

**OMBUDSMAN TASMANIA**  
**DECISION**



**Right to Information Act Review** Case Reference: R2405-019

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

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

**Provisions considered:** s35, s36, s37, s38, s39

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**Background**

- 1 In 2019 the University of Tasmania (the University) announced a decision to relocate its longstanding campus in Sandy Bay to central Hobart. This decision sparked a high level of public interest and debate.
- 2 Mr Robert Hogan (the Applicant) has a strong interest in the University and maintains a website and blog which are generally opposed to the move.
- 3 On 25 January 2024, Mr Hogan made an application for assessed disclosure under s13 of the *Right to Information Act 2009* (the Act) to the University in the following terms:

*I request copies of the Minutes of UTAS [University] Council meetings held in the period between 4 April 2022 and 23 February 2023.*

*Copies of the Minutes for both the prior and following period are already availalbe [sic].*

*I request that exemptions/redactions be minimised in line with recent decisions by the Ombudsman.*

- 4 On 27 February 2024, Mr Simon Perraton, a delegate under the Act for the University, released a decision to Mr Hogan. Mr Perraton released 71 pages of information in whole or in part. Information not released was redacted pursuant to exemptions applied under ss35 (internal deliberative information), 36 (personal information), 37 (information relating to the business affairs of a third party), 38 (information relating to the business affairs of a public authority) and 39 (information provided in confidence) of the Act.
- 5 On 26 March 2024 (in a letter mistakenly dated 26 March 2023), Mr Hogan sought internal review. On 29 April 2024, Ms Juanita O'Keefe, another delegate under the Act for the University, released a decision which generally confirmed the original decision with some minor amendments.
- 6 On 23 May 2024, Mr Hogan made an application for external review which was accepted under s44 of the Act.

## Issues for Determination

- 7 I must determine whether the information not released by the University is eligible for exemption under ss35, 36, 37, 38, 39 or any other relevant provision of the Act. As these sections are contained within Division 2 of Part 3 of the Act, my assessment is made subject to the public interest test in s33.
- 8 This means that, should I determine the requested information is prima facie exempt from disclosure, I must then determine whether it would be contrary to the public interest for it to be disclosed. In making this assessment I must have regard to all relevant matters and those contained in Schedule 1 of the Act at a minimum.

## Relevant legislation

- 9 Copies of ss35, 36, 37, 38 and 39 are included at Attachment 1.
- 10 Section 33 and Schedule 1 are also included at Attachment 1.

## Submissions

### *Applicant*

- 11 Accompanying his request for internal review, Mr Hogan made a number of submissions which challenged the University's initial decision. Relevant extracts of these submissions are set out below:

*Mr Perraton has made a number of blanket statements ... relating to his application of s35, s36, s37, s38 and s39 of the Act, which indicate a predisposition to exempt certain types of material. These are followed by a number of statements under the sub-heading "Public Interest". While I would expect statements in the "Public Interest" section to indicate that the decision maker was in harmony with the Object of the Act, a number of statements in this section also indicate a predisposition towards exemption. As exemption goes against the presumption of disclosure in the Act, every claimed exemption should be weighed on its own merits against relevant public interest concerns, within the terms of Schedule 1 of the Act. There is no indication in ... Mr Perraton's decision letter that he undertook such 'weighing'.*

...

*Redactions made throughout the UTAS Council Minutes ... frequently involve large sections of text. The content of these sections is not described ... making it difficult to determine whether exemptions have been appropriately applied and the degree to which the public interest may be engaged.*

*In such cases I have had to make judgements based on headings and surrounding text, and applied my knowledge of the matters concerned.*

*It is clear that these frequent redactions of large sections of text must inevitably include factual material that is not sensitive in any way.*

*Mr Perraton has frequently misapplied s35 either by itself as a basis for exemption, or to 'strengthen' an exemption in combination with other sections of the Act. In particular I note that the majority of the Minutes has not been redacted while large sections of text, surely no different in their claimed 'deliberative' nature from the surrounding unredacted text, has been redacted... The practice of redacting such text extends to 'updates' provided to the UTAS Council and, even, to decisions of the UTAS Council, in clear contravention of the terms of s35.*

*Major redacted sections, where s35 is used as a 'shield', frequently relate to stakeholder or financial matters, where – if there was genuine sensitivity – other bases for exemption might have been expected to be available.*

*Mr Perraton's redaction (exemption) of large sections of text under s35 must inevitably include factual information, which would – again – be a contravention of the terms of s35.*

- 12 In his application to my office for external review, Mr Hogan challenged the exemptions applied by the University in similar terms. I have carefully considered these submissions but will not restate them.

