



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>3PMQ2F and Central Queensland University [2019] QICmr 12 (11 April 2019)</i></b>
<b>Application Numbers:</b>	<b>314124, 314140 and 314177</b>
<b>Applicant:</b>	<b>3PMQ2F</b>
<b>Respondent:</b>	<b>Central Queensland University</b>
<b>Decision Date:</b>	<b>11 April 2019</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - AMENDMENT OF PERSONAL INFORMATION - documents relating to alleged academic misconduct authored by officers of the agency - photographs of pieces of toilet paper / tissues with handwriting on them - whether information is the personal information of the applicant - section 12 of the <i>Information Privacy Act 2009</i> (Qld) - whether the information sought to be amended is inaccurate, incomplete, out of date or misleading - section 72(1)(a) of the <i>Information Privacy Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. By three separate applications,<sup>1</sup> the applicant applied to the Central Queensland University (**University**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for amendment of information relating to alleged academic misconduct. The information was contained within documents in a file titled 'Academic Appeals'. The documents recorded alleged misconduct by the applicant during an examination and the steps taken by the University in response.
2. In response to each amendment application, the University decided<sup>2</sup> to amend certain personal information of the applicant by adding notations.
3. The applicant applied to the University for internal review of each decision.<sup>3</sup> In each instance, the University decided<sup>4</sup> to uphold its decision regarding the amendment of certain personal information by adding notations. In relation to the remaining information,

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<sup>1</sup> Amendment applications dated 18 June 2018, 23 June 2018 and 1 August 2018 relating to external reviews 314124, 314140 and 314177 respectively.

<sup>2</sup> Decisions dated 27 July 2018, 30 July 2018 and 5 September 2018 relating to external reviews 314124, 314140 and 314177 respectively.

<sup>3</sup> Internal review applications dated 31 July 2018, 2 August 2018 and 5 September 2018 relating to external reviews 314124, 314140 and 314177 respectively.

<sup>4</sup> Internal review decisions dated 28 August 2018, 28 August 2018 and 24 September 2018 relating to external reviews 314124, 314140 and 314177 respectively.

the internal review decision-maker stated<sup>5</sup> *'I am not satisfied the personal information not amended by notation by [the original decision] that you are seeking to amend is inaccurate, incomplete, out of date or misleading'*.

4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review.<sup>6</sup> The applicant requested that OIC review the notations used by the University to amend documents in the applicant's Academic Appeals file, as well as the University's refusal to amend the balance of the information that the applicant considered should be amended.
5. For the reasons set out below, I affirm the University's decisions to refuse the applicant's requested amendments.

## Background

6. The applicant was an external student of the University who undertook an examination at an interstate Technical and Further Education (**TAFE**) campus. The exam was overseen by an Examination Invigilator. Following the exam, the Examination Invigilator submitted an Alleged Academic Misconduct and Incident Report Form<sup>7</sup> in relation to the applicant.
7. Other employees of the interstate TAFE relevant to the circumstances surrounding the alleged academic misconduct are an Information Officer, Educational Manager and Groundsperson.
8. On external review, and in accordance with OIC's obligation to promote settlement of external review applications,<sup>8</sup> OIC asked the University to consider adding a notation to the applicant's Academic Appeals file in the form of a document outlining the applicant's concerns. The University indicated that it would be agreeable to this approach. OIC then discussed this proposal with the applicant, to ascertain whether the three external reviews could be informally resolved on this basis. While the applicant initially indicated that they<sup>9</sup> would be willing to explore the proposal, the applicant then advised their wish to pursue altering the documents. In these circumstances, it was apparent that informal resolution opportunities were exhausted, and OIC conveyed a preliminary view to the applicant and received submissions in response. This decision is necessary to finalise the three external reviews.
9. The appendix to these reasons for decision sets out the significant procedural steps taken during the external review relating to OIC's informal resolution attempts and, on exhaustion of them, the opportunity afforded to the applicant to make submissions regarding their case.

## Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and appendix).

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<sup>5</sup> At page 2 of each internal review decision.

<sup>6</sup> External review applications dated 28 August 2018, 4 September 2018 and 25 September 2018 relating to external reviews 314124, 314140 and 314177 respectively.

<sup>7</sup> Document A at paragraph 15 below.

<sup>8</sup> Section 103 of the IP Act.

<sup>9</sup> So as to avoid inclusion of information that could possibly connect the applicant with sensitive personal information, this decision uses 'they', 'their' and 'them' rather than singular pronouns for the applicant.

11. During the reviews the applicant provided a number of submissions, as well as documents relating to their concerns, to OIC.<sup>10</sup> I have considered all of this material and have extracted those parts which I consider raise issues relevant to the issues for determination in these reviews, as set out below.

