

Craig Dunlop and Teacher Quality Institute [2021] ACTOFOI 16
(26 November 2021)

**Decision and reasons for decision of Acting Senior Assistant Ombudsman
Symone Andersen**

Application number: AFOI-RR/21/10011

Applicant: Mr Craig Dunlop

Respondent: Teacher Quality Institute

Date: 26 November 2021

Catchwords: *Freedom of Information Act 2016 (ACT)* – deciding access – whether disclosure of information is contrary to the public interest – information officers may act for other agencies – content of the decision notice – identifying information within scope – prejudice the protection of an individual’s right to privacy or any other right under the *ACT Human Rights Act 2004* – promote open discussion of public affairs and enhance the government’s accountability – contribute to positive and informed debate on important matters of public interest – allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official – reveal the reason for a government decision and any background or contextual information that informed the decision – prejudice to investigation

Decision

1. I am a delegate of the ACT Ombudsman for the purposes of s 82 of the *ACT Freedom of Information Act 2016 (FOI Act)*.
2. I have decided, under **s 82(2)(b)** of the *FOI Act*, to **vary** the decision of the Teacher Quality Institute (**TQI**), dated 18 March 2021.

Background of Ombudsman review

3. On 17 February 2021, the applicant applied to the TQI (**respondent**) for access to:
 1. The document or documents which detail the reasons why any registered teacher has been issued with a formal warning, had conditions placed on their registration or been de-registered as a result of their conduct.
 2. Any information disclosed under s.70A (1) (a) and (b) of the TQI Act to the Institute, whether or not the teacher's registration was suspended, cancelled or had conditions placed upon it.
 3. Any information disclosed to the institute under s.70B of the TQI Act.
4. The applicant provided further clarification on the scope of their request, submitting:
 - I do not require copies of documents held in duplicate, or copies of documents where the information is substantially duplicated across different documents.
 - I do not require all documents relating to a case if the information I request is contained in a document in summary form (for example, a notice of finding, a case summary, or an executive summary, however worded).
 - I do not require any information which discloses the names, ages, or any other particular which might identify a student, parent or complainant.
 - Having regard to the authorities, I do not believe the names of the teachers are exempt from disclosure but envisage that there will be further discussion with the decision-maker regarding this. The time limit of my request is from July 1, 2019, until February 2, 2021.
5. Under s 21 of the FOI Act, TQI requested that an information officer of another agency, in this instance the Education Directorate (**Education**), deal with the access application.
6. On 18 March 2021, Education advised the applicant it had identified two records as falling within the scope of the access application. The records are excerpts of information held in the TQI system that were extracted for the purpose of responding to the applicants' request.
7. The applicant was given access to both records in part. In making the decision, Education relied on Schedule 2.2(a)(ii) of the FOI Act.
8. On 18 March 2021, the applicant sought Ombudsman review of the decision under s 73 of the FOI Act.
9. On 29 October 2021, I provided the parties with my draft consideration. My draft consideration set out the reasons for my preliminary view, which was that the original access decision should be varied. It also invited the parties to make additional submissions on the points it addressed.
10. On 2 November 2021, the applicant responded to my draft consideration, accepting my view that the access decision be varied. However, the applicant disagreed with my preliminary views on the scope of information provided, my application of the public interest test and my consideration of an individual's right to privacy.

11. On 12 November 2021, Education replied to my draft consideration, providing additional submissions disputing my view that the access decision be varied.

Information at issue

12. The information at issue in this Ombudsman review is the material in each record that was redacted by virtue of Education's decision to partially release each document.
13. The issue to be decided in this Ombudsman review is whether giving the applicant access to the information at issue would be contrary to the public interest.
14. In making my decision, I have had regard to:
 - the applicant's access application, review application and submissions in response to my draft consideration
 - the original access decision and Education's submissions in response to the review application and my draft consideration
 - the FOI Act, in particular ss 6, 7, 16, 17, 21, 33, 35, 50, 54, 72 and Schedule 2
 - the Explanatory Statement to the Freedom of Information Bill 2016 (ACT), particularly relating to clause 21 of the Bill
 - the *Human Rights Act 2004* (ACT)
 - Education's FOI processing file relating to the access application
 - an unedited copy of the information at issue
 - the ACT Ombudsman Freedom of Information Guideline 3 – Dealing with Access Applications
 - relevant case law, including *Re Russell Island Development Association Inc and Department of Primary Industries and Energy* (1994) 33 ALD 683, *Re Gould and Department of Health* [1985] AATA 63, and *Alistair Coe and ACT Health Directorate* [2018] ACTOFOI 4 (28 August 2018).