#### *University*

- 13 The University was not required to provide submissions for this external review, beyond the reasoning in its decisions, relevant parts of which are extracted below.
- 14 When considering s35 of the Act in its original decision, the University held:

*Records of the University Council include records of discussions on matters which are by their very nature deliberative, opinion based, advice and consultative. When these discussions are recorded they are clearly not records of a final decision. Such deliberations are imperative to the function of any council or board of governance. I consider that information with respect to the deliberations of the University Council are conditionally exempt from release pursuant to section 39 of the RTI Act. If the University Council was unable to deliberate on matters and consider recommendations from University employees, it would inhibit and harm the University Council's ability to function.*

- 15 Regarding s37, the University set out:

*In order for the university to carry out its functions, the University trades, purchases products and equipment, purchases and leases real property, and procures services in commercial and competitive markets. Disclosure of details of commercial arrangements is not in the public interest because it is highly commercial in nature and may expose the third party to commercial disadvantage.*

- 16 When considering the use of s38, the University determined:

*... Releasing commercially valuable information such as commercial yields, details of financing arrangements, details of negotiating thresholds, and in some instances project budgets prior to procurement or negotiation, would result in market competitors such as large-scale property investors, landlords, service providers, and other higher education providers having information that could significantly weaken the university's ability to negotiate and to meet University Procurement Policy principles including value for money. Market operators would not ordinarily have access to this information for other purchasers and competitors in these markets. Failure to achieve value for money means University budgets are lessened which weakens the University's ability to meet key objectives including student experience and quality research with global impact.*

*It is my conclusion that the definition of 'competitive disadvantage is met in relation to both trade and commerce for procurement of equipment, property, services and other functions needed for the University to function, and also in relation to the University operating in the global and higher education market.*

- 17 The University expanded upon this in the internal review decision, noting:

*The information in the Council Minutes about such matters which has not been provided to you is information of a business, commercial or financial nature. It includes strategic business information about attracting students, student accommodation demand, financial information (including dollar figures) about investments, and strategically managing the University's financial position into the future whilst also managing market forces and headwinds.*

*... In each of those activities, the University is engaged in some degree of competition in a competitive market and the potential impact on the university as a participant or competitor in such markets is not diminished by the passage of time in relation to*

*some longer standing matters, particularly where matters have not been finalised. The information in question is not just factual or innocuous.*

- 18 In its internal review decision, the University considered the following factors to weigh in favour of disclosure of information:

*There is a general public need for University information to be accessible which is demonstrated by the amount of information in the Council minutes which has already been disclosed, and additional information disclosed by operation of my decision.*

*As an Australian resident or citizen there is a public interest in [the Applicant's] ability to be able to obtain the maximum amount of information under the RTI Act.*

*The University is a public educational institution which receives significant public funding and disclosure of some of the information could enhance scrutiny and accountability.*

*There is a portion of the Tasmanian community that is interested in the impacts of the University of Tasmania Southern Campus Transformation who might be interested in receiving some additional information (regardless of the amount of information which was disclosed to the applicant).*

- 19 The University then listed the factors it considered to weigh against disclosure:

*In light of the overwhelming majority of information already released, and the comparatively limited information withheld, it is unlikely that further disclosure would contribute to any matter of debate or public interest (noting this is not a reference to matters which the public might be interested in);*

*The exempt information would not inform the applicant or any other person about the reasons for any decisions taken by the Council which are of any public import – it would do no more than satisfy the applicant's curiosity about very limited matters in circumstances where an overwhelming amount of information has already been released;*

*The exempt information would not assist the applicant or any other person to better understand University decisions and would not provide any further contextual information to enable that to occur;*

*There is nothing in the exempt information which would inform the public about rules and practices of the University in dealing with the public;*

*The exempt information would not if disclosed enhance scrutiny of University decision-making processes and improve accountability;*

*Disclosure of the exempt information would not improve participation, particularly in relation to older information about matters that have passed, but which retain commercial or personal sensitivity;*

*In the context of information already provided, further disclosure would not enhance scrutiny of the University's administrative processes;*