### Reviewable decision

12. The decisions under review are the University's internal review decisions dated 28 August 2018, 28 August 2018 and 24 September 2018.<sup>11</sup> The applicant requested external review regarding:
  - a. the notations added to certain personal information of the applicant in their Academic Appeals file in accordance with the University's decisions to amend this information; and
  - b. the University's refusal to amend the balance of the information that the applicant requested be amended.
13. The Information Commissioner's functions include reviewing decisions of agencies made subject to external review under the IP Act.<sup>12</sup> Section 99 provides that a person affected by a "reviewable decision" may apply to have that decision reviewed by the Information Commissioner. Accordingly, the Information Commissioner's external review functions include conducting external reviews of "reviewable decisions". The definition of "reviewable decision" in schedule 5 of the IP Act includes '(f) a decision ... **refusing amendment of a document under section 72**' (my emphasis). This definition does not, however, include any reference to a decision which permits amendment of a document, nor any resulting amendment made by notation under section 74(b) of the IP Act.
14. Given these provisions, my jurisdiction on external review, as a delegate of the Information Commissioner, enables me to review the University's refusal to amend the applicant's personal information contained within relevant documents (b. in paragraph 12 above). However, it does not extend to review of the University's decision to permit amendment of certain personal information of the applicant in the Academic Appeals file, nor the resulting amendments made by notation (a. in paragraph 12 above). Even if it were accepted that OIC could review decisions to permit amendment and ensuing notations, I note that the applicant's concerns regarding the notations made by the University are the same as the applicant's concerns in their entirety (that is, that documents sought to be amended are inaccurate, incomplete and misleading representations of the circumstances surrounding the alleged academic misconduct), and further note that these concerns are addressed in the below reasons.

### Issues for determination

15. In their applications for amendment, the applicant refers to the following documents:
  - In relation to external review 314140, three photographs of pieces of toilet paper / tissues with handwriting on them (**the Photographs**).
  - In relation to external review 314124, the following documents relating to alleged academic misconduct (**the Documents**)—

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<sup>10</sup> As set out in the appendix.

<sup>11</sup> Relating to external reviews 314124, 314140 and 314177 respectively.

<sup>12</sup> Section 137 and chapter 3, part 9 of the IP Act.

- A. Alleged Academic Misconduct and Incident Report Form
- B. email to the applicant from the University regarding Alleged Academic Misconduct - Invitation to Respond
- C. Plagiarism Incident Report
- D. email to the applicant from the University regarding Alleged Academic Misconduct - Notice of Outcome
- E. a letter to the applicant from the Office of the Chair, Appeals Committee
- F. Academic Appeals Committee Minutes
- G. Academic Appeals Committee Discussion Notes; and
- H. Academic Appeals Committee Statement of Reasons.

- In relation to external review 314177, Documents A, C, G and H as set out above.

16. The issues arising for determination are whether:

- the information the applicant seeks to amend in the Photographs is the personal information of the applicant
- the applicant has demonstrated that the information sought to be amended within the Documents is inaccurate, incomplete, out of date or misleading; and
- if it is, whether under section 72(1) of the IP Act, amendment of the information may still be refused.

#### Relevant law

17. Under the IP Act, an individual has a right to apply for amendment of a document of an agency, or Minister, containing the individual's personal information where the following requirements are satisfied:<sup>13</sup>
- a) the applicant has previously obtained access to the document said to contain the applicant's personal information
  - b) the information which the applicant seeks to amend is the applicant's personal information; and
  - c) the personal information is inaccurate, incomplete, out of date or misleading.
18. The amendment application must meet certain requirements.<sup>14</sup> These include providing sufficient information concerning each document to be amended to enable a responsible officer of the agency to identify that document, and stating the information the applicant claims is inaccurate, incomplete, out of date or misleading.<sup>15</sup>
19. Where disputed information comprises an individual's interpretation of events or issues, an applicant seeking amendment must establish not only that the relevant information inaccurately, incorrectly or misleadingly represents the underlying events or issues, but that the authoring individual had not actually held and accurately entered into the official record their particular understanding of those events.<sup>16</sup>
20. The terms '*inaccurate*', '*incomplete*', '*out of date*' and '*misleading*' are not defined in the IP Act, nor the *Acts Interpretation Act 1954* (Qld). These terms are therefore used in their ordinary sense and the dictionary definitions<sup>17</sup> of them, as set out below, are therefore relevant:

<sup>13</sup> Sections 41 and 44 of the IP Act.

<sup>14</sup> Set out at section 44(4) and (5) of the IP Act.

<sup>15</sup> Sections 44(4)(b) and (d) of the IP Act.

<sup>16</sup> *A4STL6K and Queensland Health* (Unreported, Queensland Information Commissioner, 6 September 2013) (**A4STL6K**) at [27], paraphrasing the relevant principle as stated in *Crewdson v Central Sydney AHS* [2002] NSWCA 345 (**Crewdson**) at [34].

<sup>17</sup> Online Macquarie Dictionary: <[www.macquariedictionary.com.au](http://www.macquariedictionary.com.au)> (accessed 11 April 2019).

