

## Government Information (Public Access) Act 2009

### NOTICE OF DECISION

Applicant:	<b>Andy Schmulow</b>
File Ref:	<b>2024/3074</b>
Decision maker:	<b>Cassandra Garcia</b>
Date of decision:	<b>7 May 2024</b>

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## 1. Summary of access application

On 17 April 2024, we received your valid access application under the *Government Information (Public Access) Act 2009* (GIPA Act), in which you requested 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”.*

UOW wrote to you on 22 April 2024, confirming the valid access application and the required timeframe in which a decision was to be made. UOW wrote to you again on 24 April 2024, to advise that consultation was required, and you were provided with a revised decision date i.e. 3 June 2024.

## 2. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

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

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 7 of this Notice.

## 3. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the information you asked for in your application. I have searched our records to find any information that falls within the scope of your application.

I confirm that I contacted the People and Culture Division to obtain the relevant information pertaining to your request.

## 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.

In addition to the general public interest in favour of disclosure of information I have also found the following considerations as being relevant to your application:

- Informing the public about the operations of the University and, in particular, its policies and practices for dealing with members of the public / UOW community when receiving complaints,
- The information is personal information relating to you as the applicant of this request,
- Disclosure of the information could reasonably be expected to confirm your understanding of the complaint, noting that you have been provided with the substance of the complaint previously.

I consider the above to be a strong consideration in favour of release of the information.

I understand that you have been provided with the substantive elements of the complaint, so as to provide you with a procedurally fair opportunity to respond (as outlined in section 5 of UOW's Complaint Management policy).

#### **4.2 Personal factors of the application**

In determining whether there is an overriding public interest against disclosure of information in response to an access application, the University is entitled to take into consideration the personal factors of the application (s.55 of the GIPA Act). The personal factors of the application can also be taken into account as factors in favour of providing you with access to the information.

The following factors can be taken into account (s.55 of the GIPA Act):

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

I have reviewed the personal aspects you noted in your email (which you attached to the access application). These factors have been duly considered during the processing of your request.

### 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.
- 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 1(g) of the Table – Disclosure of the information could reasonably be expected to found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence
- 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 – Contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002*

#### Section 1(d) of the Table

UOW encourages individuals to raise any concerns or lodge complaints as they provide an opportunity for UOW to improve its policies, procedures, and services so that it remains a supportive and productive environment for all staff, students, and the UOW community.

Individuals who wish to raise concerns must feel comfortable and confident to be able to bring matters to UOW's attention with the assurance that any issues are treated in a confidential manner and only made available to relevant staff and external bodies as appropriate.

Receipt of complaints is done so with an understanding and expectation of confidentiality in accordance with the below policy principles:

- UOW's [Complaints Management Policy](#):
  - o s.4 'General Principles of Complaint Management' "(17) Confidentiality must be adhered by all participants and at all stages of the complaints process, disclosure will be limited to a need-to-know basis."
  - o s.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."

- s.5(30) of [UOW's Code of Conduct](#) states that *“Staff and affiliates have an obligation to the University to maintain the confidentiality of confidential information of the University that comes into their possession.”*

In addition, the standard internal practice that is applied by UOW complaint handlers is for the respondent to be provided with sufficient context to enable an understanding of the complaint/concern and a reasonable opportunity to respond accordingly. A copy of a complaint/concern is not supplied to the respondent in order to maintain the integrity and rigor of the complaints handling process. I understand this is a consistent approach utilised at the University. We are aware that you were provided particulars of the concern made against you including who made the concern, the location of the concern, and the context of the concern. This is consistent with the above policies and practice.

It is clear from the above policy documents and standard internal practices that there is an inherent expectation of confidentiality throughout the complaints management process.

Members of the UOW community and/or third parties who raise concerns, do so with an expectation of confidentiality as outlined in the above policies. If individuals are not assured of confidentiality when raising concerns, it is likely that they would be reluctant to disclose information and therefore it could reasonably be expected that this will prejudice any future supply of this kind of information.

Furthermore, if confidentiality is not exercised and information is disclosed outside the complaints handling process, there would be a negative impact on the integrity of this University function. Consequently, it could reasonably be expected to prejudice the effective exercise of UOW's investigative and complaint handling function. A weak or ineffectual complaints handling function (in which confidentiality is not assured) could reasonably be expected to deter individuals from openly coming forward and raising concerns in the future.

