



## Decision and Reasons for Decision

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**Citation:** *R14 and Griffith University* [2025] QICmr 7  
(27 February 2025)

**Application Number:** 318232

**Applicant:** R14

**Respondent:** Griffith University

**Decision Date:** 27 February 2025

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - whether information is irrelevant to the terms of the access application - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to Griffith University (**University**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access documents, containing her personal information, which were created, sent or received by two nominated individuals between 10 May 2024 and 5 August 2024.<sup>1</sup>

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<sup>1</sup> The access application is dated 5 August 2024. By letter dated 12 August 2024, the University notified the applicant that the access application became compliant on 7 August 2024.

2. The University did not make a decision within the required statutory timeframe and was therefore taken to have made a deemed decision refusing access to the requested information.<sup>2</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of the deemed decision.<sup>3</sup>
4. On external review, the University located documents relevant to the access application and disclosed them to the applicant, subject to the redaction of certain information. The applicant is not satisfied with the level of information released to her and believes further relevant documents exist.
5. For the reasons set out below, I vary the University's decision and find that:
  - access may be refused to certain redacted information on the basis that disclosure would, on balance, be contrary to the public interest<sup>4</sup>
  - the remaining redacted information may be deleted under section 88 of the IP Act, on the basis it is irrelevant to the scope of the application; and
  - access to any further documents may be refused on the basis they do not exist.<sup>5</sup>

## Background

6. The applicant was engaged by the University on a casual basis to provide certain services. The University subsequently ended that engagement. The applicant is dissatisfied with the ending of her engagement and her treatment in the workplace.

## Reviewable decision

7. The decision under review is the deemed decision the University is taken to have made under section 66 of the IP Act.

## Evidence considered

8. Significant procedural steps taken during the external review process are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>6</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.<sup>7</sup> I have acted in this way in making this

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<sup>2</sup> Under section 66(1) of the IP Act.

<sup>3</sup> The external review applicant was sent to OIC on 14 September 2024 and is taken to have been received on the next business day (namely, 16 September 2024).

<sup>4</sup> Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

<sup>5</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

<sup>6</sup> Section 21 of the HR Act.

<sup>7</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act (as set out in this paragraph) was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member DJ McGill SC saw '*no reason to differ*' from our position).

decision, in accordance with section 58(1) of the HR Act.<sup>8</sup>

### Information in issue

10. As noted above, the University did not disclose all the information within the documents it located in response to the access application.
11. During the review, I asked the applicant to identify the particular undisclosed information to which she sought access.<sup>9</sup> As the applicant did not do this, it is necessary to address all the undisclosed information in these reasons for decision. That information comprises:
  - parts of the located documents which were redacted on the basis disclosure would, on balance, be contrary to the public interest (**Refused Information**); and
  - information within the documents disclosed to the applicant during this review, which was deleted on the basis it was not relevant to the access application (**Deleted Information**).<sup>10</sup>

### Issues for determination

12. The issues for determination are whether:
  - access to the Refused Information may be refused on the basis disclosure would, on balance, be contrary to the public interest<sup>11</sup>
  - the applicant is entitled to access the Deleted Information; and
  - access to further documents may be refused on the basis that they do not exist or cannot be located.<sup>12</sup>
13. During the review, the applicant provided a number of submissions in support of her position. Some of these submissions relate to matters which OIC has no jurisdiction to address on external review.<sup>13</sup> Accordingly, I have addressed the applicant's submissions below to the extent they are relevant to the issues for determination.

### Refused Information

14. The Refused Information appears on 14 pages of the documents initially disclosed to the applicant,<sup>14</sup> together with information on 2 pages of the further documents disclosed to the applicant (which mostly duplicates the Refused Information appearing within the initially disclosed documents). While I am limited in the extent to which I can describe the Refused Information,<sup>15</sup> it broadly includes students' information (such as their names, opinions and other identifying information) and information about other workshop

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<sup>8</sup> I also note the following observations made by Bell J in XYZ at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): 'it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act'.

<sup>9</sup> I also asked the applicant in the alternative—that is, to confirm whether there was any undisclosed information she did not seek to access. I did not receive any clear, written confirmation from the applicant in response to that request.

<sup>10</sup> In the partially disclosed documents, this information is marked as '*Irrelevant Information*'. During the review, the University agreed to disclose a small amount of information (on 5 pages) which it had initially deleted as irrelevant—as a result, that previously deleted information is no longer in issue in this review and is not addressed in this decision.