*Given the statutory mandate for the University to engage in commercial activities, it should be able to do so on a level playing field subject to a fair and appropriate degree of public disclosure. In light of the amount of information already released, further disclosure would potentially hinder equity and fair treatment of individuals and corporations in their dealings with the University;*

*There is nothing in the exempt information which would promote or harm public health and/or safety;*

*There is nothing in the exempt information which would promote or harm the administration of justice, procedural fairness or the enforcement of the law;*

*Disclosure could harm the economic development of the State such as by limiting competition and the ability of the University to attract students from other jurisdictions and the flow on commercial effect that would have to the State;*

*Further disclosure of exempt information would harm the interest of individuals whose personal information has been withheld or groups of individuals – there is not public interest or benefit, for example, of making a public spectacle of individuals who may have changed their names or gender – a matter which is no doubt of particular personal sensitivity to them;*

*Disclosure of estimates, forecasts, budgets and the like would prejudice the University's ability at the highest levels to constructively and frankly develop economic and financial policy;*

*Disclosure of information about matters which were never adopted would not inform the public of any decisions or improve accountability;*

*Disclosure of some staff related information would have a substantial adverse effect on the management or performance assessment by the University of its most senior staff;*

*To the extent that any of the information relates to matters of an enterprise bargaining nature, disclosure would have a substantial adverse effect on industrial relations of the University;*

*...disclosure of certain exempt information would harm the business and financial interests of the University and other persons or organisations with whom the University engages in business, commercial or financial negotiations and transactions;*

*Similarly ... some information is related to the business affairs of persons which would harm their competitive position if released;*

*Some of the commercial information about business affairs of other persons is not generally available to competitors of those businesses and in some instances are subject to express terms of confidentiality in the contractual arrangements with them.*

## **Analysis**

- 20 The University claimed information was exempt pursuant to ss35, 36, 37, 38 and 39 of the Act. I will assess whether information is exempt pursuant to each exemption in the following Analysis.
- 21 The University supplied my office with a PDF document containing 70 pages of unredacted information relevant to this review, as well as a partially redacted PDF document containing 71 pages of information released to Mr Hogan. Unfortunately, the latter PDF contained no indication of which sections of the Act were relied on to exempt information. The University also provided a Schedule of Documents which identified the sections relied on, though not by page number but by reference to the date and chapter number of each set of Council minutes. The labelling on this Schedule was sometimes in error, making it difficult to determine which piece of information is being referred to. However, for the purpose of my assessment, I will use the University's internal review Schedule when referencing the relevant exemptions.
- 22 I encourage the University to make a greater effort to ensure that it is clear which section of the Act is being applied to each specific exemption, as this is of major benefit to applicants and reviewers.

## **Section 35 – Internal deliberative information**

- 23 For information to be exempt under this section, I must be satisfied that it consists of:
- an opinion, advice or recommendation prepared by an officer of a public authority (s35(1)(a)); or
  - a record of consultations or deliberations between officers of public authorities s35(1)(b)); or

- a record of consultations or deliberations between officers of public authorities and Ministers (s35(1)(c)).
- 24 When one of these requirements is met, I must be further satisfied the information was prepared or recorded in the course of, or for the purpose of, the deliberative processes relating to the official business of a public authority, a Minister or the Government.
- 25 The exemption does not apply to the following:
- purely factual information (s35(2)); or
  - a final decision, order or ruling given in the exercise of an adjudicative function (s35(3)(a)); or
  - a reason which explains such a decision, order or ruling (s35(3)(b)); or
  - information which is older than 10 years (s35(4)).
- 26 As to the meaning of ‘purely factual information’ in s35(2), I refer to *Re Waterford and Treasurer of the Commonwealth of Australia (No 1)*<sup>1</sup> where the Commonwealth Administrative Appeals Tribunal (AAT) observed that the word ‘purely’ in this context has the sense of ‘simply’ or ‘merely’ and that the material must be ‘factual’ in quite unambiguous terms.
- 27 Associate Professor Moira Paterson, in her text, *Freedom of Information and Privacy in Australia 2.0*,<sup>2</sup> refers to the decision in *Re Waterford* and concludes that, regarding factual information, *it must be capable of standing alone. The material must not be so closely linked or intertwined to the deliberative process as to form part of it.*
- 28 The meaning of the phrase ‘in the course of, or for the purpose of, the deliberative processes’ has also been considered by the AAT. In *Re Waterford and Department of Treasury (No 2)*<sup>3</sup> it adopted the view that these are an agency’s ‘thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or course of action.’
- 29 The University’s schedule indicates that it has applied s35 to exempt information in University Council Minutes documents dated 27 April 2022, 29 June 2022, 31 August 2022, 18 October 2022 and 8 December 2022.
- 30 I have reviewed the information claimed be exempt and am satisfied that it consists of records of discussions between members of the University Council and other employees of the University as part of deliberative processes of the University. I am satisfied that it consists of opinion, advice or recommendations from officers of public authorities or deliberations between such officers, and is prima facie exempt pursuant to s35(1)(a) and/or (b).

