

Decision and reasons of the ACT Ombudsman

Application number:	AFOI-RR/25/80037
Applicant:	Julie Hare
Respondent:	University of Canberra
Respondent reference:	No reference number provided
Decision reference	[2026] ACTOFOI 5
Date:	24 February 2026
Catchwords	<i>Freedom of Information Act 2016</i> – interpreting scope – reasonable steps taken to identify government information within scope – refuse to confirm or deny information is held by the respondent – deciding access – whether information is contrary to the public interest information – information subject to legal professional privilege – promote open discussion of public affairs and enhances the government’s accountability – contribute to positive and informed debate on important issues or matters of public interest – ensure effective oversight of expenditure – prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act – prejudice the management function of an agency or the conduct of industrial relations by an agency – prejudice an agency’s ability to obtain confidential information.

Decision

1. For the reasons set out below, I **set aside and substitute** the decision of the University of Canberra (**UC**) dated 3 June 2025 under s 82(2)(c) of the *Freedom of Information Act 2016* (ACT) (**FOI Act**).

Background to Ombudsman review

2. On 2 January 2025, the applicant applied to UC for access to information regarding the former Vice Chancellor of UC, Professor Paddy Nixon. On 6 January 2025, the applicant and UC agreed to the following revised scope of the application:
 1. Correspondence passing between the Vice Chancellor and the Chancellor in the period between 1 January 2023 and 6 January 2025 in relation to the resignation of the former Vice Chancellor Paddy Nixon; and
 2. All reports resulting from any internal investigations undertaken by the University of Canberra into the resignation of the former Vice Chancellor Paddy Nixon.
3. On 3 June 2025, UC advised the applicant it had identified 8 documents containing information within the scope of the access application. UC decided to partially release 6 documents with redactions made to the personal information of junior staff members because UC considered it was, on balance, contrary to the public interest information.¹ UC decided to refuse access to an additional 2 documents (documents 7 and 8) on the basis that they could not be located.²
4. UC also refused to confirm or deny it held information within the scope of item 2 of the access application because UC considered the information, if held, would be information which is contrary to the public interest information; and confirming or denying that the information is held would, or could reasonably

¹ Documents 1-6

² Per section 35(1)(b) of the [Freedom of Information Act 2016 \(ACT\)](#) (FOI Act).

be expected to, be an unreasonable limitation on a person's rights under the *Human Rights Act 2004* (ACT) (Human Rights Act).³

5. On 4 June 2025, the applicant applied for Ombudsman review under s 73 of the FOI Act.
6. On 5 June 2025, the Office of the ACT Ombudsman (the Office) notified UC of the review by way of a notice issued under s 75 of the FOI Act (s 75 notice) and requested the following:
 - a copy of the access application and any correspondence clarifying the scope of the application
 - a marked up (redactions marked but not applied) copy of documents 1-6
 - evidence of searches conducted to locate documents 7 and 8, or alternatively, additional information about why documents 7 and 8 are unable to be located
 - a copy of any information relevant to item 2 of the access application
 - a copy of any correspondence with third parties consulting them on the potential release of the information sought.
7. On 17 June 2025, UC provided a response to the s 75 notice.
8. Through September 2025 to November 2025, the Office engaged with UC about the provision of the information at issue. On 3 November 2025, the Office received all the necessary information at issue.
9. On 19 January 2026, I provided my preliminary view to the parties in a draft consideration.
10. On 20 January 2026, the applicant accepted the draft consideration.

³ Section 35(1)(e) of the FOI Act.

11. On 27 January 2026, UC indicated that it acceded to the draft consideration. However, it also made additional submissions and requested the draft consideration be amended for clarity. I have considered these submissions and where I have deemed it appropriate, I have made minor adjustments.

Information at issue

12. The information at issue in this Ombudsman review is the 2 categories of documents, containing information within the scope of item 1 of the access application. UC refused access to one category of information on the basis that documents could not be located and gave partial access to the other category of information.

13. The information at issue may also include any documents, should they be held by UC, containing information within the scope of item 2 of the access application. I will consider below whether UC correctly refused to confirm or deny they held such information.