Preliminary issues

Agency processing the access application

15. In submissions responding to my draft consideration, the applicant disputed that Education should have processed the access application:

The respondent agency is the TQI... If a directorate is overseeing an independent agency's FOI applications, this of concern to me, as it would tend to undermine that agency's independence and raises the specter [sic] of a directorate meddling in the affairs of a professional regulator.

16. The FOI Act allows for information officers to act *for* other agencies (my emphasis). Section 21 of the FOI Act provides that the information officer of an agency may, at the request of the principal officer of another agency, deal with an access application made to the other agency.

Similarly, s 33(1)(b) provides that an access application to an agency must be dealt with by either the information officer of the agency, or, at the request of the principal officer of the agency – by the information officer of another agency.

17. The Explanatory Statement to the *Freedom of Information Bill 2016* provides an explanation for these provisions:

[Section 21 is] designed to help foster a collaborative approach that allows resources to be utilised as they are needed and facilitates cooperation and consistency of decision making... For example if an agency receives a particularly large or complicated request or the agency's information officer is on leave, the information officer of another agency may fulfil the role of that agency's information officer...

18. It was appropriate for an information officer of Education to deal with the access application. This was done at the request of the TQI and in accordance with ss 21 and 33(1)(b) of the FOI Act. The information officer of Education has simply stepped in to fulfil the role of the TQI's information officer.

Decision notice

19. The applicant is contending that the decision notice dated 18 March 2021 is non-compliant with the requirements of the FOI Act.

20. The applicant submits:

The Act mandates (s.54) establishes the requirement to give reasons by way of a Notice of Decisions and establishes a non-exhaustive list of what must be included in a notice. Since the requirement to give reasons exists and since the decision is reviewable, there is a Common Law requirement to that those reasons are proper and adequate.

I submit the Decision Notice is defective, and falls short of both requirements in the Act and the Common Law.

The decision-maker has redacted a large and varied amount of information. This information appears to include names, dates of reports, administrative action taken and allegations and factual findings, although it is not clear from the heavily redacted document. The failure to describe the redacted information is in clear breach of s.54(1) of the Act. The decision maker also failed to comply with s.54(2) of the Act by, inter alia, not stating material findings of fact (other than, tritely, that the ACT is a small jurisdiction), or the harm to the public interest which would arise from non-disclosure.

21. Section 54 of the FOI Act provides:

- (2) If a decision is made to refuse to give access to government information because disclosure of the information would, on balance, be contrary to the public interest under the test set out in section 17, the decision notice must include—
- (a) a description of the information; and
 - (b) a statement of reasons for the decision setting out –
 - (i) the findings on any material questions of fact referring to the evidence or other material on which the findings were based; and
 - (ii) the relevant factors favouring disclosure; and
 - (iii) the relevant factors favouring non-disclosure; and

- (iv) how the factors were balanced; and
- (v) the harm to the public interest that can reasonably be expected to occur from release

22. I have reviewed a copy of the decision notice. It includes:

- A schedule of documents, which provides a description of each record that falls within the scope of the request
- The relevant factors favouring disclosure, being schedule 2, s 2.1(a)(ii)
- The relevant factors favouring non-disclosure, being schedule 2, s 2.2(a)(ii), and prejudice towards a current TQI investigation
- A statement on how the factors were balanced, for example, '*...these protections are particularly relevant in the ACT which is a geographically small jurisdiction with relatively low population. I have decided that the public interest will be satisfied through knowledge that there were instances in which action was taken against teachers in cases where inappropriate conduct was substantiated.*'
- Evidence of the harm to the public interest that can reasonably be expected to occur (factors favouring non-disclosure), and
- The material facts relating to the decision.

23. Accordingly, I am satisfied that the decision notice is compliant with s 54 of the FOI Act.

Out of scope material

24. Much of the information at issue has been redacted by Education on the basis it is outside the scope of the applicant's request.

25. The applicant submits:

Firstly, and briefly, the decision-maker has redacted significant parts of the document by wrongly stating that it lies outside the terms of my request.

The terms of my request are for the "document or documents" which detail the subject matter I am interested in. That makes it clear that I seek access to the whole of the document. The decision-maker has misstated the terms of my request.