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<sup>1</sup> [1984] AATA 518 at [14].

<sup>2</sup> LexisNexis Butterworths Australia, 2<sup>nd</sup> edition 2015 at 7.30.

<sup>3</sup> [1984] AATA 67 at [58].

### Section 33 – Public interest test

- 31 I now turn to my assessment of whether it would be contrary to the public interest to release the information I have found to be prima facie exempt under s35. This requires the consideration of the factors in Schedule 1 of the Act and any other information relevant to my decision.
- 32 I consider Schedule 1 matter (a) – the general need for government information to be accessible – is always relevant and generally weighs in favour of disclosure.
- 33 Schedule 1 matter (b) – whether disclosure would contribute to or hinder debate on a matter of public interest – is also relevant. There is no question that the University’s planned move is a matter of significant public interest, generating substantial media and community debate as well as being the subject of an elector poll at the time of the 2022 local government elections. I note the University’s contention it is unlikely further disclosure would contribute to any matter of debate, however I do not accept that there may be a limit to public debate beyond which disclosure of information is superfluous. I consider this matter weighs in favour of disclosure.
- 34 Schedule 1 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 – were identified by the University as weighing against disclosure. This was partly because it contended that disclosure would do no more than satisfy the applicant’s curiosity about very limited matters in circumstances where an overwhelming amount of information has already been released. I do not agree with this position. Any curiosity of the applicant does not undermine his statutory right to information provided in s7 of the Act. I also cannot accept that the release of discussions within the University Council immediately prior to decisions would not add to public understanding of the reasoning behind such decisions. Overall, I consider these matters weigh in favour of disclosure.
- 35 Schedule 1 matter (f) – whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation – was identified by the University as weighing against disclosure. Again, I do not agree with this submission. Understanding the matters considered by the Council leading to a decision would allow informed scrutiny of decision-making processes which can only improve the accountability of the University to the community. This aligns with the University’s own acknowledgement in its internal review decision that *the University is a public educational institution which receives significant public funding and disclosure of some of the information could enhance scrutiny and accountability.*
- 36 The University further submitted that disclosure of information about matters which were never adopted would not inform the public of any decisions or improve accountability. I again disagree and consider that any information

relating to the decision-making process has the potential to enhance public understanding of why a course of action was, or was not, adopted. On balance, I consider matter (f) weighs in favour of disclosure.

- 37 I consider that Schedule 1 matters (n) – whether the disclosure would prejudice the ability to obtain similar information in the future – and (m) – whether the disclosure would promote or harm the interests of an individual or group of individuals – are relevant. In order to ensure its future success, the University requires competent people to step forward and serve on its governing body. It is to be expected the Council will explore and consider different opinions and priorities, but if records of early stages of robust debate concerning ideas of individual members on controversial issues were routinely released, qualified people might be inhibited from contributing to the Council. This matter has been mitigated because although those present at meetings are identified, discussions are generally presented as occurring within the Council as a collective. Matters (m) and (n) therefore weigh against disclosure but only slightly.
- 38 As part of my public interest assessment, I also consider the inherent reasons for Parliament's inclusion of the s35 exemption to allow for early thinking processes to be explored and options tested prior to settling on a final direction for the University. I consider that this weighs against the release of some information. The effectiveness of the University Council may be undermined if all early proposals for the future of the University, even if later abandoned, were released. This must always be balanced with the need for transparency regarding the operations of public authorities.
- 39 The assessment and weighting of the various public interest factors set out in Schedule 1 involves a consideration of competing factors, always taking into account the object of the Act and that *discretions be exercised so as to facilitate and promote, promptly and at the lowest cost, the provision of the maximum amount of official information.*
- 40 The majority of the information to which the University has applied s35 is not 'early thinking' but a discussion immediately prior to a resolution. On balance, I give greater weight to matters (a), (b), (c), (d) and (f), and do not believe the University has discharged its onus under s47(4) to demonstrate that the release of much of the information is contrary to the public interest.
- 41 I also note the information is now approaching three years old and any decisions recorded in the Minutes would have already been implemented. In addition, some information claimed to be exempt is already in the public

domain through media releases issued by the University<sup>4</sup> and so it could not be contrary to the public interest to disclose it in the University Council Minutes.