<i>'inaccurate'</i>	<i>not accurate.</i>
<i>'incomplete'</i>	1. <i>not complete; lacking some part.</i> 2. <i>not to the entire extent: incomplete combustion.</i>
<i>'out of date'</i>	1. <i>(of a previous style or fashion) obsolete.</i> 2. <i>(of a ticket, etc.) no longer valid.</i>
<i>'mislead'</i>	1. <i>to lead or guide wrongly; lead astray.</i> 2. <i>to lead into error of conduct, thought or judgement.</i>

21. Even if the preceding requirements are satisfied, this does not of itself entitle an applicant to amendment. This is because the opening words of section 72(1) of the IP Act—*'[w]ithout limiting the grounds on which the agency or Minister may refuse to amend the document'*—confer on the decision-maker discretion whether to grant or refuse an amendment application. While the section sets out specific grounds on which amendment may be refused, the decision-maker is not limited solely to those grounds. Consequently, even where an applicant has satisfied each of the requirements noted above, discretion is retained to refuse to amend a relevant document.
22. While an agency has the onus of establishing that its decision was justified,<sup>18</sup> in an external review of a decision to refuse to amend information:<sup>19</sup>

*... a practical or evidentiary onus shifts to [an applicant] to provide evidence to support [their] entitlement to relief under [the IP Act] on the basis that the documents in issue contain information that is inaccurate, incomplete, out-of-date or misleading.*

### **Findings - external review 314140**

23. The applicant applied to amend information contained within the Photographs, copies of which were attached to the applicant's amendment application in relation to external review 314140. As noted at paragraph 15 above, the Photographs depict pieces of toilet paper / tissues with handwriting on them.
24. Given copies of the Photographs were attached to the applicant's amendment application, it is clear that requirement a) at paragraph 17 above is satisfied. Here, requirement b) is the issue.

### ***Is the information the applicant seeks to amend in the Photographs the applicant's personal information?***

25. No, for the reasons that follow.
26. In external review 314140, the applicant requested amendment of the Photographs. The amendment application stated:

*... please clearly amend/notate the toilet tissue pieces that three of photographs of the toilet tissue contained wording and symbols which clearly do not relate to my exam as they are accountancy/bookkeeping terminologies and not ... words.*

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<sup>18</sup> Section 100(1) of the IP Act.

<sup>19</sup> *Doelle and Legal Aid Office (Qld)* (1993) 1 QAR 207 at [18], where the Information Commissioner considered the issue of onus in an equivalent context under the now repealed *Freedom of Information Act 1992* (Qld). In *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (**3DT2GH**) the delegate of the Information Commissioner found this reasoning to be applicable to the provisions of the IP Act.

These three pictures ... depict the following:

1. The word 'Trade' 'A, B, C'. This clearly relates to some chain of trade.
2. 'Cr' for Credit, 'Bwd' for Balance brought forward, and 'Profit'. Clearly bookkeeping/accountancy terms related to journals, balance sheets, and profit and loss statements.
3. The algebraic formula which relates to interest rates (partially written as it is a cheat sheet). The most defining terms are the brackets and double brackets with the caret in between.

$$\begin{array}{c} (^{\wedge}) \\ \downarrow \\ Ti>>n \end{array}$$

Clearly part of the compound interest formula as evidenced in the web site information copied below.

<http://www.thecalculatorsite.com/articles/finance/compound-interest-formula.php>

^ means 'to the power of'

Also the ))

$$A = 5000 (1 + 0.05 / 12)^{\wedge} (12(10)) = 8235.05.$$

$$A = 5000 (1 + 0.00416)^{\wedge} 120$$

It would be appreciated if you could amend my records to note that three pictures of the six pictures (50%) of the toilet tissue contained information clearly not pertaining to a ... exam as it is misleading.

27. During the course of the external review, in response to my preliminary view that the Photographs do not comprise the applicant's personal information, the applicant submitted:<sup>20</sup>

*I note that there appears to be confusion in regard to whether the 'toilet paper' can be classed as 'personal information'. We therefore need to 'define' exactly what constitutes 'personal information' under the Information Privacy Act. The Information Privacy Act defines personal affairs of a person to include (a) financial affairs (b) criminal records (c) marital or other personal relationships (d) employment records (e) personal qualities or attributes. Consequently, I would put this as my personal affairs under '**personal qualities or attributes**' as they are documents which clearly put me forward as a person who will 'cheat' and this is a personal quality which I am 'most unhappy about'. It is pleasing that someone recognises that the information on those particular pieces of toilet paper may relate to bookkeeping/accountancy, in the very least, a subject completely different to [the subject being assessed by the examination].*

*I have noted that you are having difficulty discerning how the 'pieces of toilet paper' are 'about me' for the purpose of the Information Privacy Act in relation to '**annotation**'. The information is definitely about me, it says 'you are a cheater' and carries with it the very essence and stigma of who I am 'as a person' as put forward in this matter. Consequently, it is definitely 'my personal information' under the Act.*

[applicant's emphasis, endnote omitted]