26. On the Schedule, Education cited three reasons for partial release or non-release:

- Schedule 2, s 2.2(a)(ii) – 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 ACT *Human Rights Act 2004* (**Human Rights Act**)
- Disclosure of the information could be prejudicial to current investigations
- The information was out of scope.

27. Education further submitted:

The reasons for deletions being applied were to protect the right to privacy of individuals and to remove information that was outside of the scope of the applicant's request. The applicant appears to be under the misconception that all of the information contained in that record was relevant to the request which was not the case. Most of the information redacted was because it was outside of scope.

28. Having reviewed a copy of the unredacted material, it is not immediately apparent what information has been redacted as personal information, information prejudicial to current investigations and out-of-scope information.
29. Education appears to have taken a very narrow approach when determining what information falls within scope, including only information which relates explicitly to points one, two and three of the applicant's request.
30. In response to my draft consideration, Education submitted:

The request was considered to be clearly stated and met the requirements of section 30 of the Act and section 6.6 of the Ombudsman's Guidelines for Dealing with Access Applications... [the applicant's] request was specifically focused on the reasons for actions. He did not request information about what, how or when actions were taken, and his request was not for all records relating to actions taken.
31. Education requested further explanation of my view at paragraph 29 above, submitting:

... as, by definition, if the three points of the applicant's request have been specifically addressed and relevant information released to the applicant, then the obligations contained in the Act have been met.
32. When dealing with access applications for government information, agencies should be guided by the objects of the FOI Act, including to facilitate and promote the disclosure of the maximum amount of government information.¹
33. It is important that agencies broadly and fairly read the scope of the access application. Officers should keep in mind that applicants may not know exactly what government information an agency may hold, and the FOI Act does not require a precise description of information to be provided.²
34. Requests must not be interpreted with the exactitude that applies to legislation or a set of pleadings.³ When reading the access application, agencies should have regard to the wording of the access application and the context in which it is made.⁴
35. I am not persuaded by Education's additional submissions. My interpretation of the applicant's request is that it should include any document which contains the information in points one, two and three.
36. Furthermore, my view is that all of the redacted material appears to relate specifically to (and form an integral part of) the information at issue and requires consideration for disclosure by Education.

¹ Section 6(f) of the FOI Act.

² ACT Ombudsman, *Freedom of Information Guidelines – Dealing with Access Applications – Guideline 3 of 6* (2020).

³ *Re Russell Island Development Association Inc and Department of Primary Industries and Energy* (1994) 33 ALD 683, confirming *Re Gould and Department of Health* [1985] AATA 63.

⁴ ACT Ombudsman, *Freedom of Information Guidelines – Dealing with Access Applications – Guideline 3 of 6* (2020).

Scope of request – documents provided

37. The documents provided to the applicant are excerpts from a database used by the respondent, produced specifically to meet the applicant's request.

38. The applicant submitted:

...the document provided appears to be a very parsing brief organizational and summary document held by the TQI. Insofar as it is a summary, it does not fulfil the terms of my request for the "document or documents".

... it is clear that the search has not been performed in the manner that I stated I expected.

In a telephone conversation with the decision-maker, I explicitly stated that a table of outcomes (which she referred to, and which she has produced) was not sufficient to meet the terms of my request. I stated that, in my experience of obtaining professional standards requests, there was typically a brief summary of approximately one or two pages detailing findings of professional misconduct investigations, of notifications of allegations of professional misconduct, and that I was seeking documents at that level of detail.

39. Education submitted:

The Education Directorate maintains a running record of FOI requests being processed to track and monitor progress. On 22 February 2021 it is noted "Discussed scope with applicant and commitment given to showing him a sample of the records". My recollection of this conversation is that I offered to provide the applicant with a sample of the summary record held by TQI and that when it was released to him, he would then be able to determine which cases he wanted to pursue further. Unfortunately, due to workload associated with processing of other FOI requests, the intention of providing him with a sample could not be met prior to the deadline for decision. I have no recollection of the applicant stating that a table of outcomes was not sufficient.

40. The applicant claims that he specifically objected to being provided with the type of summary document which was provided. There is a discrepancy between the two accounts of a phone conversation relating to the scope of the request. Without anything further in writing, I can only consider the information before me. In particular, I note the following part of the applicant's request, which the applicant reiterated in his submission in response to my draft consideration:

I do not require all documents relating to a case if the information I request is contained in a document in summary form (for example, a notice of finding, a case summary, or an executive summary, however worded).