<sup>11</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>12</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>13</sup> For example, in her submission dated 24 October 2024, the applicant raised concerns about specific conduct of various University staff during her employment with the University and the perceived consequences of that conduct. The IP Act does not give OIC jurisdiction to address matters of this nature on external review.

<sup>14</sup> Pages 11, 12, 13, 14, 20, 24, 25, 26, 62, 102, 112, 113, 143 and 149 of the 152 pages which were located by the University.

<sup>15</sup> Section 121(3) of the IP Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

facilitators (including their names, qualifications, scheduled work, contact details and other identifying information).

15. It is the University's position that the Refused Information would, on balance, be contrary to the public interest to disclose.<sup>16</sup> The applicant has provided limited submissions concerning the Refused Information, including that she had '*no problem*' with the University's refusal to release '*the documents which include both [her] personal information and the student's or the other workshop facilitator's personal information*'.<sup>17</sup> However, the applicant did not identify whether there was any particular Refused Information<sup>18</sup> that she no longer sought to access on external review. As I have noted above, it is for this reason that I have necessarily addressed all the Refused Information in this decision.

### **Relevant law**

16. Under the IP Act, an individual has a right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.<sup>19</sup> However, this access right is subject to some limitations, including the grounds on which access to information may be refused.<sup>20</sup>
17. One ground of refusal is where disclosing information would, on balance, be contrary to the public interest.<sup>21</sup> The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.<sup>22</sup>
18. In deciding whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker is required to:<sup>23</sup>
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
19. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my decision. I have also kept in mind the IP Act's pro-disclosure bias.<sup>24</sup>

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<sup>16</sup> The University's submission dated 27 September 2024.

<sup>17</sup> Applicant's submission dated 13 January 2025. In this regard, I have also explained to the applicant that her personal information appears within all of the located documents in which the Refused Information appears and that only some components of the Refused Information are entirely comprised of the personal information of other individuals.

<sup>18</sup> For example, by description or page reference.

<sup>19</sup> Section 40 of the IP Act.

<sup>20</sup> The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

<sup>21</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>22</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>23</sup> Section 49(3) of the RTI Act.

<sup>24</sup> Section 64(1) of the IP Act. I have also noted Parliament's requirement that grounds for refusing access to information be interpreted narrowly (section 47(2)(a) of the RTI Act).

## Findings

20. I do not consider that any irrelevant factors arise in the circumstances of this case, and I have taken none into account.

### Factors favouring disclosure

21. A small amount of the Refused Information relates to the applicant and comprises her personal information. This gives rise to a factor favouring disclosure,<sup>25</sup> to which I afford high weight.
22. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>26</sup>
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community,<sup>27</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision<sup>28</sup>
23. Here, the University has disclosed a substantial amount of information within the located documents. That disclosed information also confirms that the applicant received notification about the ending of her engagement with the University. I consider these disclosures have substantially advanced the public interest factors identified in the preceding paragraph, which generally concern government accountability and transparency. For the Refused Information which comprises information about other workshop facilitators (such as their names, qualifications, scheduled work and contact details), I do not consider its disclosure would further the University's accountability or transparency in any way. Taking into account the nature of the remaining Refused Information, I consider its disclosure would only, to a limited extent, further advance these accountability and transparency considerations. On that basis, I afford low weight to these public interest factors for some, but not all, of the Refused Information.
24. The applicant submitted that disclosure of the Refused Information would allow her to '*consider and determine the course of action [she] will take*'.<sup>29</sup> A public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person.<sup>30</sup> In determining whether this public interest factor applies, I must consider whether:
- the applicant has suffered loss, damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - the applicant has a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.<sup>31</sup>

<sup>25</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>26</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>27</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>29</sup> Applicant's submission dated 24 October 2024.

<sup>30</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>31</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