14. In making my decision, I have had regard to:

- the applicant's access application and review application
- the respondent's decision
- the ACT FOI guidelines, a notifiable instrument under s 66 of the FOI Act
- the FOI Act, in particular Schedule 2.1 and 2.2
- the *Human Rights Act 2004* (ACT)
- the *Information Privacy Act 2014* (ACT)
- an unedited copy of the information at issue
- relevant case law, including:
 - [AA and Transport Canberra and City Services Directorate](#) [2018] ACTOFOI 1 (20 July 2018),

- [BP and Justice and Community Safety Directorate](#) [2021] ACTOFOI 19 (22 December 2021),
- [DK and Community Services Directorate](#) [2025] ACTOFOI 7 (3 July 2025), and
- [National Tertiary Education Union and University of Canberra](#) [2025] ACTOFOI 21

Relevant law

15. Section 7 of the FOI Act provides every person with an enforceable right of access to government information. This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.⁴
16. Contrary to the public interest information is defined in s 16 of the FOI Act as:
- Information—
- (a) That is taken to be contrary to the public interest to disclose under schedule 1; or
 - (b) The disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.
17. The public interest test set out in s 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.
18. Section 34 of the FOI Act requires that an agency or Minister deciding on an access application must take reasonable steps to identify all government information within the scope of the application.⁵
19. Section 35(1)(c) of the FOI Act provides an access application may be decided by refusing to give access to the information sought because the information being sought is contrary to the public interest information.

⁴ Section 35(1)(c) of the [FOI Act](#).

⁵ Section 34(1) of the FOI Act.

20. Section 35(1)(e) of the FOI Act provides an access application may be decided by refusing to confirm or deny that the information is held by the respondent because:

- (i) the information is contrary to the public interest information; and
- (ii) doing so would, or could reasonably be expected to—
 - (A) endanger the life or physical safety of a person; or
 - (B) be an unreasonable limitation on a person's rights under the *Human Rights Act 2004*; or
 - (C) significantly prejudice an ongoing criminal investigation.

21. Section 12 of the Human Rights Act provides:

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

22. Schedule 1 of the FOI Act sets out categories of information taken to be "contrary to the public interest information" for the purposes of the definition in s 16. Schedule 1, s 1.2 of the FOI Act provides that information that would be privileged from production or admission into evidence in a legal proceeding on the ground of LPP is information disclosure of which is taken to be contrary to the public interest.

23. Schedule 2 of the FOI Act sets out a non-exhaustive list of public interest factors which must be considered, where relevant, when determining the public interest.

The submissions of the parties

24. In the decision notice UC said:

I have decided to provide partial access to six of the documents under sections 35(1)(a) and (c) and 50 of the Act (being documents Nos. 1 to 6 in the Schedule). That is, I have refused access to some information contained in those documents on the basis that the redacted information is "contrary to the public interest

information". I have formed the view that a factor strongly favouring non-disclosure of that information under Schedule 2 section 2.2(a)(ii) of the Act is the fact that disclosure could reasonably be expected to unreasonably prejudice the protection of an individual's right to privacy. On balance, the release of the information would be contrary to the public interest under the test set-out in section 17 of the Act.

I have refused access to two documents under section 35(1)(b) of the Act (being documents Nos. 7 and 8 in the Schedule). Despite reasonable and proportionate searches those documents could not be located. Reasonable and proportionate searches have been undertaken for the two documents, including searches of all relevant electronic and manual records and files. In *Community and Public Sector Union and Chief Minister, Treasury and Economic Development Directorate* [2018] ACTOFOI7 (14 November 2018) the Ombudsman stated that the concept of "reasonable searches" should be construed as not going beyond the limits applied by reason, not be extravagant or excessive, but be modest and suitable in the circumstances. I am satisfied that the searches undertaken were reasonable.

I have decided to refuse to confirm or deny the existence of any information relating to Item No. 2 of your Revised FOI Request pursuant to section 35(1)(e) of the Act. In relation to the factors favouring non-disclosure, I consider that, if any information exists which is relevant to Item No. 2, releasing that information in response to the Revised FOI Request could reasonably be expected to unreasonably prejudice Professor Nixon's right to privacy. Confirming that any information exists which responds to Item No. 2 would reveal private information about Professor Nixon (because it would reveal the existence of an investigation which is neither confirmed nor denied). Likewise, confirming that any information responding to Item No. 2 *does not* exist would equally interfere with Professor Nixon's right to privacy because doing so would reveal that no investigation occurred. In either case, disclosing whether any information responsive to Items No. 2 exists or does not exist would reveal private information about Professor Nixon's employment and the circumstances of his departure from the University.

I also consider that revealing the existence or otherwise of any information responding to Item No. 2 would also prejudice the University's ability to carry out its management function (Schedule 2 section 2.2(xv) of the Act). Investigations into complaints about misconduct must necessarily be carried out in private, and all parties to such an investigation must be assured that their privacy will be protected during any investigation. Revealing the existence or otherwise of any information responsive to Item No. 2 could reasonably be expected to reduce the confidence of any future prospective complainant (or respondent to a complaint) that the complaint will be handled confidentially.