- 42 My determination is subject to the limited exceptions discussed below and any further determinations I make under ss36, 37, 38 or 39.

*Minutes dated 27 April 2022*

- 43 In section 4.2 of the 27 April 2022 minutes document, the first paragraph and associated dot points are exempt under s35(1)(a) and are not required to be released. The second paragraph beginning *Members noted...* is not exempt and should be released to Mr Hogan, subject to my assessment under s38.

*Minutes dated 29 June 2022*

- 44 In section 3.1 of the 29 June 2022 minutes document, the final sentence of the second redacted paragraph is an opinion and I am satisfied that it is exempt under s35(1)(a). It is not required to be released to Mr Hogan.
- 45 In section 6.5, the relevant information reflects an internal deliberative discussion surrounding the University's Risk Profile. I am satisfied it is exempt under s35(1)(b) and so is not required to be released to Mr Hogan.

*Minutes dated 31 August 2022*

- 46 In section 1.1 of the 31 August 2022 minutes document, the first paragraph merely refers to Council members noting a position regarding the 2022 City of Hobart elector poll. I am not satisfied that it would be contrary to the public interest to release it.
- 47 The second paragraph was assessed by the University as exempt under s36, however I consider it to be more appropriately assessed under s35 as it refers to a discussion regarding University procedures and learning models. With the exception of the first two sentences, I am satisfied this paragraph is exempt under s35(1)(b) and is not required to be released.
- 48 In section 3.4, the exemptions did not appear to be addressed by the University, however I note a repeated and apparently irrelevant reference to Section 3.2 on the Schedule which is likely to contain the University's position in relation to this section. I am satisfied that all except the first paragraph is exempt. This paragraph will be further assessed under s38.
- 49 In section 4.2, I am satisfied the information in the second paragraph which has not been released is exempt under s35(1)(b). The information which has not been released in Resolution 31-08-2022\_UC\_10982-11456 is also exempt.

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<sup>4</sup> University of Tasmania media releases dated 1 July 2022 and 3 March 2023, *4.6 percent pay rise for University of Tasmania staff* and *International study centre for Melbourne CBD*, available at [www.utas.edu.au/about/news-and-stories/articles/2022/4.6-percent-pay-rise-for-university-of-tasmania-staff](http://www.utas.edu.au/about/news-and-stories/articles/2022/4.6-percent-pay-rise-for-university-of-tasmania-staff) and [www.utas.edu.au/about/news-and-stories/articles/2023/international-study-centre-for-melbourne-cbd](http://www.utas.edu.au/about/news-and-stories/articles/2023/international-study-centre-for-melbourne-cbd), accessed on 19 May 2025.

*Minutes dated 18 October 2022*

- 50 In section 3.1 of the 18 October 2022 minutes document, the third paragraph under the heading *Elector Poll and Council Election* is exempt under s35(1)(b) and not required to be disclosed to Mr Hogan. The remainder of this section is not exempt under s35 but will be further assessed under s38.

### **Section 36 – personal information of person**

- 51 For information to be exempt under this section, I must be satisfied that its release would involve the disclosure of the personal information of a person other than the person making the application under s13.

- 52 Section 5 of the Act defines personal information as:

*...any information or opinion in any recorded format about an individual –*

*(a) whose identity is apparent or is reasonably ascertainable from the information or opinion; and*

*(b) who is alive, or who has not been dead for more than 25 years.*

- 53 The University identified information in this category in the Council minutes which are subject to this review, including names and grades of students and employment details of University staff. I am satisfied that all the information identified is personal information and is prima facie exempt under s36.

### *Section 33 – Public interest test*

- 54 Section 36 is also subject to the public interest test contained in s33. I note that, in relation to some information, the University has indicated on its schedule of documents that there is *no public interest in release*. However, the public interest test requires me to determine whether the release of the information would be contrary to the public interest. To do this, I must again consider all relevant matters and as a minimum those in Schedule 1 of the Act.