I have placed significant weight on considerations of confidentiality and its effect on the effective exercise of UOW's complaint handling function when applying the public interest test.

### **Section 1(f) of the Table**

There is a public interest consideration against the disclosure of some of the information as it could reasonably be expected to prejudice the effective exercise of the University's complaint and investigative handling function.

The University operates under the [University of Wollongong Act 1989 \(NSW\)](#) and exercises its functions under established policies and procedures that are approved by the University Council, in accordance with section 16, 1B(h).

The use of social media by UOW staff, students and affiliates is governed by UOW's Social Media Policy. Where concerns are raised relating to a potential breach of this policy UOW applies the requirements and principles outlined in the policy as part of its function of assessing whether a breach has occurred. As outlined in the Social Media Policy UOW aims to “(33) resolve the matter informally and directly with the member of Staff and their supervisor.”

Furthermore, the University's complaints handling function, governed by the Complaints Management Policy forms part of establishing robust governance and procedural rules related to the handling of grievances, concerns or issues raised by staff, students, or community members. By releasing information that includes specific personal opinions to the public it would disadvantage UOW's ability receive full and frank concerns or complaints.

In light of the above considerations, I believe that the disclosure of some of the information requested could reasonably be expected to prejudice the effective exercise of the University's functions, particularly in the area of complaint handling and policy enforcement.

### **Section 1(g) of the Table**

Information obtained by the University as part of a complaint and investigative function relies on the mutual understanding of confidence to ensure frank and open discussion. The information you have requested includes information that was created and provided in confidence.

Ensuring the integrity of this process is pivotal to ensuring a culture of trust and openness within UOW, ultimately contributing to effective management and sound decision-making. I have placed significant weight as to the public interest and the importance of maintaining confidentiality, which is central to UOW's operations and building trust with the public. This has been discussed above as part of my consideration relating to section 1(d) and 1(f) of the table.

The disclosure of some of the information that has been provided in confidence would undermine the trust that is relied upon by UOW. Consequently, it is reasonably expected that disclosure would result in the disclosure of information provided to an agency in confidence. I believe the disclosure of information provided to UOW in confidence is a very strong consideration against the release of some of the information included in the scope of your request.

### **Section 3(a) of the Table**

The scope of the information you have requested includes information that, if disclosed, could reasonably be expected to reveal an individual's personal information, specifically the name, address, opinion and other details of the concerned party.

Personal information is defined in clause 4 of schedule 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'.

I therefore consider that disclosure of some of the information you requested could reasonably be expected to reveal the personal information of those individuals.

Furthermore, section 15(b) of the GIPA Act states that '*Agencies must have regard to any relevant guidelines issued by the Information Commissioner*'. I have therefore referred to [Guideline 4: Personal information as a public interest consideration under the GIPA Act](#) when determining whether there is an overriding public interest against disclosure regarding this consideration. The Guideline provides common examples of personal information and refers to examples where opinions and concerns could amount to personal information.

I have considered that the identifying details of the concerned party and personal details included in the concern may provide sufficient information so that a member of the public could identify any parties directly involved in lodging the complaint.

If UOW releases the identity of the concerned party and the details of the issues raised as part of this GIPA application, it can reasonably be expected that UOW will be providing access to personal information about an individual that has not already been made publicly available. This would result in revealing an individual's personal information.

In order to maintain a level of confidence and trust among individuals to enable them to come forward to raise concerns so that UOW upholds its obligation to foster an open and trustworthy community, it is important that personal details are not discussed or disclosed unless required to facilitate UOW's function of effectively dealing with complaints.

In light of the information provided in Guideline 4 of the *GIPA Act*, the expectations of all individuals concerned that their information/complaints would be treated in a confidential manner and the potential negative effect on the willingness of future concerned individuals to openly and willingly come forward to raise issues regarding

employee practices, I have given this a very strong consideration against disclosure when I applied the public interest test.

### **Section 3(b) of the Table**

In the above section (3(a)) I have established that by releasing some of the personal information of the individuals captured in the information, it can reasonably be expected that UOW will be revealing the personal information of an individual that has not already been made publicly available.

By releasing the personal information of an individual without their consent and for a purpose that is not directly related to the collection of the information, it can be reasonably expected that UOW would be in contravention of the information protection principles under the *Privacy and Personal Information Protection Act 1998*. The purpose for which the information was collected was to communicate a concern in relation to a potential breach of University policies applicable to a University staff member from a concerned third party.