25. The applicant has identified the loss or wrong she contends she has suffered. However, the applicant has not identified any particular remedy she considers may be available to her or why she considers disclosure of the Refused Information is required to assist her pursuit, or evaluation, of any such remedy. In these circumstances and taking the content of the Refused Information into account, I am not satisfied that this public interest factor applies to favour disclosure of the Refused Information.
26. Under the RTI Act, factors favouring disclosure will also arise where disclosing information could reasonably be expected to:
- allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of an agency or its officers<sup>32</sup>
  - advance the fair treatment of individuals in accordance with the law in their dealings with agencies;<sup>33</sup> and
  - contribute to the administration of justice generally, including procedural fairness.<sup>34</sup>
27. Having carefully reviewed the Refused Information, I do not consider there is anything within it which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. Accordingly, I do not consider the public interest factors in schedule 4, part 2, items 5 and 6 of the RTI Act apply to favour disclosure of the Refused Information.
28. The public interest factor relating to fair treatment is about providing information to ensure fair treatment in an applicant's future dealings with agencies.<sup>35</sup> I also note that the fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.<sup>36</sup> On the information before me, it is unclear how disclosing the Refused Information which is about other workshop facilitators would, in any way, advance the applicant's fair treatment or procedural fairness, particularly noting the context in which this information appears within the located documents. In this case, I also note that the information which has been disclosed by the University confirms that the applicant was notified of the reasons why her engagement with the University was ended and she responded to that notification. In all these circumstances, and given the nature of the remaining Refused Information, I am not satisfied that its disclosure could reasonably be expected to contribute, in any meaningful way, to procedural fairness for the applicant (or any other individual) or to the fair treatment of the applicant in her dealings with the University, or any other agency. For these reasons, to the extent these factors<sup>37</sup> may apply to favour disclosure of some of the Refused Information, I afford them only low weight.
29. Taking into account the particular nature of the Refused Information, I cannot identify any other public interest considerations favouring its disclosure.<sup>38</sup>

<sup>32</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>33</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>34</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>35</sup> *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [101].

<sup>36</sup> *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J. Accordingly, the person who is the subject of a decision must be provided with an opportunity to deal with adverse information that is credible, relevant and significant to the decision (*Kioa* at 629 per Brennan J).

<sup>37</sup> Schedule 4, part 2, items 10 and 16 of the RTI Act.

<sup>38</sup> Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Refused Information could, for example, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); or contribute to the maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 15 and 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Refused Information.

### Factors favouring nondisclosure

30. The RTI Act recognises that there is a public interest harm<sup>39</sup> in disclosing an individual's personal information. A public interest factor favouring nondisclosure will also arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>40</sup> The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>41</sup>
31. Having carefully reviewed the Refused Information, I am satisfied that it comprises personal information of individuals other than the applicant. As noted in paragraph 21 above, some of the Refused Information is also the personal information of the applicant. I am able to confirm that where the personal information of the applicant appears within the Refused Information, it is intertwined with the personal information of other individuals. On careful consideration of it, I am satisfied that it is not possible to separate the applicant's personal information from the personal information of those other individuals. That is, disclosing the personal information of the applicant would necessarily also disclose the personal information of individuals other than the applicant.
32. I am satisfied that disclosing the Refused Information could reasonably be expected to prejudice the protection of the other individuals' right to privacy and cause a public interest harm. As to the weight to be afforded to these public interest considerations, I note that most of this information is highly sensitive, as it comprises the contact details of private individuals, details of their personal circumstances and their observations and opinions. The complaint context in which some of the Refused Information appears is also evident from the surrounding information which has been disclosed to the applicant.
33. In all these circumstances, I consider the extent of the public interest harm in disclosing this personal information of other individuals under the IP Act (where there would be no restriction on its use, dissemination or republication) is significant, and its disclosure would also significantly impact the privacy of these other individuals. For these reasons, I afford these public interest factors significant weight in favour of nondisclosure.

### Balancing the public interest

34. For the reasons set out above, I am satisfied that the nondisclosure factors relating to the protection of personal information and privacy<sup>42</sup> are deserving of significant weight. I have afforded high weight to the factor favouring disclosure of the small amount of the applicant's personal information within the Refused Information.<sup>43</sup> I have also identified additional factors which apply to favour disclosure of some, but not all, of the Refused Information<sup>44</sup> and afforded them low weight, due to the nature of that information.
35. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosing the Refused Information would, on balance, be contrary to the public interest and access to it may be refused on that basis.<sup>45</sup>

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<sup>39</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>40</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>41</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

<sup>42</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

<sup>43</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>44</sup> Schedule 4, part 2, item 1, 3, 10, 11 and 16 of the RTI Act.