25. In their Ombudsman review application, the applicant submitted:

The university told me they had identified 14 documents but only gave partial release to six arguing it was not in the public interest. My argument is that it is very much in the public interest - that a publicly funded institution gave \$1.8 million

payout (according to reports) to a former vice chancellor who left abruptly for reasons that have never provided. If the information provided to me by people close to that VC is correct, then the university is engaging in a cover up to protect its reputation, but not the interests of its staff, students and the community.

26. On 3 November 2025, in relation to searches conducted to locate information within scope, UC submitted:

Emails were exchanged between me and the Chancellor between 16 April and 8 May 2025 in an effort to locate all attachments to the relevant emails, which resulted in the identification and provision of Item 6. Notably, the other persons involved in those communications had left the University prior to processing of this FOI application, and their email accounts closed.

Initial searches for all relevant documents included emails to the Chancellor, Vice Chancellor and Chief Operations Officer and a review of documents provided in previous FOI applications which covered largely the same ground.

We have, today, written again to the Chancellor to seek copies of those “missing” annexures and a record of the searches undertaken. If the annexures cannot be found in the electronic or paper files maintained by the Office of the Chancellor or the Chancellor personally, we will seek the Chancellor’s permission to have the University’s IT section undertake relevant searches of all email accounts – provided that those searches are reasonable and proportionate in terms of cost and effort.

27. In response to the draft consideration, UC raised concerns about how the draft consideration described documents 1 to 5 with respect to item 1 of this access application, including how it identified the parties to the emails discussed and how it described the exchange of the communications that occurred.

28. Additionally, UC raised concerns about the practical implications of treating correspondence that is not sent directly from the Chancellor to Vice Chancellor (or vice versa) as within scope of the access application in terms of the extent of searches that would be required to identify relevant information and the volume of information that would potentially be captured. UC advised it would be a significant and adverse development if this decision provided a precedent for:

“... a proposition to the effect that the Chancellor could communicate something relevant to the FOI request to A and A could communicate all or some of that to B and B could subsequently send a communication to the Vice Chancellor on the

same broad topic (and which could repeat the earlier correspondence verbatim, or summarise it, or embellish it, or simply refer to it as having occurred) and that all that correspondence constitutes “communication between the Chancellor and the Vice Chancellor”

29. These submissions are discussed in more detail below.

Considerations

30. The issues to be decided in this Ombudsman review are:

Item 1 of application

- whether the interpretation of scope of item 1 was appropriate
- whether reasonable steps were taken to identify government information

Item 2 of application

- whether UC is entitled to rely on s 35(1)(e) of the FOI Act to refuse to confirm or deny they held information sought within the scope of item 2 of the access application, and

Items 1 and 2 of application

- whether, on balance, the information at issue is contrary to the public interest information.

Consideration—item 1 of application

Scope of item 1

31. Item 1 of the applicant's access application was for:

Correspondence passing between the Vice Chancellor and the Chancellor in the period between 1 January 2023 and 6 January 2025 in relation to the resignation of the former Vice Chancellor, Paddy Nixon.

32. In its decision letter, UC stated:

The University interprets Item No. 1 of your Revised FOI Request as seeking correspondence passing between any persons officially holding either the role of Chancellor or Vice Chancellor (including in an "Interim" or "Acting" capacity), as at the date of the relevant communication.

33. UC proposed the wording for items 1 and 2 when negotiating scope with the applicant, due to concerns about the original scope being too broad.
34. Documents 1-5 are emails authored by the Chancellor or Vice Chancellor, separately, contained within 3 email chains. These chains also contain 9 emails by people other than the Chancellor or Vice Chancellor, including third party correspondence forwarded by the Chancellor to the Vice Chancellor (or vice versa) to inform their email discussion, and correspondence from other UC staff participating in joint email discussion with the Chancellor and Vice Chancellor. Given the narrow interpretation of scope, UC did not consider the other emails in these chains to be within scope as they were not authored by the Chancellor or Vice Chancellor.
35. I am of the view that these email chains would be considered "correspondence passing between the Chancellor and Vice Chancellor" and that UC took an unduly narrow interpretation of the scope it had negotiated.
36. My reasoning for this view includes that the emails that were forwarded by the Chancellor to the Vice Chancellor (or vice versa) formed part of the contents of the correspondence between the Chancellor and Vice Chancellor. Regarding the emails from UC staff jointly to the Chancellor and Vice Chancellor, I have considered the context of the communications, which were part of an ongoing and intentional exchange of information between 3 people. In these circumstances, I consider it an overly strict approach not to include emails where both the Chancellor and Vice Chancellor were recipients and, when replies were sent by one of them, they included each other in their responses. I have also taken into account that the FOI ACT has a

pro-disclosure basis, and the objects of the FOI Act promote disclosure of the maximum amount of government information.⁶

