

Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	Andrew Schmulow
File Ref:	2024/3158
Decision maker:	Rebecca Watts, Legal Counsel
Date of decision:	5 June 2024

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1. Summary of access application

On 17 April 2024, the University of Wollongong (**UOW**) received your valid access application under the *Government Information (Public Access) Act 2009* (**GIPA Act**). You asked for the following information:

'On or about 8 March 2024 the University of Wollongong received a written complaint from PwC Australia either directly or through their lawyers, Allens, in which allegations were made against me of breach of UoW's social media policy. I seek access to this complaint in its full, un-redacted form'.

On 7 May 2024, Cassandra Garcia of UOW advised you of her decision to refuse access to some of the information you requested (**Original Decision**).

On 17 May 2024, UOW received your valid application for an Internal Review. On 22 May 2024, I wrote to you confirming the validity of your application for internal review and the required timeframe in which a decision was to be made.

In accordance with section 84(1) of the GIPA Act, I have reviewed your access application of 17 April 2024 and the Internal Review Application dated 17 May 2024 as if the Original Decision had not been made.

2. Decision

I am authorised by the principal officer of UOW, for the purposes of section 9(3) of the GIPA Act, to decide your access application. I also confirm that, in accordance with section 84(2) of the GIPA Act, I did not make the Original Decision and I am not less senior than the person who made the Original Decision.

I have decided, under section 58(1)(d) of the GIPA Act, to refuse to provide access to some of the information you have requested because there is an overriding public interest against disclosure of the information. Additionally, I have decided that some of the information is already available to you in accordance with section 58(1)(c) of the GIPA Act.

In this Notice of Decision I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to tell you:

- (a) the reasons for my decision and the findings on any important questions of fact underlying those reasons; and
- (b) the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure.

You can ask for a review of this decision. For details about how to do so, see part 8 of this Notice.

3. Searches for information

Under the GIPA Act, UOW must conduct reasonable searches for the government information you asked for in your application. UOW conducted a search and found the information that falls within the scope of your application, being one email.

4. The public interest test

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

Further, under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

I applied the public interest test by:

- (a) identifying any public interest considerations in favour of disclosure;
- (b) identifying any relevant public interest considerations against disclosure; and
- (c) deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- (a) in a way that promotes the objects of the GIPA Act;
- (b) with regard to any relevant guidelines issued by the Information Commissioner;
- (c) without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);
- (d) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and
- (e) with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

4.1 Public interest considerations in FAVOUR of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

I find the following considerations in favour of disclosure relevant to your application:

- The information contains personal information of the person to whom it is to be disclosed. This includes your name and opinions about you;
- It is reasonable to deduce that the information is needed by you to understand the nature of the complaint made against you (noting you have already been provided with information about the complaint by UOW's People and Culture Division);

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- Disclosure of the information could reasonably be expected to inform the public about the operations of UOW and, in particular, its Complaints Management Policy and practices when dealing with members of the public.

I consider the above to be a **substantial** consideration in favour of disclosure of the information.

4.2 Personal factors of the application

I can also take into account any personal factors of your application, under section 55 of the GIPA Act, including:

- a) your identity and relationship with any other person,
- b) your motives for making the access application
- c) any other factors particular to you.

I have considered the following:

- the information in issue contains your personal information;
- the information is a complaint about you;
- prior to your application, you were involved in a workplace complaints process related to the complaint and allegations that you breached UOW's Social Media Policy, which is relevant because you were provided with access to information related to that process and the complaint during your interactions and communication with UOW's People and Culture Division and relevant UOW personnel;
- As set out in the Fact Sheet 'Internal Review Under GIPA Act' (a copy of which has been provided to you), I can consider correspondence between you and UOW before and after the date of the original decision. Your email dated 17 April 2024 attached to the access application (**Your First Email**) asserts that a criminal offence may have occurred by another person. This is not an assertion that UOW or a member of its staff has committed an offence, which is included in the examples of considerations in favour of disclosure. As stated in [Coote v Blacktown City Council \[2021\] NSWCATAD 160](#), 'The applicant's concern that a criminal offence may have been committed by some other person could be a public interest in favour of disclosure'. As such, this personal factor may be taken into account in favour of providing the applicant with access to the information.