41. My preliminary view was that the document provided is a summary table and that this met the terms of the applicant's request.

42. In response to my draft consideration, the applicant disagreed that the document provided met the terms of the request. I am satisfied, however, that the information contained within the document meets the terms of the request. My view is that the information contained within the document, particularly the columns titled 'Employer Communication' and 'TQI Action' satisfy what would be expected to be included in "... a notice of finding, a case summary, or an executive summary, however worded."

Relevant law

43. 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.
44. 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.
45. 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.
46. Section 35(1)(c) of the FOI Act provides that 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.
47. Section 50 of the FOI Act applies if an access application is made for government information in a record containing contrary to the public interest information and it is practicable to give access to a copy of the record from which contrary to the public interest information has been deleted.
48. Section 72 of the FOI Act provides that the person seeking to prevent disclosure of government information has the onus of establishing the information is contrary to the public interest information.
49. Schedule 1 of the FOI Act sets out categories of information that is taken to be contrary to the public interest to disclose.
50. Schedule 2 of the FOI Act sets out the public interest factors that must be considered, where relevant, when determining the public interest.

The contentions of the parties

51. In its decision notice, Education said:

I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Accordingly, the records are partially released with personal information, such as names of individuals, and other information that could enable them to be identified, deleted from the records

being provided to you. These protections are particularly relevant in the ACT, which is a geographically small jurisdiction with relatively low population. I have decided that the public interest will be satisfied through knowledge that there were instances in which action was taken against teachers in cases where inappropriate conduct was substantiated.

52. In the application for Ombudsman review, the applicant said:

... the decision-maker has misapplied the test required of her, by, among other reasons, misstating the right to privacy in the Human Rights Act, and by taking into account irrelevant matters (that is, the private interests of one person rather than the public interest).

53. These submissions are discussed in more detail below.

Considerations

54. I have carefully considered an unedited copy of the information at issue together with the information provided by the applicant and Education.

Information that is taken to be contrary to the public interest to disclose under Schedule 1

55. Neither party to this Ombudsman review has submitted the information sought contains information that is taken to be contrary to the public interest to disclose under Schedule 1 of the FOI Act.

56. Therefore, for the information sought to be contrary to the public interest information, disclosure of the information sought must, on balance, be contrary to the public interest under the test set out in s 17 of the FOI Act.

Public interest test

57. To determine whether disclosure of information is, on balance, contrary to the public interest, s 17(1) of the FOI Act prescribes the following five steps:

- (a) identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1;
- (b) identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 2, section 2.2;
- (c) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
- (d) decide whether, on balance, disclosure of the information would be contrary to the public interest;
- (e) unless, on balance, disclosure would be contrary to the public interest, allow access to the information subject to this Act.

58. In addition, there is an initial step of ensuring that none of the irrelevant factors listed in s 17(2) of the FOI Act are considered.

Irrelevant factors

59. The applicant has submitted that Education considered irrelevant factors. I have noted the irrelevant factors listed in s 17(2) of the FOI Act and I do not consider that any irrelevant factors arise in this Ombudsman review.

Factors favouring disclosure

60. Schedule 2, s 2.1 of the FOI Act contains a non-exhaustive list of public interest factors favouring disclosure. Five such factors are applicable in this review.

Promote open discussion of public affairs and enhance the government's accountability

61. A reasonable expectation that disclosure of information could promote open discussion of public affairs and enhance the government's accountability weighs in favour of disclosure under the FOI Act.⁵

62. The information at issue relates to the conduct of teachers. In the ACT, such matters are dealt with by the TQI. The sections of the information at issue which reveal the way in which the TQI executes its function enable a member of the public to form a view about how effectively the TQI is performing its function and is therefore likely to enhance the government's accountability. However, the sections which merely identify the individual do not contribute to enabling member of the public to form views about how effectively the TQI is performing its function. This because the public interest and accountability which flows from it is the effectiveness of the TQI rather than the identity of any individual that the TQI interacts with.

Allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official

63. A reasonable expectation that disclosure of information could allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official weighs in favour of disclosure under the FOI Act.⁶

64. I have described the information at issue above. The information at issue could not reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an official who is the subject of any conduct-related allegation. This is because the matters in the information at issue have already been inquired into by the responsible agency in the ACT, the TQI. However, the administration of the TQI itself is a matter of public interest which disclosing the information at issue could reasonably be expected to promote. This is true insofar as the information at issue relates to steps taken in the management of the TQI's function but

⁵ Schedule 2, s 2.1(a)(i) of the FOI Act.

⁶ Schedule 2, s 2.1(a)(v) of the FOI Act.

not in relation to information which merely identifies the individual official whose conduct the TQI inquired into.

65. There is no evidence before me of any deficiency in the conduct of the TQI. However, the factor captures the public interest in the opportunity to inquire into possible deficiencies generally. In that way, it promotes government transparency in a general sense. It is therefore relevant in this review, but I do not intend to be interpreted as having formed any view that the information at issue identifies any deficiency per se.

Reveal the reason for a government decision and any background or contextual information that informed the decision

66. A reasonable expectation that disclosure of information could reveal the reason for a government decision and any background or contextual information that informed the decision favours disclosure under the FOI Act.⁷
67. I have described the information at issue above. It is sufficient to say that disclosing the information at issue could reasonably be expected to reveal the reasoning behind steps taken by the TQI in the management of its function as the responsible agency for teacher quality and conduct in the ACT. However, information identifying the particular individuals involved in matters does little to nothing to promote this factor because the identity of a person is irrelevant to the assessment of their alleged conduct and decisions made by the TQI in dealing with it.

Contribute to positive and informed debate on important issues or matters of public interest

68. The FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of representative democracy.⁸ This concept is promoted through the objects of the FOI Act.⁹
69. A reasonable expectation that disclosure of information could contribute to positive and informed debate on important issues or matters of public interest weighs in favour of disclosure under the FOI Act.¹⁰
70. The material relates to the conduct of teachers at several schools in the ACT. Education stated that the education of children and conduct of people responsible for educating and caring for children is very much a matter of public interest, to which I agree.

⁷ Schedule 2, s 2.1(a)(viii) of the FOI Act.

⁸ See s 17 of the FOI Act.

⁹ See s 6(b) of the FOI Act.

¹⁰ Schedule 2, s 2.1(a)(ii) of the FOI Act.

71. The information at issue is of value to the public because it shows how the TQI managed situations that arose in the course of its function. The information about steps taken and decisions made by the TQI is likely to contribute to positive and informed debate about the effectiveness of the TQI's management of those matters. On the other hand, the names, TQI numbers and schools involved are not important issues or matters of public interest. They are matters for the TQI, and the public interest is merely in the TQI executing its function effectively.
72. For these reasons, I am satisfied that disclosure of the information sought could reasonably be expected to promote the objects of the FOI Act and the pro-disclosure factor outlined in Schedule 2, s 2.1(a)(ii).

Factors favouring nondisclosure

73. Of the factors favouring nondisclosure listed in Schedule 2, s 2.2, I agree with Education's contention that 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 (Schedule 2, s 2.2(a)(ii)).
74. Education identified an additional factor favouring nondisclosure; disclosure of the information could reasonably be expected to prejudice a current investigation. Whilst this is not a relevant factor identified in Schedule 2.2 of the FOI Act, I accept that it may nevertheless be relevant in this matter. I note the ACT Ombudsman Guideline 4, *Considering the public interest*, at 7.1 provides the lists in Schedule 2 are not exhaustive, and other factors may be relevant when making a decision.¹¹

Individual's right to privacy

75. A factor favouring non-disclosure is that 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.

¹¹ ACT Ombudsman Guideline 4, *Considering the public interest*, at 7.1.

76. The applicant submitted:

Disclosure of a registered professional's breach of his or her professional obligations would not unreasonably breach that person's privacy...

The right to privacy has been inappropriately weighted in the public interest test.

77. Education submitted:

The applicant's comparison of the requirements for registration of medical practitioners and teachers is invalid because the requirements are not the same, and whether or not this is appropriate is not a matter for FOI or this review. TQI's role is to uphold the standards and abide by the requirements of the *ACT Teacher Quality Institute Act 2010*, within the bounds set by the legislation.

78. Section 12(a) of the Human Rights Act provides that everyone has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'. It does not provide a general right to privacy,¹² but can essentially be viewed as the right of an individual to preserve their personal sphere from interference from others.