28. The source of the applicant's definition of what constitutes personal information for the purposes of the amendment applications is unclear. Under the IP Act, this term is defined in section 12 as follows:

*... information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.*

29. Determining whether information is the personal information of an individual for the purposes of the IP Act requires consideration of whether the individual can reasonably

<sup>20</sup> Submission dated 8 December 2018.

be identified from the information and if so, whether the information is ‘*about*’ that individual.<sup>21</sup>

30. If the individual is the subject matter of the information, the information will be about them.<sup>22</sup> Where information is not clearly about an individual, it is necessary to consider the context in which the information appears. In doing so, the key question is whether there is a sufficient connection between the fact or opinion and the individual to reveal something about the individual. To demonstrate a sufficient connection between the individual and the information, the link cannot be so tenuous that the information is not about the individual, but about something else.<sup>23</sup>
31. I agree, as the applicant suggests, that the information in the Photographs may relate to a subject different to that for which they were sitting the examination. As noted previously, the Photographs are of pieces of toilet paper / tissues with handwriting on them. The pieces of toilet paper / tissues were collected as evidence by the Examination Invigilator, and therefore concern an issue which is personally important to the applicant. However, these circumstances do not alter the nature of the information contained within the Photographs. The Photographs do not include the applicant’s name, nor any other information from which the applicant’s identity is readily apparent or can reasonably be ascertained. I am unable to discern any connection between the applicant and the information in the Photographs, being the pieces of toilet paper / tissues with handwriting on them, that would make the information *about* the applicant for the purposes of the amendment provisions of the IP Act. On its face, none of the information in the Photographs is about the applicant. Indeed, given the nature of the information, it is not about any individual.
32. On the basis of the above, I am satisfied that, in relation to the amendment application the subject of external review 314140, the information sought to be amended in the Photographs is not *about* the applicant and therefore does not comprise their personal information. Therefore, the University was entitled to refuse the applicant’s amendment request.
33. In view of my finding at paragraph 32 above, it is not necessary for me to consider the amendment request for this information further. Accordingly, I am not required to consider requirement c) at paragraph 17 above. However, for completeness, I have addressed the discretion to amend information at paragraphs 66 to 71 below.

#### **Findings - external review 314124**

34. External review 314124 focuses on the applicant’s concern about different versions of events detailed within the Documents as to when and where the pieces of toilet paper / tissues with handwriting on them depicted in the Photographs were located.
35. It is not in dispute that the applicant has had access to the Documents, nor that the information within them that the applicant wishes to amend is the applicant’s personal information. Therefore, the issue for determination is whether this personal information is inaccurate, incomplete, out of date or misleading—that is, requirement c) at paragraph 17 above.

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<sup>21</sup> *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [19].

<sup>22</sup> See *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4 (19 January 2017) at [63].

<sup>23</sup> See *Telstra Corporation Limited and Privacy Commissioner* [2015] AATA 991 (18 December 2015) at [99].

**Is the information sought to be amended within the Documents inaccurate, incomplete, out of date or misleading?**

36. No, for the reasons that follow.
37. In external review 314124, the applicant requested amendment of the Documents, stating:<sup>24</sup>

*I refer to the Alleged Academic Misconduct form<sup>25</sup> dated ... in which it states:*

**'Notes found in the vicinity of the exam room that can be linked to the candidate'  
'Notes found in possession of the candidate'  
'Query student using toilet for 20 minutes. [The applicant] stated ... was ill. I found [the applicant] with tissues with writing on. [The applicant] claimed they were just notes. But I kept them and notified [Information Officer] Signed [Examination Invigilator]'**

*I refer to the email sent to me by [a University staff member]<sup>26</sup> dated ... in which she states:*

**'Examination Conduct:- handwritten notes and textbook found within the vicinity of the exam room which can be linked to you.  
We acknowledge that it may not have been your intention to act in a way that may be considered academic misconduct'**

*I refer to the Plagiarism Incident Report<sup>27</sup> dated ... in which it states:*

**'Student in toilet for 20 minutes. Found with ..... handwritten notes'.**

*I refer to the email to me from [a University staff member]<sup>28</sup> dated ... in which she confirms:*

**'Recorded as academic misconduct'**

*I refer to the determination on my appeal<sup>29</sup> dated ... in which it clearly states:*

**'when emerging from the toilet you were found to be in possession of handwritten notes on toilet paper'**

*I refer to the minutes of the first Academic Misconduct Hearing<sup>30</sup> dated ... where I ask for clarification and it is clarified that the documentation states:*

**'[Examination Invigilator] was the one who came across [the applicant] and the notes' .... 'when emerging from the toilet I was found in possession of handwritten notes on toilet paper'.**

*I refer to the minutes of the second Academic Misconduct Hearing<sup>31</sup> ... which was the linkup between [the interstate TAFE campus]'s [Examination Invigilator] and [Information Officer] and Central Queensland University's Academic Appeals Committee dated ...*

**([Examination Invigilator]) rang [Information Officer] on the mobile phone and asked her to check the ... toilets, and just as they (?) were coming around the other end, [the applicant] came out of the toilet and said: 'what is going on?'**

<sup>24</sup> Letter attached to the amendment application dated 18 June 2018.