- 55 I agree that the release of names of students or graduates who have changed their name or gender, and information relating to graduates of Shanghai Ocean University (where not already on the public record), has the potential to cause harm to those persons (Schedule 1 matter (m)) and there are no other matters which outweigh this concern. This information is exempt under s36 and is not required to be disclosed to Mr Hogan.

- 56 I also accept the University's submission disclosure of some staff related information would have a substantial adverse effect on the management or performance assessment of the University's staff (Schedule 1 matter (p)). The relevant information is a performance review of the Vice Chancellor. While there are matters which weigh in favour of release (Schedule 1 matters (a) and (b)), due to legitimate scrutiny of the performance of senior executives, I am satisfied that these are outweighed by the need for confidentiality to manage staff performance effectively. Accordingly, the information in the first redacted paragraph under section 1.1 in the 27 April 2022 minute document, along with

the final sentence in the second redacted paragraph, is exempt under s36 and not required to be released. The remainder of the second paragraph is not exempt, as this relates to employment arrangements which are already on the public record.

57 Accordingly, the information not disclosed in the following sections of the relevant minutes documents is exempt under s36 and is not required to be released:

- 27 April 2022 – section 1.1 (first redacted paragraph and final sentence of the second redacted paragraph only), section 8.1;
- 12 May 2022 – Resolution 12-05-2022\_UC\_18942-11098;
- 29 June 2022 – section 4.4;
- 31 August 2022 – section 5.3;
- 18 October 2022 – Resolutions 18-10-2022\_UC\_17439-11613 and 18-10-2022\_UC\_17439-11614; and
- 8 December 2022 – section 6.1.

58 The remainder of the information is not exempt under s36 and is to be released to Mr Hogan.

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

59 For information to be exempt under this section, I must be satisfied that its release 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.*

60 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*<sup>5</sup> 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...*

61 The court further held that:

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<sup>5</sup> [2010] TASSC 39.

55. *In my view, what the provisions refer to as a competitive disadvantage is something which affects one entity to the extent that it may not be able to generate as high a level of profit relative to its competitive rivals as would be expected, if all else being equal, the particular entity did not face the reason or circumstance. A competitive disadvantage will not necessarily be something which, in strict terms, impacts on an actual ability to compete, and the level of competition.*

62 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.*

63 The University applied s37 on 12 occasions to exempt information in the Council minutes. I am not satisfied the following entries reveal any information relating to business affairs which would expose any third party to a competitive disadvantage. They are not exempt under s37 and should be released to Mr Hogan, subject to any assessment under s38:

- 4 April 2022 – Resolution 04-04-2022\_IC\_18860-10949;
- 18 October 2022 – Resolution 18-10-2022\_UC\_15481-11635; and
- 8 December 2022 – page 1 (first redaction).

64 The University also indicated on the Schedule that information had been exempted pursuant to both ss37 and 38 in section 3.5 in the 8 December 2022 minutes document (second redaction), a redaction which does not appear to exist. However, I have assumed the University intended to refer to the second redaction of information in section 3.6 of the minutes document.

65 I am satisfied the remainder of the relevant information identified by the University is prima facie exempt under s37.

### *Section 33 – Public interest test*

66 Exemptions under s37 are subject to the public interest test set out in s33 of the Act in order to determine if disclosure of the information would be contrary to the public interest.

67 I agree with the University's submission that Schedule 1 matter (a) – the general public need for government information to be accessible is relevant, along with matter (f) – whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation, as *the University is a public educational institution which receives significant public funding.*

68 I further agree that matters (s), (w) and (x), which relate to whether the disclosure would harm the business or financial interests of a third party, cause competitive disadvantage or reveal information not normally available to their competitors, are relevant.

69 I consider that the risk of competitive disadvantage can be satisfactorily mitigated in the following information which the University claimed to be exempt by selective redaction. Accordingly, I determine that the name of the third party organisations, where they occur in the following documents, are exempt under s37:

- 18 October 2022 – section 5.2, including Resolution 18-10-2022\_UC\_15481-11633; and
- 8 December 2022 – section 3.6 (second redaction).

70 The remaining information which the University sought to exempt under s37 refers to commercial partnerships which have wide public exposure,<sup>6</sup> or which were for a finite and now concluded period. I am not satisfied that its release at this point in time would be contrary to the public interest. This information is not exempt under s37 and should be released to Mr Hogan.