79. The information at issue which identifies individuals, relevantly names, TQI number, the name of the applicable school and specific job descriptions could reasonably be expected to prejudice an individual's right to privacy by allowing access to information about the fitness and propriety of the person for employment in a way that is inextricable from their ability to enjoy the right to privacy under the Human Rights Act.

80. That can be distinguished from information about conduct alleged and the way that the government dealt with matters arising from that. I will draw a similar distinction when deciding the weight to be given to the public interest factors favouring disclosure. The underlying point is that the assessment of a person by a public agency employing them is a private matter, until such a point that the effectiveness of the assessment is inherently public because it has implications for the public at large and government accountability.

81. By this logic, I consider the identifying information, relevantly names, TQI numbers, the name of the applicable school and specific job descriptions could reasonably be expected to prejudice an individual's right to privacy but information about alleged conduct by the individuals in this context and the management of matters by the TQI is inherently a public rather than private function.

82. In its response to my draft consideration, Education submitted that the records proposed to be released should be reviewed again to ensure that information that may enable a person to be identified is not disclosed. I have reviewed the information at issue again and made several further redactions of information that I consider may enable a person to be identified.

¹² *Alistair Coe and ACT Health Directorate* [2018] ACTOFOI 4 at [43]

Prejudicial to current investigations

83. In its decision notice, Education stated:

... I have decided that the disclosure of information that could reasonably be expected to prejudice a current TQI investigation is also a factor favouring non-disclosure. Whilst this is not one of the factors listed at Schedule 2.2 of the FOI Act, the ACT Ombudsman's FOI Guidelines notes that the list is not exhaustive.

... I also place significant weight on ensuring that current investigations are not jeopardised by the disclosure of information. The outcomes of these investigations contribute to the protection of children and upholding high standards of conduct in the teaching workforce. It would [be] contrary to the TQI's purpose if these were put at risk.

84. I accept that for at least some of the information at issue, investigations may be ongoing. I do not agree, however, that releasing the outcomes of completed investigations or the status of ongoing investigations would put the protection of children at risk, nor would it be contrary to the TQI's purpose.

Balancing the factors

85. As I have identified public interest factors favouring disclosure, and non-disclosure, I now have to consider the public interest balancing test as set out in s 17 of the FOI Act.

86. The information at issue could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability, contribute to positive and informed debate on important issues or matters of public interest, and reveal the reason for a government decision, including any background or contextual information that informed the decision. However, the degree to which the information at issue promotes this is not uniform. That is because the public interest is in transparency and oversight vis-à-vis the government effectively managing a TQI which executes its function in an optimal way. There is a considerable public interest in this and it has implications for the government's accountability.

87. On the other hand, identifying information such as names, TQI numbers, individual schools and specific job descriptions is not so much a matter of public interest. Accordingly, I do not consider I should afford this factor weight with respect to the information at issue which is identifying information. Indeed, the TQI manages sensitive matters, and the public interest is in ensuring that the TQI does this effectively. In that sense, the TQI's function strikes a balance between fair processes for involved parties and transparency with the public at large. This point is illustrated by the way that the pro-disclosure factor of allowing or assisting inquiry into possible deficiencies in the conduct or administration of an agency or official also applies. Disclosing the information at issue does not contribute to inquiry into the conduct or administration of the individual because that function is a matter for the TQI. But what

disclosing the information may reasonably be expected to promote is inquiry into the conduct and administration of the TQI, by revealing how (and how effectively) it goes about executing its function.

88. The information at issue could also reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government. For the reasons discussed above, my decision is to afford this factor minimal weight.
89. The information at issue could reasonably be expected to prejudice the protection of an individual's right to privacy. Having considered the applicant's submissions and the nature of the material, my preliminary view is to afford this factor significant weight.
90. I am satisfied that, on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure for some of the information sought, that is, the identifying information.
91. Because my decision is that the information at issue would not be prejudicial to current investigations, I place no weight on this factor.

Conclusion

92. For these reasons, under **s 82(2)(b)** of the FOI Act, I have decided to **vary** the decision of the Teacher Quality Institute dated 18 March 2021.
93. Identifying information including names, TQI numbers, dates and school names should be taken to be contrary to the public interest to disclose under Schedule 2, s 2.2(a)(ii) of the FOI Act.
94. My decision is that access be granted to the remainder of the information, as set out in the annotated documents shown to Education.

Symone Andersen
Acting Senior Assistant Ombudsman

26 November 2021