4.3 Public interest considerations AGAINST disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act. To show that they are relevant to the information you asked for, I need to consider whether they could reasonably be expected to have the effect outlined in the table.

I have identified the following considerations against disclosure as being relevant to your application:

- **Section 1(d) of the Table** – Disclosure of the information could reasonably be expected to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions;

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- **Section 1(f) of the Table** – Disclosure of the information could reasonably be expected to prejudice the effective exercise by an agency of the agency’s functions;
- **Section 3(a) of the Table:** disclosure of the information could reasonably be expected to reveal an individual’s personal information;
- **Section 3(b) of the Table:** disclosure of the information could reasonably be expected to contravene an Information Protection Principle under the *Privacy and Personal Information Protection Act 1998* (NSW) or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002* (NSW).

Section 1(d) of the Table

UOW is a public university established by the *University of Wollongong Act 1989* (NSW) with the object of promoting ‘*scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.*’

It is important for a public body of such a nature to encourage and receive both internal and external complaints in order to assist it to carry out its legislative functions and follow its policies and procedures as well as improve its practices.

It is critical for UOW to treat complaints in a confidential manner so that people feel comfortable in bringing complaints to UOW’s attention. If UOW failed to treat complaints in a confidential manner or reveal personal information without consent it could deter other members of the public, UOW staff or students from raising issues with UOW for fear of being treated in this manner.

UOW’s [Complaints Management Policy](#) clearly sets the expectation that a complaint will be handled in a confidential manner and in accordance with UOW’s privacy obligations. Some relevant excerpts are below:

- Section 4 (General Principles of Complaint Management) ‘(17) *Confidentiality must be adhered to by all participants and at all stages of the complaints process, disclosure will be limited to a need-to know basis.*’
- Section 7 (Confidentiality and Privacy) ‘(30) *The University will take all reasonable steps to ensure that information relating to complaints at the University are handled in a confidential manner and in accordance with its privacy obligations, unless an exception applies under law.*’
- Section 7 (Confidentiality and Privacy) ‘(31) *The University is committed to managing complaints in accordance with the [Privacy Policy](#).*’

I understand UOW does not typically supply a copy of a complaint to respondents, and instead a respondent is provided with sufficient context to understand the nature of the complaint and is afforded a reasonable opportunity to respond.

Your email attached to your Internal Review Application dated 17 May 2024 (**Your Second Email**) quotes the definition of ‘Confidentiality’ from UOW’s Complaints Management Policy and asserts ‘*I am involved in the process as the respondent and therefore have a right to see the complaint, know the identity of the complainant.*’

The definition of Confidentiality in the Complaints Management Policy states:

‘The obligation to refrain from disclosure of information related to a matter the subject of a complaint to any person other than those involved in the complaints process to whom disclosure is required by law.’

You are asserting that this means that disclosure to you is required by law. However, I interpret ‘*to whom disclosure is required by law*’ as a reference to persons other than those involved in the complaints process. For

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example, disclosure is not permitted to anyone outside the complaints process unless required by law (for example, as required under a subpoena). It is not a statement that UOW is required by law to disclose all confidential information to all persons involved in the complaints process.

UOW's Complaints Management Policy sets out how the parties can expect adherence to the principles of procedural fairness and the release of the complaints identity/personal information is not included as an expectation but rather the parties can expect to *'have the complaint dealt with confidentially...'*

I am satisfied that revealing the identity of the complaint would not materially add to your understanding of UOW's complaints processes. This is a similar position taken in the case heard in the NSW Civil and Administrative Tribunal (NCAT) *Coote v Blacktown City Council* [2021] NSWCATAD 160.