37. In its response to the draft consideration, UC raised concerns about the practical implications of treating this third party correspondence as within scope of the access application. I do not agree that my interpretation of the scope of this access application is so broad as to render identifying and searching for relevant information practically unworkable or unreasonable. In the context of this application, we are considering only a small number of emails. The third party correspondence is not difficult to identify and does not require extensive searches: it is embedded in the chain of emails exchanged between the Chancellor and Vice Chancellor. In these particular circumstances, in my view, to exclude from scope the correspondence by third parties which is within the chain of emails exchanged between the Chancellor and Vice-Chancellor would be to consider an incomplete account of the Chancellor and Vice Chancellor's communication. In my view UC should have considered the other emails in the email chains to be within scope of the access application.

38. I have therefore considered the emails UC treated as out of scope to be within scope and they will be discussed in this decision.

Part release of documents 1-6

Legal professional privilege

39. UC did not raise legal professional privilege (LPP) as a consideration in their decision. I am of the view that LPP would extend to emails previously considered as out of scope, specifically the emails being forwarded by document 4 in that email chain.

⁶ Section 6(f) of the FOI Act.

40. Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of LPP is taken to be contrary to the public interest to disclose under the FOI Act (except in certain circumstances related to corruption and law enforcement that do not apply here).⁷
41. LPP provides an immunity to disclosure of information which would reveal communications between a client and their lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of services for legal proceedings.⁸
42. LPP extends to information which has been copied and provided to a legal advisor for the dominant purpose of obtaining legal advice, and information prepared by the client or the legal advisor from which the nature of the advice sought or given might be inferred.⁹
43. Evidence must not be presented if, on objection by a client, the court finds that presenting the evidence would result in the disclosure of a confidential communication made between the client and a lawyer; or between 2 or more lawyers acting for the client; or the contents of a confidential communication prepared by the client, lawyer or someone else for the dominant purpose of the lawyer providing legal advice to the client.¹⁰

⁷ See s 16 and Schedule 1, s 1.20 of the FOI Act. There is an exception in Schedule 1 for information that “identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law”. However, I am satisfied the exception does not apply here.

⁸ *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49 (7 November 2002) at [9] – [11]. See also *Esso Australia Resources v Commissioner of Taxation* [1999] HCA 67 (21 December 1999) (Esso) at [61].

⁹ *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [141]–[142] citing *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501; *Esso; AWB Ltd v Cole (No 5)* (2006) 155 FCR 30; *AWB Ltd v Cole* [2006] FCA 571.

¹⁰ *Evidence Act 2011 (ACT)*, s 118.

44. The Evidence Act provides a 'client' includes an entity that engages a lawyer to provide legal services.¹¹

45. The following elements are also relevant to determine whether a 'lawyer-client relationship' exists and if information is subject to LPP¹²:

- an independent professional legal practitioner and client relationship must exist where the lawyer is acting in their professional capacity
- the communication between a client and their legal advisor must have been made for the dominant purpose of giving or receiving legal advice
- the communication must have been confidential, and
- LPP has not been waived by the client

46. I have considered whether each of these elements of LPP is satisfied in relation to the emails forwarded by document 4, being advice from a law firm addressed to an external consultancy firm. These emails contained a version of the draft media release and communication plan as attachments, which UC referred to as document 8.

47. I consider an independent legal practitioner and client relationship exists, as the legal firm was engaged by UC through an external consultancy agency in their professional capacity, the communication was for the dominant purpose of providing legal advice for UC, the information was provided on a confidential basis, and I do not consider LPP has been waived, either expressly or impliedly by UC.

48. I am of the view that LPP applies to the emails forwarded by document 4 and are therefore contrary to the public interest information.

¹¹ Ibid s 117(1)(a).

¹² *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54 (24 June 1987).

Factors favouring disclosure

49. In its original decision, UC did not identify any factors favouring disclosure applied to the information within scope.

50. I have identified one factor favouring disclosure of the information.

Promote open discussion of public affairs and enhances the government's accountability—Schedule 2, s 2.1(a)(i)

51. A factor favouring disclosure of information is where disclosure could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability.