<sup>45</sup> Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

## Deleted Information

36. Section 88 of the IP Act permits an agency to delete information that is not relevant to the access application from a copy of an otherwise relevant document before giving access to the document. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.<sup>46</sup> In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>47</sup>
37. The applicant submitted that the University unreasonably removed the Deleted Information 'because it narrowed the meaning of personal information'<sup>48</sup> and she believed the University had incorrectly deleted pieces of her personal information as being irrelevant to the access application.
38. Having carefully considered the terms of the access application and the Deleted Information, I am satisfied that none of the Deleted Information is relevant to the access application. On this basis, I find that the Deleted Information was validly deleted from the documents which the University has disclosed.<sup>49</sup>

## Nonexistent or unlocatable documents

### Relevant law

39. Access to a document may be refused if it is nonexistent or unlocatable.<sup>50</sup>
40. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.<sup>51</sup> To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:<sup>52</sup>
- the administrative arrangements of government
  - the agency's structure
  - the agency's functions and responsibilities<sup>53</sup>
  - the agency's practices and procedures (including but not exclusive to its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
41. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for

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<sup>46</sup> *Wyeth and Queensland Police Service* [2015] QICmr 26 at [12].

<sup>47</sup> *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) (*Van Veenendaal*) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>48</sup> Applicant's submission dated 24 October 2024. In this submission, the applicant specifically referred to Deleted Information appearing on pages 55 and 80 of the initially disclosed documents, which she considered comprised her personal information. After reviewing this component of the Deleted Information, I confirmed to the applicant (by letter dated 8 November 2024) that this information was not about her and her identity could not be ascertained from it.

<sup>49</sup> Under section 88 of the IP Act.

<sup>50</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>51</sup> Section 52(1)(a) of the RTI Act.

<sup>52</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (*PDE*). These factors were more recently considered in *Van Veenendaal* at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

<sup>53</sup> Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

the nonexistent document are adequately explained by the agency.<sup>54</sup> However, searches may be relied on to satisfy the decision-maker that a document does not exist— if searches are relied on, all reasonable steps must be taken to locate the documents.<sup>55</sup> What constitutes reasonable steps will vary from case to case.<sup>56</sup>

42. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.<sup>57</sup> To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.<sup>58</sup> In answering these questions, regard should again be had to the circumstances of the case and the key factors referenced above.<sup>59</sup>
43. The external review functions of the Information Commissioner include investigating and reviewing whether an agency has taken reasonable steps to identify and locate documents applied for by applicants.<sup>60</sup> While the agency that made the decision under review has the onus of establishing that the Information Commissioner should give a decision adverse to the applicant,<sup>61</sup> an applicant who maintains further relevant documents exist will bear a practical onus of establishing reasonable grounds to conclude that the agency has not discharged its obligation. Suspicion and mere assertion will not satisfy this onus.<sup>62</sup>
44. The Information Commissioner has confirmed that, when assessing an agency's searches, the relevant question is whether the agency has taken all reasonable steps to identify and locate documents, as opposed to all possible steps.<sup>63</sup>

### ***Applicant's submissions and the University's searches***

45. The University provided<sup>64</sup> records to OIC about the searches it conducted to locate documents relevant to the access application. Those records confirmed that searches had been conducted of the University's 'eDiscovery' and 'Onedrive' record keeping systems, the email records of the two individuals nominated in the access application and a digital notepad of one of the individuals nominated in the access application.<sup>65</sup>

<sup>54</sup> For example, where a particular document was not created because the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document.

<sup>55</sup> As set out in *PDE* at [49].

<sup>56</sup> As the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

<sup>57</sup> Section 52(1)(b) of the RTI Act.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Pryor* at [21].

<sup>60</sup> Section 137(2) of the IP Act. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 (*Webb*) at [6] that the equivalent provision in the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review.

<sup>61</sup> Section 100(1) of the IP Act.

<sup>62</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

<sup>63</sup> *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19], citing with approval *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23]. This follows the approach taken in *Webb* at [5]-[6], where Judicial Member DJ McGill SC reasoned that it is open to reach a finding that an agency has taken all reasonable steps 'even if, at least in theory, further and better searches might possibly disclose additional documents'.

<sup>64</sup> On 27 September 2024.

<sup>65</sup> Searches of the University's electronic record keeping systems were undertaken using the applicant's name as the search term.