Overall, there's a risk that the integrity of UOW's complaints management function would be compromised if confidentiality was not upheld and the information was disclosed through this GIPA process outside of the complaint handling process. If individuals are not afforded confidentiality when raising complaints, it's likely to affect the supply of confidential information to UOW and impact receiving and handling complaints in the future. It is important to foster an environment that encourages people to come forward with complaints and not deter people from doing this.

This is a similar position argued in the matter [Bourke v Roads and Maritime Services \[2012\] NSWADT 272](#) whereby Roads and Maritime Services argued that if *'they could not protect the identity of members of the public who have made complaints...They would be reluctant to report issues, particularly if they felt threatened by the person about whom they are complaining, and this would make it difficult for the respondent to carry out its function'*. In this matter, the identity of the complainant was withheld.

This is a **substantial** consideration against disclosure when applying the public interest test as release of some of the information could prejudice the supply of confidential to UOW and impact UOW facilitating its complaint management functions.

Section 1(f) of the Table

Release of some of the information could reasonably be expected to prejudice the effective exercise of UOW's complaint management functions. In order to promote its objectives, UOW needs to create a safe and supportive environment for its staff, students and wider UOW community to thrive and to do this UOW needs to create a safe space to submit complaints and voice concerns.

As referred to above, UOW's Complaints Management Policy requires complaints to be handled in accordance with UOW's publicly available Privacy Policy. Section 8 (Disclosure of Information) in UOW's Privacy Policy covers when UOW can release an individual's personal information. I have reviewed these circumstances and it appears that UOW is not permitted to release the information and if UOW were to release the information UOW could reasonably be expected to be in breach of its own Privacy Policy and consequently it's Complaints Management Policy. The risk of breaching its own policies may prejudice UOW's ability to effectively exercise its complaints management functions.

As referred to above, UOW Complaints Management Policy sets the expectation that complaints will be treated confidentially. Releasing information that contains personal information and specific personal opinions of the public, contrary to UOW policy or consent from the complainant, could have an adverse effect on UOW's ability to exercise its complaints management functions properly.

The above position is supported by *Coote v Blacktown City Council* [2021] NSWCATAD 160 where the Tribunal determined that Council's decision to release the information in part and withhold the name of the complainant and any personal information sought was justified. In this matter, Council submitted that given their Privacy Management Plan *'it would be expected by the complainant that their report to the Council would be dealt with*

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confidentially and *'Disclosure of the identifying information concerning the complainant is not directly related to the purpose for which it was collected, which was to investigate a report of what was described as a "minor dog attack"'*. This is similar situation where the complainant could have reasonably expected their complaint to be dealt with confidentiality. Additionally, Your First Email and Your Second Email indicate that you want the information for purposes not directly related to the purpose for which it was collected by UOW (discussed further below at 3(b)).

As such, there is **substantial** consideration against disclosure when applying the public interest test as the release of some of the information could reasonably be expected to prejudice the effective exercise of UOW's functions.

Section 3(a) of the Table

'Personal information' is defined in Schedule 4[4] of the GIPA Act as:

'... information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.'

The information you have requested includes information relating to individuals other than you. This includes names, personal email addresses, phone numbers and opinions about individuals whose identities can be reasonably ascertained from the information or opinion. In my view, this information falls within the scope of the definition of 'personal information' in the GIPA Act.

I have decided to release the name of the relevant law firm that submitted the information to UOW because the name of the law firm would not fall into the definition of 'personal information' in the GIPA Act. However, to reiterate, the complainant's and other individual's details contained the information do fall within the definition of 'personal information' in the GIPA Act and have been redacted accordingly.

Your Second Email queries *'whether a solicitor, when acting for a client, has the right under NSW rules of court and the legal professional code of practice to be given anonymity'*. I have considered this but am not aware of an exemption or carve out in the definition of 'personal information' in the GIPA Act in support of the release of the complainant's personal information because they submitted the complaint to UOW in a professional capacity in the private sector (there is only an exclusion under for public servants of an agency).