52. I am of the view release of the requested information may promote open discussion regarding the resignation of then Vice Chancellor Nixon and may enhance accountability regarding UC's handling of his departure from the university.

53. Document 6 is the communication plan and draft media release with tracked changes and documents 1-5 are emails between various staff members discussing the draft. I am of the view disclosure would promote open discussion of public affairs by informing the public of UC's approach to Vice Chancellor Nixon's resignation.

54. The then Vice Chancellor's resignation has been a matter of public debate, and I am of the view that internal discussions between UC staff leading up to the announcement of Vice Chancellor Nixon's resignation and how it would be conveyed to the public would enhance accountability of the university's actions and decision-making.

55. I attribute moderate weight to this factor.

Factors favouring nondisclosure

56. UC identified one factor favouring nondisclosure of the information.

57. I have identified an additional factor favouring nondisclosure of the information.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act—Schedule 2, s 2.2(a)(ii)

58. UC, in its decision, considered there was a reasonable expectation disclosure of the information could prejudice an individual's right to privacy under the Human Rights Act.

59. Section 12 of the Human Rights Act is extracted above at paragraph 21.

60. I consider that the information relevant to documents 1-6 of the access application would contain personal information in the form of the names of junior staff members, the personal email address of a senior UC staff member, and the personal email address of a former UC staff member.

61. In considering whether the disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act, relevant matters include any detriment disclosure may cause, the nature of the information, and the circumstances in which the information was collected.¹³

62. I consider disclosure of the information could present an arbitrary interference with a person's privacy under s 12 of the Human Rights Act.

63. The *Information Privacy Act 2014* (ACT) (Information Privacy Act) sets out how personal information is handled by public sector agencies and how the privacy of individuals is protected. An individual's privacy is 'interfered with' if an act or practice breaches a Territory Privacy Principle (TPP) in relation to personal information about the individual.¹⁴

¹³ [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#)

¹⁴ Section 11 of the [Information Privacy Act 2014 \(ACT\)](#) (Information Privacy Act)

64. TPP 6 provides if an agency holds personal information about an individual that was collected for a particular purpose (primary purpose), the agency must not use or disclose the information for another purpose (secondary purpose) unless the individual consents or an exception in TPP 6.2 or 6.3 applies.
65. An agency may use or disclose non-sensitive personal information for a secondary purpose if the use or disclosure is related to the primary purpose, is required or authorised by law, or if a permitted general situation exists.
66. The personal information that would be expected to be included in the information may have been obtained by UC for the primary purpose of management of the resignation of the then Vice Chancellor, including junior UC staff members involved in preparing a communication plan to announce his departure from the university and to co-ordinate the media release.
67. I consider that the disclosure of the information for a secondary purpose would not be reasonably expected by the junior UC staff members involved and disclosure of the information would not be related to the primary purpose of the collection.
68. I afford significant weight to this factor.

Prejudice the management function of an agency or the conduct of industrial relations by an agency—Schedule 2, s 2.2(a)(xv)

69. I am of the view that there is a reasonable expectation that disclosure of the information could prejudice the management function of an agency or the conduct of industrial relations by an agency in relation to the first email chain (which encompasses documents 1-3 and three additional emails previously considered by UC to be out of scope).

70. The 'management function' of an agency includes activities such as recruitment, management, promotion and compensation. The 'conduct of industrial relations' refers to an agency's management of employment-related entitlements and obligations.¹⁵
71. Further, the ability to obtain confidential information from employees is a central element of the management function of the conduct of industrial relations by an agency.¹⁶
72. The additional emails contain information about UC's approach to the management of personnel, including detailed discussions around a former staff member's resignation from an industrial relations lens. I am of the view that disclosure of such information could prejudice UC's ability to engage staff members in frank and open discussions during the resignation process, which could impede their industrial relations functions. This is because staff may not be willing to talk to openly about matters in such a context if they know that what they say may be disclosed under FOI.
73. I also am of the view that disclosure of the information could reasonably be expected to prejudice UC's management by potentially undermining the confidence of staff in having confidential discussions about sensitive matters.
74. I afford this factor moderate weight.

Balancing the factors

75. Having identified public interest factors favouring disclosure and factors favouring nondisclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.