46. Following the initial disclosure of documents by the University, the applicant contested the adequacy of the University's searches and identified additional documents which she considered were missing.<sup>66</sup> Broadly, these missing documents identified by the applicant were:
- lecturer videos in which the applicant believed she was spoken about
  - specific emails the applicant had exchanged with one of the individuals nominated in the access application;<sup>67</sup> and
  - potentially responsive (but unspecified) information on the University's teaching platforms.
47. At my request, the University undertook further searches and inquiries to address the applicant's submission. The additional email correspondence identified by the applicant was located by the University's further searches of its 'eDiscovery' and email systems<sup>68</sup> and this was disclosed to the applicant.<sup>69</sup> The University did not otherwise locate any additional documents relevant to the access application and submitted that no video content existed in which the applicant was spoken about.
48. Having reviewed the information provided by the University, there was nothing before me to suggest that the University was in possession of any further information relevant to the access application. Accordingly, I conveyed a preliminary view<sup>70</sup> to the applicant that the University had conducted appropriately targeted searches of the locations where it was reasonable to expect that documents relevant to the access application (including the additional documents the applicant had identified) would be stored.
49. The applicant did not accept the preliminary view and identified further missing documents (or categories of documents) which she considered may exist and be relevant to the access application.<sup>71</sup> Broadly, these were:
- records of a specific conversation, and a specific recommendation (as referenced in the disclosed documents)
  - Microsoft teams messages of a nominated individual
  - recordings of the applicant's workshops; and
  - records concerning the uploading of workshop recordings.
50. The applicant also generally asserted that she believed more information was received by one of the individuals nominated in the access application and it may be located on the individual's '*private devices*'.<sup>72</sup>
51. The University conducted further inquiries and searches (including with the assistance of its IT department) to address the applicant's further concerns. One relevant document was located on its 'Blackboard' system<sup>73</sup> and this was disclosed to the applicant.<sup>74</sup>

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<sup>66</sup> Applicant's submission dated 24 October 2024.

<sup>67</sup> The applicant attached copies of these emails to her submission dated 24 October 2024.

<sup>68</sup> Using a shortened version of the applicant's first name as the search term (previous searches had been conducted using the applicant's full name).

<sup>69</sup> On 12 November 2024, subject to the redaction of irrelevant information and a small amount of contrary to the public interest information, which has been addressed in the previous sections of this decision.

<sup>70</sup> On 8 November 2024. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and afford them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

<sup>71</sup> Applicant's submissions dated 9 January 2025, 17 January 2025 and 9 February 2025.

<sup>72</sup> Applicant's submission dated 9 January 2025. This submission primarily relates to how the applicant considers records would be stored when a staff member works from home.

<sup>73</sup> This document contains staff details (including those of the applicant) for a particular course and was on the University's website during the timeframe specified in the access application.

<sup>74</sup> On 30 January 2025.

However, the University's further searches of the Microsoft teams messages of the individual nominated by the applicant did not locate any additional, relevant documents and no records were located for the conversation and recommendation specified by the applicant. The University also submitted<sup>75</sup> that the applicant's workshops were not recorded, as they were not delivered online, and otherwise confirmed that no video content containing the applicant's personal information existed.

52. In respect of the applicant's assertion that further relevant documents may be located on an individual's personal devices, the University also submitted<sup>76</sup> that:
- correspondence sent or received when a staff member works from home would be captured by the searches that have already been undertaken within the University's eDiscovery system; and
  - under the University's 'Information Technology Code of Practice', staff are not permitted to use personal or private email accounts and systems, for University related business.
53. When notifying the applicant of the outcome of the University's further searches and enquiries,<sup>77</sup> I conveyed a further preliminary view to the applicant that the University had conducted appropriately targeted searches of the locations where it was reasonable to expect that documents relevant to the access application would be stored.
54. The applicant did not accept the preliminary view and submitted that additional documents were missing, as outlined in paragraph 56 below.
55. The University relied on the searches and inquiries conducted by its officers to justify its position that reasonable steps have been taken to locate documents relevant to the access application.

## **Findings**

56. The applicant maintains that a particular statement in the disclosed documents<sup>78</sup> provides evidence that there is '*a webpage of the storage which lists the file of the recordings indicating that the file contains [her] workshops*'. I do not consider the wording relied upon by the applicant gives rise to any reasonable expectation that any further, relevant documents exist. The University has confirmed<sup>79</sup> that the recordings referenced in the particular statement relied upon by the applicant are not recordings of the applicant's workshops and they do not contain any of the applicant's personal information. Such recordings therefore fall outside the scope of the access application. While these recordings were uploaded to the University's website, the applicant's submissions do not raise any reasonable expectation that any upload record created in respect of such recordings would contain her personal information.
57. Having reviewed the terms of the access application, the located documents, the applicant's submissions and the University's search submissions (including search records and certifications), I consider that the University has conducted extensive and appropriately targeted searches of locations where it would be reasonable to expect that

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<sup>75</sup> The University's submission dated 28 January 2025.

<sup>76</sup> The University's submission dated 28 January 2025.

<sup>77</sup> On 30 January 2025.