<sup>25</sup> That is, Document A at paragraph 15 above.

<sup>26</sup> That is, Document B at paragraph 15 above.

<sup>27</sup> That is, Document C at paragraph 15 above.

<sup>28</sup> That is, Document D at paragraph 15 above.

<sup>29</sup> That is, Document E at paragraph 15 above.

<sup>30</sup> That is, Document F at paragraph 15 above.

<sup>31</sup> That is, Document G at paragraph 15 above.



'not 100% sure if toilet paper with notes found with textbook in toilet or not' ([Information Officer]).

'[Examination Invigilator] did not want to leave the room so kept ringing [Information Officer]'.

(Upon my return to the classroom) [the applicant] had all these tissues all over [their] desk, and I ([Examination Invigilator]) was thinking, 'I'd better check there was no writing on [the applicant's] hand, then I looked at the scrunched up tissues, they had writing on them. [The applicant] said, 'don't touch them, they're germy'. I ([Examination Invigilator]) put the notes in the bag ... . I went outside the door, I could see [the applicant] through the glass and asked someone to check the toilet'.

- **PLEASE NOTE HOW THE SCENARIO HAS CHANGED REGARDING THE TOILET TISSUE DISCOVERY. WHY IS [the Examination Invigilator] OUTSIDE THE EXAM ROOM DOOR LOOKING IN AT ME THROUGH A GLASS WINDOW AND ASKING SOMEONE TO CHECK THE ... TOILETS WHEN SHE HAS ALREADY MOBILE PHONED [the Information Officer] TO DO THIS, AND THEY(?) HAVE ALL MET ME ON THE WAY OUT OF THE TOILET, AND [the Examination Invigilator] HAS TAKEN THE TOILET TISSUE FROM ME AS I EMERGED FROM THE TOILET, AND I HAVE 'CLAIMED I WAS SICK' AND SAID 'THEY ARE JUST NOTES'?**

I refer again to the minutes of the second Academic Misconduct Hearing<sup>32</sup> which was the linkup between [interstate TAFE campus]'s [Examination Invigilator] and [Information Officer] and Central Queensland University's Academic Appeals Committee dated...

... (confirms the changed scenario): you mentioned [the applicant] went to the toilet, returning to [their] desk, resumed the exam - the tissue paper, was that on [their] desk during the exam, was that there before or after [they] went to the toilet?

[The Examination Invigilator] states that before [the applicant] went to the toilet there were a few but after ([the applicant] returned) there were lots more (tissue)

I refer to the Statement of Reasons<sup>33</sup> dated ... in which it states:

**'Handwritten notes on toilet paper were confiscated from the student following [their] return to the examination room'**

I refer to the determination<sup>34</sup> from ... [the interstate TAFE campus]' Freedom of Information Officer, in which Document 6<sup>35</sup> ... states:

**[The Examination Invigilator] came back to the front office (after the exam) with exam papers and also had toilet paper/toilet towel with writing on it. It cannot be recalled how [the Examination Invigilator] found the toilet paper/toilet towel'**

It would be appreciated if you could correct/amend my records to clearly acknowledge the confusion/uncertainty regarding how the toilet tissue with writing upon it was discovered and linked to myself, to the point where the toilet tissue is not linked to myself, by clearly stating the following on my files:

[Request A]

**First, the toilet tissue was in the vicinity (nowhere near my hands or desk).**

<sup>32</sup> That is, Document G at paragraph 15 above.

<sup>33</sup> That is, document H at paragraph 15 above.

<sup>34</sup> This determination is a letter from the interstate TAFE campus to the applicant in response to an application to the interstate TAFE campus for access to documents.

<sup>35</sup> This document is an Internal Misconduct Incident Report of the interstate TAFE campus.

[Request B]

**Second, the toilet tissue was confiscated from my hands as I emerged from the toilet by [the Examination Invigilator] (being also met by various people as witnesses on the way out of the toilet) where I said 'they are just notes' but [the Examination Invigilator] took them and gave them to [the Information Officer] later. This scenario is discussed in depth and verified as stated by various members of the Academic Appeals Committee at the first hearing.**

[Request C]

**Third, the toilet tissue is taken from my desk on my return and resumption of the exam as [the Examination Invigilator] (who has now never left the exam room) contemplated my hands for writing, various tissues on my desk, etc and I said 'don't touch them, they're germy', then [the Examination Invigilator] bagged them. This scenario is discussed in depth and verified by various members of the Academic Appeals Committee.**

[Request D]

**Fourth, it cannot be recalled how [the Examination Invigilator] found the toilet paper/toilet towel from [interstate TAFE campus] official records.**

[applicant's emphasis]

38. As stated at paragraph 2, the University decided to amend personal information of the applicant in the Academic Appeals file. This was done by adding the following notations:<sup>36</sup>