¹⁵ [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#)

¹⁶ [DK and Community Services Directorate \[2025\] ACTOFOI 7](#)

76. I have identified one public interest factor favouring disclosure. I attribute moderate weight to this factor.
77. I have identified 2 public interest factors favouring nondisclosure of the information. I attribute significant weight to one factor, and moderate weight to the other.
78. I find, on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure. In particular, I consider there is a significant public interest in protecting the privacy of the individuals involved, that being UC staff members and the former Vice Chancellor, and preventing the prejudicing of UC's ability to carry out its management functions, specifically in relation to the management of industrial relations during the process of the resignation of senior staff.

Were reasonable steps taken to identify government information? - documents 7 and 8

79. The FOI Act requires that an agency or Minister must take 'reasonable steps' to identify all the government information within the scope of the access application.
80. In *AF and Community Services Directorate*¹⁷ the Senior Assistant Ombudsman observed:

The FOI Act is silent on what constitutes 'reasonable steps'. The meaning of 'reasonable', in the context of searches for documents sought under FOI legislation, has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as judged to be appropriate or suitable to the circumstances or purpose.¹⁸

¹⁷ [2018] ACTOFOI 11.

¹⁸ Ibid, citing *Re Cristovao and Secretary, Department of Social Security* (1998) 53 ALD 138 and *De Tarle and Australian Securities and Investments Commission (Freedom of Information)* [2015] AATA 770.

81. What amounts to reasonable steps may vary in different circumstances. It would, however, include a search of electronic records and a manual search of physical records, where applicable.¹⁹
82. This FOI matter covers similar material to another Ombudsman review matter, [National Tertiary Education Union and University of Canberra](#),²⁰ and it is my understanding that the majority of the document searches and retrieval were conducted during that previous matter.
83. The Office has reviewed the internal search consultations conducted by UC. In the evidence of searches provided by UC, the FOI Officer requested relevant staff to conduct searches of their email inboxes. While document 6 was able to be located, documents 7 and 8 could not be.
84. In its decision letter, UC said:
- Reasonable and proportionate searches have been undertaken for the two documents, including searches of all relevant electronic and manual records and files. In *Community and Public Sector Union and Chief Minister, Treasury and Economic Development Directorate [2018] ACTOFOI7 (14 November 2018)* the Ombudsman stated that the concept of “reasonable searches” should be construed as not going beyond the limits applied by reason, not be extravagant or excessive, but be modest and suitable in the circumstances. I am satisfied that the searches undertaken were reasonable.
85. It was apparent from the email correspondence that additional documents should have existed within scope of the request, those being previous versions of the communications plan regarding Vice Chancellor Nixon's resignation.
86. I acknowledge that UC has stated searches of all relevant electronic and manual records were conducted, and that multiple staff members manually searched for records. However, I note that UC did not conduct IT searches despite having the option to do so. UC has discussed that “reasonable searches” should be construed as not going beyond the limits applied by

¹⁹ Clause 23 of the [Explanatory Statement](#) to the Freedom of Information Bill 2016 (ACT).

²⁰ [2025] ACTOFOI 21 (31 October 2025).

reason but has not commented on how IT searches would be excessive in the circumstances (cost, time, resources, etc).

87. I acknowledge that there was an element of difficulty given some staff email addresses have been deactivated. However, UC has made no mention of records management practices or filing conventions which would explain why documents were not filed.
88. On 14 November 2025, UC contacted our Office to notify that they have identified further documents that would have been in scope of the access application. In response to the draft consideration, UC confirmed that these additional documents will be the subject of a second decision in respect of this access application. Consequently, the handling of those documents will be separate to this review. In my draft consideration, I invited UC to provide further submissions regarding proof of searches and information regarding records management practices to explain why documents could not be located. No further submissions were received in this regard, although UC's response to the draft consideration included that it is prepared to search centralised IT systems and any additional documents identified could potentially, depending on timing, be included in its further decision on this access application.
89. Based on the evidence before me, I am of the view that not all reasonable searches were undertaken to locate all government information with the scope of the request. This view is also influenced by the fact that further documents within scope were located during the process of the review.

Consideration—item 2 of application

Refusing to confirm or deny information held relevant to item 2

90. To determine whether a decision-maker may rely on s 35(1)(e) to refuse to confirm or deny that information sought is held, a two-step test is necessary:

- consideration of the broader public interest, and a balancing of relevant public interest factors, and, if the information, if held, is determined to be contrary to the public interest information
- consideration of s 35(1)(e)(ii) – in this case, whether confirming or denying the information is held would or could reasonably be expected to be an unreasonable limitation on a person’s rights under the Human Rights Act.

Is the information, if held, contrary to the public interest information?