Further, Your Second Email states the *'assumed work email address is not covered by a confidentiality obligation, in that it is not personal information, but is in fact corporate information.'* However, the beginning of the email address contains an individual's name and thus does fall into the definition of 'personal information' but the information after the '@' does not so I have not redacted this.

The term 'reveal' is defined in Schedule 4[1] of the GIPA Act as:

... to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure)

While you may have separately received information related to the content of the information in issue through the complaints process or otherwise, as far as I am aware the personal information of other individuals contained in the information has not already been lawfully publicly disclosed and may not be readily capable of being ascertained. As such, I am satisfied that disclosure of the information could reasonably be expected to reveal the personal information of several individuals.

I have considered the Information Commissioner's *Guideline 4 – Personal Information as a public interest consideration under the GIPA Act* (Guideline 4) when determining whether there is an overriding public interest

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against disclosure in these circumstances. Guideline 4 provides that disclosing information that would reveal personal information about another individual is not an absolute barrier to that information being disclosed, and is only a relevant factor that needs to be weighed against other factors for and against disclosure (Guideline 4, Para. 3.7).

UOW have also consulted with individuals to whom the personal information relates, where reasonably practicable to do so, and have received an objection to the release of that personal information.

As such, I consider this to be a **substantial** consideration against disclosure of that personal information.

Section 3(b) of the Table

As outlined above, the information you have requested includes information relating to individuals other than you.

I am satisfied that the information described above, also falls within the scope of ‘personal information’ under the *Privacy and Personal Information Protection Act 1998 (PIIP Act)*. This definition in section 4 of the PIIP Act parallels the definition in the GIPA Act. However, section 4(3) of the PIIP Act does have more exceptions to what constitutes personal information. I have reviewed these exceptions and have determined that they do not apply and consequently the information falls within the scope of ‘personal information’ under the PIIP Act.

Information protection principles are contained in sections 8 – 19 of the PIIP Act. Section 18 sets out the limits on the disclosure of personal information that apply to UOW (as a public sector agency):

(1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless—

(a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or

(b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or

(c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

(2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

Upon interpretation of the above section to this particular application, it is clear that a release of personal information by UOW would reasonably be expected to constitute a contravention of the information protection principles under the PIIP Act.

UOW collected the personal information for the purpose of receiving a complaint from an external third party about allegations that a UOW staff member breached a UOW policy. I understand that the complaints process has been closed.

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Your Second Email states you have a right to know the identity of the complainant *‘as this may indicate vexatiousness or an attempt to interfere with a testimony provider covered by the protection of Parliamentary privilege’* or to *‘evaluate the compliance of a solicitor making the complaints with his/her professional obligations.’* This suggests that you intend to use the information for other purposes beyond understanding / responding to allegations that you breached UOW’s Social Media Policy. Those uses are not for the purpose that UOW originally collected the information for, being a complaint that UOW’s Social Media Policy had potentially been breached by a staff member.

As required under paragraph 3.17 of Guideline 4, I have considered the type of personal information being requested, the context of your request and the extent of a breach of section 18 of the PPIP Act should UOW disclose that personal information when determining the weight to be given to this consideration. In particular, I note that consent for disclosure has not been granted by the individuals in question, a breach would result in the disclosure of the personal information relating to a number of individuals and, as far as I am aware, the personal information in question is not already publicly available.

Consequently, a release by UOW would be without the consent of the individual and for a purpose not directly related to the collection of the information.

As such, I consider this to be a **substantial** consideration against disclosure of that personal information.

4.4 Consultation

The information that you requested includes information that is:

- personal information of another person; and/or
- business interest of another individual.

UOW was therefore required, under section 54 of the GIPA Act, to consult with those people before releasing the information.

There was an objection to the release of **some** of the information.

The objection does not mean that I cannot release the information. However, I must take it into account when making my decision. I have therefore considered it when applying and balancing the public interest test.