Request	Notation added
A	<i>The University's records show ..., [Examination] Invigilator, observed toilet tissue on the desk [the applicant] was seated at for [their] exam.</i>
B	<i>The University's records show [the Examination Invigilator] removed the toilet tissue with writing on them from the desk [the applicant] was seated at for [their] exam.</i>
C	<i>The University's records show [the Examination Invigilator] removed the toilet tissue with writing on them from the desk whilst [the applicant] was seated at the desk.</i>
D	<i>The University's records show [the Examination Invigilator] removed the toilet tissue with writing on them from the desk whilst [the applicant] was seated at the desk.</i>

39. In the external review application,<sup>37</sup> the applicant contended that they are appealing the decision because *'clear facts and documentation are not being recognised, amended and corrected on [their] file.'* Further, the applicant stated:

**First, Central Queensland University has failed to acknowledge that the toilet paper with writing upon it was first stated to be 'in the vicinity' which was definitely 'not observed on the desk of [the applicant]' as you have stated. Clearly, [the University's] email to myself ... states:**

**'Examination conduct - handwritten notes and textbook found within the vicinity of the exam room that can be linked to you. We acknowledge that it may not have been your intention to act in a way that may be considered academic misconduct'**

<sup>36</sup> The notations correspond with the issues raised by the applicant in the letter attached to the amendment application dated 18 June 2018. For ease of reference, I have inserted headings for Requests A to D into the excerpt from this letter as set out at paragraph 37 above.

<sup>37</sup> External review application dated 28 August 2018. The applicant's external review application is substantially the same as the applicant's application for internal review dated 31 July 2018.

Clearly, if the toilet paper with writing upon it had been near myself it would definitely have been interpreted as 'an intention to act in a way considered academic misconduct'. Clearly, this toilet paper with writing upon it is not near me at all when initially documented. This needs to be clearly acknowledged. Putting that this has been replaced with 'found on the desk of [the applicant]' defies the whole point of making corrections and indeed annotations.

The initial documentation regarding the toilet paper with writing upon it was certainly put forward **first** that it was 'in the vicinity' and specifically 'not on my desk'. This is an incorrect determination on this particular point which I am appealing. [The Examination Invigilator] has observed the toilet tissue with writing upon it in many different places during this process, in the 'vicinity' was definitely one of the places, and the **first** one of the places. The first time it was mentioned to be on the 'desk of [the applicant]' was not until during the second hearing on ... (3 months later) before this time 'on the desk' was not mentioned, clearly the story has changed and I want it documented (see *Alleged Academic Misconduct form dated ...; specifically, the email sent from [the University] to myself dated ...*).

Please carefully correct/annotate my file that 'in the vicinity' means not in my hands, or on my desk, or in my exam room at all, as clearly indicated by the above 2 pieces of official documentation'.

**Second**, Central Queensland University have failed to acknowledge that this matter went to the first academic appeal hearing on ... (2 months after the 'in the vicinity version) with all documentation now stating that the toilet paper with writing upon it was taken from my hands as I emerged from the toilet by [the Examination Invigilator], firmly believing there were witnesses which met me on the way out of the toilet, witnesses who saw [the Examination Invigilator] take this toilet paper with writing upon it from my hands. This is clearly the **second story**, and while there is a third story of taking it from my desk, the **second story** clearly is put forward as 'being taken from my hands as I emerged from the toilet', being met by others who would be witnesses. This needs to be clearly acknowledged. Putting that this has been replaced with 'found on the desk of [the applicant]' defies the whole point of making corrections and indeed annotations. [The Examination Invigilator] has observed the toilet tissue with writing upon it in many different places during this process, 'in my hands upon emerging from the toilet' was definitely one of them, and definitely the **second** version she put forward, along with others. The first time it was mentioned to be on the 'desk of [the applicant]' was not until during the second hearing on ... (2 months later after the 'in the vicinity story) before this time 'on the desk' was not mentioned, clearly the story has changed and I want it documented (see *Plagiarism Incident Report dated ...; Appeal Determination dated ...; Academic Misconduct Hearing dated ...; Academic Appeal Hearing dated ...*).

Please carefully correct/annotate my file that the second story of where the toilet paper with writing upon it was discovered was when emerging from the toilet. Please note that when it states 'when emerging from the toilet I was found with handwritten notes' does not mean 'a long walk back down the corridor from the toilet to room ... (see attached map) and then a long time while [the Examination Invigilator] looked at things on my desk, on my hands, I resumed the exam, and then [the Examination Invigilator] discovered I had a desk covered in toilet paper and decided to pick up one piece of toilet paper which she puts forward as having writing on it, without explaining why I had a desk covered in toilet paper' (verified I had a desk covered in toilet paper from Decision Letter dated ... from Request to Correct dated ...).

**Third**, Central Queensland University have failed to acknowledge that this version is the **third** version put forward, not the only version put forward, of how [the Examination Invigilator] came upon the toilet paper with writing upon it and it is incorrectly annotated as the only 'version' put forward by [the Examination Invigilator].