91. In relation to the first limb of s 35(1)(e), information is contrary to the public interest information if it is either listed in schedule 1 of the FOI Act (schedule 1 information) or, after applying the public interest test in s 17 of the FOI Act, disclosure of the information would, on balance, be contrary to the public interest.

92. The information sought within the scope of item 2 of the access application is:

- all reports resulting from any internal investigations undertaken by the University of Canberra into the resignation of the then Vice Chancellor Paddy Nixon.

Schedule 2 information – public interest test

93. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following five steps:

- identify any factor favouring disclosure that applies in relation to the information (*a relevant factor favouring disclosure*), including any factor mentioned in schedule 2, s 2.1
- identify any factor favouring nondisclosure that applies in relation to the information (*a relevant factor favouring nondisclosure*), including any factor mentioned in schedule 2, s 2.2

- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure
- decide whether, on balance, disclosure of the information would be contrary to the public interest
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information

Factors favouring disclosure

94. UC identified 3 factors favouring disclosure of the information, if held.

Promote open discussion of public affairs and enhance the government’s accountability—Schedule 2, s 2.1(a)(i)

95. In its decision, UC identified that release of the information, if held, could reasonably be expected to promote open discussion of public affairs and enhance the government’s accountability.

96. I consider the information, if held, would relate to the conduct expected of a senior public official and would be a matter of interest for the ACT community, noting that UC is a public university with over 11,000 students.²¹

97. I accept that disclosure of the information, if held, would be in the public interest because it would enhance the government’s accountability and would provide insight into the decisions made by the government, and matters considered relating to the conduct of senior public officials.

98. I afford this factor moderate weight.

Contribute to positive and informed debate on important issues or matters of public interest—Schedule 2, s 2.1(a)(ii)

²¹ [University of Canberra Annual Report 2024](#), p 21.

99. UC identified that release of the information, if held, could reasonably be expected to contribute to positive and informed debate on important issues or matters of public interest.

100. I accept that matters relating to the governance of UC, including information about the conduct expected of senior public officials, is an important matter and it is reasonable to expect that disclosure of information, if held, would carry some capacity to contribute to or inform debate on the governance of UC.

101. I afford this factor moderate weight.

Ensure effective oversight of expenditure of public funds—Schedule 2, s 2.1(a)(iv)

102. UC identified that release of the information, if held, could ensure the effective oversight of expenditure of public funds.

103. I agree this factor is relevant. The management and operation of a public university is a significant undertaking involving considerable financial costs. It is likely that the information, if held, would include some financial information and it is reasonable to expect that disclosure of the information, if held, could assist in oversight of the expenditure of public funds.

104. I afford this factor moderate weight.

Factors favouring nondisclosure

105. UC identified 2 factors favouring nondisclosure of the information, if held.

106. I have identified an additional factor favouring nondisclosure of the information, if held.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act—Schedule 2, s 2.2(a)(ii)

107. UC, in its decision, considered there was a reasonable expectation disclosure of the information, if held, could prejudice an individual's right to privacy under the Human Rights Act.

108. Section 12 of the Human Rights Act is extracted above at paragraph 21.

109. I consider that the information relevant to item 2 of the access application, if held, would contain personal information.

110. In considering whether the disclosure of the information, if held, could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act, relevant matters include any detriment disclosure may cause, the nature of the information, and the circumstances in which the information was collected.²²

111. I consider disclosure of the information, if held, could present an arbitrary interference with a person's privacy under s 12 of the Human Rights Act.

112. The *Information Privacy Act 2014 (ACT)* (Information Privacy Act) sets out how personal information is handled by public sector agencies and how the privacy of individuals is protected. An individual's privacy is 'interfered with' if an act or practice breaches a Territory Privacy Principle (TPP) in relation to personal information about the individual.²³

113. TPP 6 provides if an agency holds personal information about an individual that was collected for a particular purpose (primary purpose), the agency must not use or disclose the information for another purpose (secondary purpose) unless the individual consents or an exception in TPP 6.2 or 6.3 applies.

²² [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#)

²³ Section 11 of the [Information Privacy Act 2014 \(ACT\)](#) (Information Privacy Act)

114. An agency may use or disclose non-sensitive personal information for a secondary purpose if the use or disclosure is related to the primary purpose; required or authorised by law; or a permitted general situation exists.
115. The personal information that would be expected to be included in the information, if held, may have been obtained by UC for the primary purpose of management of the then Vice Chancellor, including any investigation of the then Vice Chancellor's conduct.
116. I consider that the disclosure of the information, if held, for a secondary purpose would not be reasonably expected by the former Vice Chancellor and disclosure of the information, if held, would not be related to the primary purpose of the collection.
117. I afford significant weight to this factor.