<sup>78</sup> In support of her position, the applicant referred (submissions dated 17 January 2025 and 9 February 2025) to the following words on page 84 of the disclosed documents: *I've recorded a workshop recap for her first class. Will get the second on [sic] recorded and uploaded today.*

<sup>79</sup> The University's submission dated 28 January 2025.

the documents requested in the access application would be stored within the University's record keeping systems.

58. On this basis, I am satisfied that:

- the University has taken all reasonable steps to locate documents relevant to the access application; and
- access to any further documents relevant to the access application may be refused on the basis they do not exist.<sup>80</sup>

## DECISION

59. For the reasons set out above, I vary the University's decision and find<sup>81</sup> that:

- disclosure of the Refused Information would, on balance, be contrary to the public interest and access to it may be refused on that basis<sup>82</sup>
- the Deleted Information is not relevant to the access applicant and has been validly deleted under section 88 of the IP Act; and
- access may be refused to any further documents relevant to the access application on the ground that they are nonexistent.<sup>83</sup>

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**T Lake**  
**Principal Review Officer**

**Date: 27 February 2025**

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<sup>80</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

<sup>81</sup> As a delegate of the Information Commissioner, under section 139 of the IP Act.

<sup>82</sup> Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>83</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
16 September 2024	OIC received the external review application.
19 September 2024	OIC notified the applicant and the University that the application for external review had been accepted and requested information from the University.
27 September 2024	OIC received the requested information from the University, including the University's disclosure position for located documents and its search records.
1 October 2024	OIC asked the University to release documents to the applicant in accordance with its disclosure position. OIC notified the applicant of the University's disclosure position, conveyed a preliminary assessment to the applicant about the University's searches and asked the applicant to confirm whether she accepted the University's information disclosure in resolution of the external review.
8 October 2024	OIC received the University's confirmation that information has been disclosed to the applicant on 4 October 2024.
15 October 2024	OIC wrote to the applicant to reiterate the request that she confirm whether she accepted the University's information disclosure in resolution of the external review.
24 October 2024	OIC received the applicant's submission which contested the redaction of information in the disclosed documents and raised concerns about missing documents and the adequacy of the University's searches.
28 October 2024	OIC asked the University to provide information addressing the applicant's submission about missing documents.
7 November 2024	OIC received the University's submission (which included the University's agreement to disclose a small amount of the previously undisclosed information and a search record and certification).
8 November 2024	OIC conveyed a preliminary view to the applicant and invited her to provide a submission by 22 November 2024 if she did not accept the preliminary view. OIC asked the University to release a small amount of additional information which it had agreed to disclose.
12 November 2024	OIC received the University's confirmation that further information had been released to the applicant.
19 November 2024	At the applicant's request, OIC granted the applicant additional time to respond to the preliminary view.
6 January 2025	At the applicant's request, OIC granted the applicant further time to respond to the preliminary view.

Date	Event
9 January 2025	OIC received the applicant's submission, which sought further explanation of a particular aspect of the preliminary view and raised concerns about additional documents the applicant considered to be missing.
10 January 2025	OIC asked the University to provide information addressing the applicant's submission about additional missing documents. OIC provided the requested explanation to the applicant and reiterated that component of the preliminary view.
13 January 2025	At the applicant's request, OIC conveyed further explanations to the applicant about the particular aspect of the preliminary view which she had queried.
17 January 2025	OIC received the applicant's further submission, which identified additional documents the applicant considered to be missing.
20 January 2025	OIC asked the University to provide information addressing the applicant's further submission about additional missing documents.
28 January 2025	OIC received a further submission from the applicant to explain why she considered certain documents were missing. OIC received the University's submission.
30 January 2025	OIC asked the University to release a small amount of additional information which it had agreed to disclose. OIC conveyed a further preliminary view to the applicant and invited her to provide a submission if she did not accept the further preliminary view. OIC also asked the applicant to identify the particular undisclosed information she sought to access on external review. OIC received the University's confirmation that further information had been released to the applicant.
9 February 2025	OIC received the applicant's further submission, which identified additional documents the applicant considered to be missing and requested clarification regarding a matter discussed in OIC's further preliminary view.
10 January 2025	OIC provided the requested clarification to the applicant, conveyed a preliminary view and invited the applicant to confirm whether (i) she accepted the preliminary view about the University's searches and (ii) she sought to access any of the undisclosed information on external review. In response, the applicant reiterated her concern that additional documents were missing.
11 February 2025	OIC notified the applicant that a formal decision would be issued to finalise the review.