Please carefully correct/annotate my file that the only time the 'toilet paper taken from my desk' version appears is in the Academic Appeals Second Hearing dated ... and Statement of Reasons dated ... (this is 3 and 2 months later after the first two versions of how [the Examination Invigilator] came upon the toilet paper with writing upon it).

**Fourth**, Central Queensland University are totally ignoring the official **fourth** version of how [the Examination Invigilator] came upon the toilet tissue with writing upon it. This version is put forward by [interstate TAFE campus] official records and needs to be corrected/annotated on my records as a **fourth** version where [the Examination Invigilator] can now no longer remember how she came upon the toilet paper, she just arrived back at the office with exam papers and the toilet paper with writing upon it. While Central Queensland University records may not show this, upon my presentation of the official documentation from [interstate TAFE campus]'s FOI search, it should be put upon my Central Queensland University records as the **fourth** possible option put forward throughout this process (see ... [interstate TAFE campus] documentation).

Please carefully correct/annotate my file that 'upon searching other documentation from other departments outside Central Queensland University there was a fourth option that it 'was unknown where the toilet paper came from' (see ... [interstate TAFE campus] documentation).

Please can you ensure that my records are clearly corrected/annotated on my Central Queensland University file regarding the first, second, third and fourth options as to how [the Examination Invigilator] came upon the toilet paper with writing upon. I would like it very clearly noted and shown the variety of clearly documented versions of this story which [the Examination Invigilator] came up with as to how she found the toilet paper with writing upon it as put forward in my original request. I am appealing the decisions not to do this as I have clearly given adequate documentation to prove my points.

I note that in the Internal Appeal determination there are no new points put forward by [the internal review decision-maker] which differ from [the decision-maker], except that [the internal review decision-maker] puts forward the Information Privacy Principles which to me seem irrelevant when I have provided numerous and adequate pieces of documentation to show that without these corrections/amendments my file is definitely inaccurate, incomplete, out-of-date and misleading.

[applicant's emphasis]

40. During the course of the external review, the applicant submitted:<sup>38</sup>

(1) I note that you 'accept that the Documents detail different versions of events about when and/or where the toilet paper with writing on it was located'. **This is very pleasing.**

(2) However, when documents are written, signed and dated they are legally binding documents and have serious consequences for those about who these documents are written (myself) and if they were 'recollections, opinions or understanding only of matters by the authoring officers of the Documents at the time they were created' then this should have been clearly stated at the time and taken into consideration. This makes it even more of a reason to put a clear '**annotation**' that the documentation may contain 'errors'. **This is my point exactly.**

(3) I am asking for an '**annotation**' because clearly, we cannot re-write what [the] authors have said, or change the consequences.

[applicant's emphasis]

41. I have carefully considered the Documents which the applicant seeks to have amended as set out at paragraph 15 above and the applicant's statements at paragraphs 37 and 39 to 40 above. The applicant appears to contend that the information in the Documents is inaccurate, incomplete, out of date and misleading because different versions of events of when and where the pieces of toilet paper / tissues with handwriting on them were found by the Examination Invigilator are detailed in each of the Documents.

42. Amendment provisions such as those found in the IP Act are aimed at:

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<sup>38</sup> Submission dated 8 December 2018.

*... ensuring that personal information concerning an applicant and read by third persons, does not unfairly harm the applicant or misrepresent personal facts about the applicant. It is concerned that the third persons reading the personal information do not get the wrong impression ...*<sup>39</sup>

43. The first page of Document A contains a list of options to choose from under the heading 'Type of Academic Misconduct' and Documents B and D contain what appears to be pre-determined text corresponding with the list of options in Document A, both of which provide a general description of the type of alleged misconduct rather than details specific to the applicant's circumstances. Therefore, it is understandable that the general information recorded in these Documents is different to the versions of events recorded at other locations within the Documents,<sup>40</sup> which require the entry of "free text", and necessarily involve more specific wording and expression of the respective authors.
44. Nevertheless, I acknowledge the applicant's view that the Documents detail accounts of when and/or where the pieces of toilet paper / tissues were located that arguably differ in some respects. However, I also note that the Documents are the recollections, opinions or understanding of matters held by the authoring officers of the Documents at the time they were created. There is nothing before me to suggest that the authoring officers did not hold those recollections. Further, there is nothing to suggest that the statements made in the various Documents which the applicant seeks to amend are not an accurate recording of the recollections, opinions or understanding of the authors of the Documents.<sup>41</sup>
45. As the Documents detail matters in contention between the applicant and the University, it is not surprising that the applicant disagrees with how details of the alleged academic misconduct have been recorded by the various persons involved. However, this does not mean that the information within the Documents which the applicant seeks to amend is inaccurate, incomplete, out of date and misleading as contemplated by the amendment provisions of the IP Act. I do not consider the applicant has provided objective evidence which would demonstrate, on the balance of probabilities, that the statements contained within the Documents are inaccurate, incomplete, out of date or misleading.
46. I do not consider that the statements made in the Documents could reasonably be said to cause any of the detriments described in paragraph 42 above. I am further satisfied that inclusion of the applicant's requested notations at paragraphs 37 and 39 above is not necessary to ensure that the Documents are up to date and complete.
47. On the basis of the above, I therefore find that, in relation to the amendment application the subject of external review 314124, the information sought to be amended in the Documents is not inaccurate, incomplete, out of date or misleading. Therefore, the University was entitled to refuse the applicant's amendment request.
48. In view of my finding at paragraph 47 above, it is not necessary for me to consider the amendment request for this information further. However, for completeness, I have addressed the discretion to amend information at paragraphs 66 to 71 below.