Prejudice the management function of an agency or the conduct of industrial relations by an agency—Schedule 2, s 2.2(a)(xv)

118. UC identified that there was a reasonable expectation that disclosure of the information, if held, could prejudice the management function of an agency or the conduct of industrial relations by an agency.

119. In *BP and Justice and Community Safety Directorate*,²⁴ the Acting Senior Assistant Ombudsman observed:

... maintaining a system for reporting integrity matters... is inextricably linked to the management function of an agency.

120. In *DK and Community Services Directorate*,²⁵ the Senior Assistant Ombudsman stated:

... the ability to obtain confidential information from employees is a central element of the management function of the conduct of industrial relations by an agency.

²⁴ [\[2021\] ACTOFOI 19](#)

²⁵ [\[2025\] ACTOFOI 7](#)

121. It is not unreasonable that such information, if held, may include information provided in confidence by employees about the conduct of the then Vice Chancellor.

122. I consider that disclosure of such information, if held, could reasonably be expected to prejudice both UC's management function and conduct of industrial relations, through inhibiting the receipt and monitoring of allegations of misconduct, thereby also prejudicing the ability to act upon matters of internal integrity. Disclosure of such information, if held, may make complainants or witnesses reluctant to fully participate in future investigations.

123. I afford this factor significant weight.

Prejudice an agency's ability to obtain confidential information—Schedule 2, s 2.2(a)(xii)

124. I consider an additional factor favouring nondisclosure may apply to the information, if held.

125. Disclosure of the information, if held, could reasonably be expected to prejudice an agency's ability to obtain confidential information.

126. The information, if held, may relate to allegations or information about the conduct of a senior public official. If disclosed, such information may have a chilling effect on the engagement of employees generally with similar processes in the future.

127. I afford this factor significant weight.

Balancing the factors

128. Having identified public interest factors favouring disclosure and factors favouring nondisclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.

129. I have identified 3 public interest factors favouring disclosure. I attribute moderate weight to these factors.

130. I have identified 3 public interest factors favouring nondisclosure of the information, if held. I attribute significant weight to all 3 factors.

131. I find, on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure. In particular, if the information sought is held by UC, I consider there is a significant public interest in protecting the privacy of the individuals involved and preventing the prejudicing of UC's ability to carry out its management functions, and obtaining confidential information.

Whether confirming or denying the information is held would or could reasonably be expected to be an unreasonable limitation on a person's rights under the Human Rights Act.

132. Having completed the first limb of s 35(1)(e) and finding that, on balance, the information, if held, would be contrary to the public interest information, I must now consider whether confirming or denying whether the information is held would or could reasonably be expected to be an unreasonable limitation on a person's rights under the Human Rights Act.

133. Section 12 of the Human Rights Act is extracted above at paragraph 21 of this decision.

134. UC decided that confirming they held information within scope of item 2 of the access application would reveal private information about the former Vice Chancellor (because it would reveal the existence of a suspension, deed of release, or investigation). UC decided, likewise, that denying they held information within scope of item 2 of the access application would reveal that no such suspension or investigation occurred.

135. I agree that, if the information sought existed, a response which *confirmed* that such information is held, would impose an unreasonable limitation on a person's rights under the Human Rights Act. I also agree that a response which *denied* that such information is held, could impose an unreasonable limitation on a person's rights under the Human Rights Act, as either response could have the effect of disclosing private information about the former Vice Chancellor and the reasons for his departure from UC.

136. I agree that UC is entitled to rely on s 35(1)(e) of the FOI Act in relation to any information within scope of item 2 of the access application.

Conclusion

137. For the reasons set out in this decision, I have concluded that UC took a too narrow interpretation of scope and 9 additional emails fall within scope of the request. I am of the view that, on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure relating to documents 1-6 regarding the personal information of UC staff and UC's management function.

138. Additionally, my view is that UC was entitled to rely on s 35(1)(e) of the FOI Act to refuse to confirm or deny they held information sought within the scope of item 2 of the access application.

Decision

139. For the reasons set out above, my decision is to **set aside and substitute** UC's decision under s 82(2)(c) of the FOI Act.

140. The effect of my decision is that 6 additional documents, being 3 emails in the email chain containing documents 1-3 and 3 emails in the email chain containing document 5, would be released to the applicant with personal information of UC staff members and information concerning the

management of staff by UC being redacted as this information would be, on balance, contrary to the public interest information.

Iain Anderson

ACT Ombudsman

24 February 2026