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

71 The University has applied s38(a)(ii) on 31 occasions to exempt some information contained in Council Minutes.

72 Section 38(a)(ii) provides that information is exempt information if it is:

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

73 As has been set out in the previous decision of my office in *Alexandra Humphries and University of Tasmania*,<sup>7</sup> given ss6 and 7 of the *University of Tasmania Act 1992*, I am satisfied 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 commercial activities to achieve its objectives.

74 The interpretation of the term competitive disadvantage in s38 of the Act is the same as in s37, which is discussed above.

75 Turning now to the exemptions applied by the University, I do not consider the following information is of a nature such that disclosure would expose the University to any competitive disadvantage and it is to be released to Mr Hogan:

- 4 April 2022, Resolution 04-04-2022\_UC\_18860-10947.

76 I am satisfied the remainder of the information to which the University has applied exemptions under s38 are prima facie exempt under this section, as it

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<sup>6</sup> University of Tasmania media release dated 3 March 2023, *International study centre for Melbourne CBD*, available at [www.utas.edu.au/about/news-and-stories/articles/2023/international-study-centre-for-melbourne-cbd](http://www.utas.edu.au/about/news-and-stories/articles/2023/international-study-centre-for-melbourne-cbd), accessed on 20 May 2025.

<sup>7</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)

does relate to the commercial activities undertaken by the University which could cause competitive disadvantage if disclosed.

*Section 33 – Public interest test*

77 As noted, s38 is subject to the public interest test and so I must now determine whether disclosure of the information found to be prima facie exempt under s38 would be contrary to the public interest.

78 I again agree with the University's submission to the effect that disclosure of the information could enhance scrutiny and accountability of an organisation which receives significant public funding (Schedule 1 matters (a), (b), (f) and (g)).

79 I also consider Schedule 1, matter (s) – whether the disclosure would harm the business or financial interests of the University, to be particularly relevant and weigh against the disclosure of some commercial information.

80 I also note that some commercial activities were for a 12 month period and have now ceased and also, that another commercial partnership has received public exposure due to public announcements by both the University and the partner. Other information is general in nature and does not reveal specific or projected impacts upon the business activities of the University.

81 On balance, I am satisfied any competitive disadvantage to the University can be adequately mitigated by redacting the name of any partner organisation, along with dollar figures and percentages values, in the following:

- 4 April 2022 – Resolution 04-04-2022\_UC\_18860-10949;
- 27 April 2022 – Section 4.2 (second paragraph);
- 18 October 2022 – Section 3.3 (except for the percentage value in the first redaction);
- 18 October 2022 – section 5.1 (except for the contractor name);
- 18 October 2022 – Resolution 18-10-2022\_UC\_10521-11630;
- 18 October 2022 – Section 5.2, including Resolution 18-10-2022\_UC\_15481-11633; and
- 8 December 2022 – Section 3.6.

82 Of the remaining information to which the University has applied s38, the following is exempt and is not required to be released:

- 27 April 2022 – Resolution 27-04-2022\_UC\_18746-10971;
- 6 June 2022 – Section 2.1;
- 6 June 2022 – Resolution 06-06-2022\_UC\_11020-11214;
- 29 June 2022 – Sections 5.1 and 6.5; and

- 31 August 2022 – Section 4.1, the final sentence of the second paragraph.

83 The remainder of the relevant information is not exempt and is to be released to Mr Hogan.

### **Section 39 – Information obtained in confidence**

84 For information to be exempt under s39(1), I must be satisfied that its disclosure would divulge information communicated in confidence by or on behalf of a person or government to a public authority or Minister, and –

- a) the information would be exempt information if it were generated by a public authority or Minister; or
- b) the disclosure of the information would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.

85 Section 37(2) sets out that this does not include information that –

- a) was acquired by a public authority or a Minister from a business, commercial or financial undertaking; and
- b) relates to trade secrets or other matters of a business, commercial or financial nature; and
- c) was provided to a public authority or Minister pursuant to a requirement of any law.

86 In his initial decision, Mr Perraton reasoned:

*I consider that information with respect to the deliberations of the University Council are conditionally exempt from release pursuant to section 39 of the RTI Act.*

87 This approach was not pursued by Ms O’Keefe on internal review. This is correct, as such deliberations are not information provided in confidence to the University but its own internal thinking process.

88 Ms O’Keefe confirmed the University’s reliance on s39 on four occasions to exempt information in the University Council Minutes.