I have given **substantial** weight to the objection when applying the public interest test. This is because:

- Individuals have not provided consent for their personal information to be disclosed, and that personal information has not, as far as I am aware, already been publicly disclosed; and
- Information provided to UOW that is detailed in the information requested was provided on a confidential basis as part of UOW receiving external complaints.

4.5 Balancing the public interest test

I have considered the relevant public interest considerations in favour of and against disclosure of the information you requested, the objections raised by third parties and the personal factors noted above.

As set out in 4.1 above, there are substantial public interest considerations in favour of disclosure. However, at 4.3 above there are also substantial public interest considerations against disclosure.

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The GIPA Act requires me to identify the public interest considerations for and against disclosure and decide where the balance lies between them. I have decided that the considerations against disclosure outweigh those in favour of disclosure. I have placed substantial weight on the disclosure revealing personal information, UOW's requirements under the PPIP Act to protect personal information, and the third party objection to the disclosure of personal information.

Additionally, disclosure of the requested information could reasonably be expected to impact the supply of confidential information required by UOW to carry out its complaints management functions effectively. If complaints are not treated confidentiality and are released publicly in full then this could deter people from submitting complaints to UOW.

Having weighed up the considerations, I have decided to refuse to provide access to information because there is an overriding public interest against disclosure of the information as per section 58(1)(d) of the GIPA Act. However, I have decided that some of the information can be released as per section 58(1)(a) of the GIPA Act.

I have provided you with a redacted copy of the email sought so that you may access the information that I have decided to release to you.

5. Access

5.1 Form of access

I have attached to my email a copy of the information that I have decided can be released. As discussed, there is an overriding public interest against disclosure of some but not all of the information. You will therefore find that some of the information has been redacted, as allowed by section 74 of the GIPA Act.

Some of the information you requested is already publicly available as per section 58(1)(c) of the GIPA Act. As per section 59(2) of the GIPA Act, UOW is not required to provide access to information that UOW has decided is already available to the applicant but notice of the decision must indicate why UOW believes the information is already available to the applicant and, if necessary, how the information can be accessed by the applicant.

To comply with section 59(2) of the GIPA Act I have indicated below where you can access this information:

- LinkedIn Article: This is publicly available on a website. You wrote this LinkedIn post on your LinkedIn profile and therefore this information is already available and accessible to you.
- UOW's Social Media Policy: <https://policies.uow.edu.au/download.php?id=108&version=1>

5.2 Access period

Not Applicable.

5.3 Deferral of access

Not Applicable.

5.4 Third party review rights

Not Applicable.

6. Processing charges

You paid a \$40 review application fee. Under sections 64(1) and (2) of the GIPA Act, we may require you to pay processing charges, at a rate of \$30 per hour, for the time spent dealing with your access application.

However, I have decided to waive any applicable charges beyond the review application fee.

7. Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

In the letter acknowledging receipt of your valid application, you were told about the disclosure log. You were also advised of your right to object to the inclusion of details about your access application in the disclosure log, in certain circumstances (for example, if you seek access to your own personal information).

You objected to details about your application being included in the disclosure log and given the information requested relates to your personal information it would not be of interest to members of the public. As such, I have decided not to include the information in UOW's disclosure log.

8. Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. Before you do so, I encourage you to contact me to discuss your concerns. My contact details are set out below.

As this decision is the result of an internal review, you are not entitled to seek another internal review. However, there are two other review options:

- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

To assist you, here is a link to a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled Your review rights under the GIPA Act:

<https://www.ipc.nsw.gov.au/fact-sheet-your-review-rights-under-gipa-act>.

You will also find some useful information and frequently asked questions on the IPC's website: www.ipc.nsw.gov.au.

You can also contact the IPC on freecall 1800 IPC NSW (1800 472 679).

9. Further Information

If you have any questions about this notice or would like any further information, please contact me on 02 4221 4521 or via email rwatts@uow.edu.au

Rebecca Watts

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Rebecca Watts

Legal Counsel

Legal Services Unit | Office of General Counsel