The information protection principle that applies in this consideration is:

- s.18(1), which provides that a public sector agency that holds personal information must not disclose the personal information unless the disclosure is directly related to the purpose for which the information was collected, or there is no reason to believe that the person would object to the disclosure, or the individual concerned is aware, or reasonably aware, that information of that kind is usually disclosed.

I have placed considerable weight as to the public interest consideration against disclosure (both cl 3(a) and 3(b)) in the absence of the individual's consent and taking into account the purpose of the request. I have concluded that if UOW released the details of the individuals captured in the information requested, it could reasonably be expected that it would be in contravention of s18(1) of the *Privacy and Personal Information Protection Act 1998*.

## **4.4 Consultation**

The information that you requested includes information that is personal information of another person and or the business interest of another individual. I 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.

## **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.

As discussed at 4.1 and 4.2 above, I initially identified strong considerations in favour of the disclosure of the information.

Under the GIPA Act, I am required to weigh this up with the public interest considerations against disclosure, discussed at 4.3 above, considering the impact that the disclosure would have on UOW's commitment to effectively deal with complaints and handle information in accordance with our policies and practices including our privacy obligations.

I have given considerable weighting to UOW's commitment to protecting an individual's personal information as required under the information protection principals set out in *Privacy and Personal Information Protection Act 1998* (NSW).

In addition, disclosure would reasonably be expected to disadvantage the supply of confidential information required by UOW for it to carry out its functions effectively. If individuals do not feel comfortable and assured that the information, they provide will be dealt with in a confidential contained manner then this would negatively impact on the effective exercise of UOW's complaint handling function. This is because it is likely that individuals would not be forthcoming in raising concerns if this information could subsequently be released in the public domain.

Having weighed up the considerations, on balance, I have decided that some of the information can be released as permitted under s.58(1)(a) of the GIPA Act. Additionally, I have decided, in accordance with s.58(1)(d) of the GIPA Act, to refuse access to some of the information sought in your application as there is an overriding public interest against disclosure of that information.

In order to provide you with access to the information that I have decided to release to you I have redacted the information that represents an overriding public interest against disclosure.

## **5. Access**

### **5.1 Form of access**

Access to the requested information is to be provided in the way requested by you as the applicant, unless one of the exemptions apply as per section 72 (2) of the GIPA Act. You requested a full, un-redacted form of the concern. I have understood this to mean that you are requesting a copy, therefore, attached to my email is a copy of the correspondence received by UOW.

As outlined above in section 4.3 of this notice there is an overriding public interest against disclosure of some the information included in the record. Therefore, you will find that some of the information has been redacted to overcome the considerations against disclosure, as permitted by section 74 of the GIPA Act.

I have also decided, in accordance with s. 58(1)(c), that some of the information that falls within the scope of your request is already available to you. In accordance with s.59(2) I am required to indicate how the information can be accessed by you. This information is already publicly available on a website.

You are able to access this information via the following links:

- UOW's Social Media Policy: <https://policies.uow.edu.au/download.php?id=108&version=1>
- LinkedIn Article: [https://www.linkedin.com/posts/dr-andy-schmulow\\_unregulated-aggressively-profit-driven-activity-7171336034255822848-jgVn?trk=public\\_profile](https://www.linkedin.com/posts/dr-andy-schmulow_unregulated-aggressively-profit-driven-activity-7171336034255822848-jgVn?trk=public_profile)

## **6. 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 your access application you objected to the details about your application being included in the disclosure log. Having considered this and the fact that the information requested pertains primarily to your personal information the University has decided that it will not include the details in its disclosure log as it would not be of interest to other members of the public.

## 7. 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.

You have three review options:

- internal review by another officer of this agency, who is no less senior than me;
- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, 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:

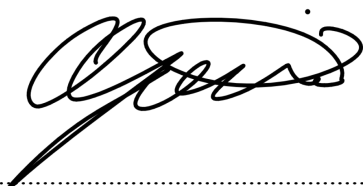
<https://www.ipc.nsw.gov.au/fact-sheet-your-review-rights-under-gipa-act>.

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

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

## 8. Further information

If you have any questions about this notice or would like any further information, please contact me at [icu-enquiry@uow.edu.au](mailto:icu-enquiry@uow.edu.au) or on (02) 4239 4546.



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