#### *Minutes dated 18 October 2022*

89 In the schedule, the University identified s39 was applied to the second and third redactions in section 3.1, section 5.1 and Resolution 18-10-2022\_UC\_10521-11629 of the 18 October 2022 meeting minutes. I have not identified any information in that section which was communicated in confidence to the University. In the absence of any reasoning in either decision or the Schedule regarding the application of s39 to this information, I determine that the University has not discharged its onus under s47(4) of the Act and this information is not exempt under s39.

## Preliminary Conclusion

90 For the reasons set out above, I determine that:

- exemptions claimed pursuant to ss35, 36, 37 and 38 are varied; and
- exemptions claimed pursuant to s39 are set aside.

## Response to the Preliminary Conclusion

91 As the above preliminary decision was adverse to the University, on 8 August 2025 it was made available to it pursuant to s48(1)(a) of the Act to seek its input before finalisation.

92 On 8 September 2025, Ms Karina Groenewoud, Director Governance and Compliance at the University responded. She accepted the proposed findings in the preliminary decision, except in relation to the release of a small amount of information under s36, about which she made some submissions.

93 I have carefully considered these submissions and agree that, in the specific and unusual circumstances provided, it is appropriate to exempt a small amount of personal information. I am satisfied that the release of this information could cause harm to the interests of the relevant person. This exemption has been incorporated into my decision.

94 On 9 September 2025, the preliminary decision was made available to Mr Hogan to seek his input prior to finalisation, in accordance with s48(1)(b) of the Act.

95 On 15 September 2025, Mr Hogan responded and made a number of observations and comments which I have carefully considered, however advised (emphasis original):

*In the public interest, I believe that it is important that UTAS provide me with the additional material determined not to warrant exemption in the draft decision as soon as possible. I therefore do not seek modifications to decisions made on individual exemptions, and/or changes to the text, in the draft decision.*

## Conclusion

96 Accordingly, and for the reasons set out above, I determine:

- exemptions claimed pursuant to ss35, 36, 37 and 38 are varied; and
- exemptions claimed pursuant to s39 are set aside.

97 I apologise to the parties for the delay in finalising this review.

**Dated:** 19 September 2025



Megan Leary  
**ACTING OMBUDSMAN**

## **Attachment 1 – Relevant Legislation**

### **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 36 - Personal information of person**

- (1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13.
- (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 concern to the third party –the principal officer or Minister is to, if practicable and before deciding whether the disclosure of the information under this Act should occur, by notice in writing to the third party –
  - (d) notify that person that the public authority or Minister has received an application for the information; and
  - (e) state the nature of the information that has been applied for; and
  - (f) request that, within 15 working days from the date of the notice, the person provide his or her view as to whether the information should be provided.
- (3) If a public authority or Minister, after receipt of a person's view referred to in subsection (2)(f), decides to provide the information, the public authority or Minister must, by notice in writing given to that person, notify that person 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 or Minister, state the name and designation of the person who made the decision; and
  - (c) inform the person to whom the notice is addressed of –
    - (i) that person's 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 person under subsection (3) –
- (a) until 10 working days have elapsed after the date of notification of that person; or
  - (b) if during those 10 working days the person applies under section 43 for a review of the decision, 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 working days the person applies for a review of the decision under section 44, until that review determines that the information should be provided; or
  - (e) if the information is information to which a decision referred to in section 45(1A) relates –
    - (i) during 20 working days after the notification of the decision; or
    - (ii) where the person applies for a review of the decision under section 45(1A) – until that review determines the information should be provided.

**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; or
- (e) if the information is information to which a decision referred to in section 45(1A) relates –
  - (i) during 20 working days after the notification of the decision; or
  - (ii) where the third party applies for a review of the decision under section 45(1A) – until that review determines 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 39 - Information obtained in confidence**

(1) Information is exempt information if its disclosure under this Act would divulge information communicated in confidence by or on behalf of a person or government to a public authority or Minister, and –

- (a) the information would be exempt information if it were generated by a public authority or Minister; or
- (b) the disclosure of the information would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.

(2) Subsection (1) does not include information that –

- (a) was acquired by a public authority or a Minister from a business, commercial or financial undertaking; and
- (b) relates to trade secrets or other matters of a business, commercial or financial nature; and
- (c) was provided to a public authority or Minister pursuant to a requirement of any law.

### **Section 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**

1. 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.