36 (“Personal information of person”) of the RTI Act on the basis that:

“Referring to information containing the names of the selection panel, I consider that the individuals who formed the selection panel may perceive this information to be highly sensitive in nature. Participating on a selection panel for a chief officer of an organisation is a role beyond the usual day to day duties of the individual's [sic] who formed the selection panel. It is also a role that may in some circumstances have **involved real or perceived personal and/or reputational risk for the individual selection panel members.**” [my bolding]

I note that I am only seeking names; not other personal information. As indicated in the discussion of the four documents above, I consider the public interest case in this matter is of great weight. Against this, Mr Perraton appears to have put potential thoughts into the minds of members of the selection panel (“may perceive”). This cannot be considered a reasonable basis for exemption, particularly as Mr Perraton does not indicate that he has consulted the members as part of the consultation he wrote to advise me of on 23 September. It is also unclear how Mr Perraton sees “reputational risk” arising.

The general description of the panel Mr Perraton has provided will lead to speculation regarding the identity of the people who made up the panel (Mr Field’s identity is clear). This is likely to detract from, rather than add to, the quality of public discussion on the VC selection process.

(3) Questions asked at interview

Mr Perraton has stated in Schedule 2 to his letter that:

“There is no record of the interview questions for either the first or second rounds of interviews. At the second round of interviews which were held in person candidates were given advance notice to prepare a 20 minute verbal presentation and following the presentation, the Panel asked questions.”

I find it hard to believe that there are absolutely no records of the questions asked at interview. For instance, I would have assumed the selection report provided to the UTAS Council included questions. Given the public interest in the selection of Rufus Black as VC, I would ask that all possible documents/records containing questions asked at interview be searched, including emails. My points countering any suggestion of “unreasonable diversion of resources” made under (2) above, also pertain to this matter.

Thank you for attending to the internal review of Mr Perraton’s decision on my RTI application.

Yours sincerely



Robert Hogan

14 November 2022

Email: harveyr35@aol.com