### **Findings - external review 314177**

49. In external review 314177, the applicant has expressed concern about how the finding of a textbook in the vicinity of the interstate TAFE campus where the applicant sat their

<sup>39</sup> *Buhagiar and Victoria Police* (1989) 2 VAR 530, per Jones J.

<sup>40</sup> Including the second page of Document A.

<sup>41</sup> See *A4STL6K* at [25] to [27], paraphrasing the relevant principle as stated in *Credson* at [34].

examination has been linked to them, and the different versions of events which have been put forward.

50. On initial consideration of the terms of the applicant's amendment application, I conveyed a preliminary view<sup>42</sup> to the applicant that the application did not provide sufficient information concerning the document/s to be amended to enable a responsible officer of the agency to identify the document/s. In response, the applicant submitted:<sup>43</sup>

*I agree with you, it is indiscernible, because the issue of me being in contact with the textbook was 'never under contention'. It was always clearly stated I was 'never in contact or seen in contact' with the textbook and I am at a loss to know why Central Queensland University would want to now bring a 'new point' into the situation. **You are correct.** The very reason you cannot understand what requested [sic] is that there are so many versions, clearly many untruthful versions, **there is no discernible enduring version. That is precisely my point** – the truth is still unestablished, and I would like that 'annotated' – so I think you might almost have got it all correct.*

[applicant's emphasis]

51. I have carefully considered the applicant's explanation regarding the inaccuracy of documents expressed in this response, in conjunction with the amendment application's reference<sup>44</sup> to certain documents also referred to in the abovementioned application that is the subject of external review 314124<sup>45</sup>—specifically, Documents A, C, G and H<sup>46</sup> and determinations by an interstate TAFE officer. Based on these considerations, I am satisfied that the applicant has sufficiently identified the documents that are the subject of the present amendment application.
52. As a delegate of Queensland's Information Commissioner, documents in the possession or control of an interstate TAFE are not 'documents of an agency'<sup>47</sup> that I have jurisdiction to consider under the IP Act. Potentially, I may consider a version of such documents that comes into the possession or control of the University. However, it is my understanding that the 'determinations' referred to by the applicant appear in a letter from the interstate TAFE campus to the applicant in response to an application to the interstate TAFE campus for access to documents. There is nothing before me to suggest that such a letter has been provided to the University either by the applicant or the interstate TAFE. Consequently, to the extent the applicant's amendment application relates to 'determinations' by the interstate TAFE, I am satisfied that such documents fall outside the remit of the IP Act, and cannot be considered further in this review.
53. It terms of the other documents—that is, Documents A, C, G and H (**Remaining Documents**)—it is not in dispute that the applicant has had access to the Remaining Documents, nor that the information within them that the applicant wishes to amend is the applicant's personal information. Therefore, as for external review 314124, the issue for determination is whether the personal information in the Remaining Documents is inaccurate, incomplete, out of date or misleading—that is, requirement c) at paragraph 17 above.

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<sup>42</sup> Dated 7 December 2018.

<sup>43</sup> Submission dated 8 December 2018.

<sup>44</sup> Set out at paragraph 55 below.

<sup>45</sup> See paragraph 37 above.

<sup>46</sup> As listed at paragraph 15 above and also considered in relation to external review 314124.

<sup>47</sup> See definition of 'document of an agency' at section 13 of the IP Act and definition of 'agency' in section 17 of the IP Act and sections 14 and 16 of the *Right to Information Act 2009* (Qld).

**Is the information sought to be amended within the Remaining Documents inaccurate, incomplete, out of date or misleading?**

54. No, for the reasons that follow.

55. In external review 314177, the applicant requested amendment as follows.<sup>48</sup>

**PLEASE CLEARLY CORRECT/AMEND MY FILES TO AVOID IT BEING MISLEADING IN REGARD TO THE TEXT BOOK AS FOLLOWS:**

*I refer to the Alleged Academic Misconduct Form<sup>49</sup> ... in which it refers to a text book found in the toilet which had my name and address inside the front cover. I also refer to the full section put forward by [the Information Officer] as written and signed by [the Educational Manager], now annulled due to being inaccurate, due to not being signed by [the Educational Manager], and due to the events not occurring as put forward (see minutes of second hearing<sup>50</sup> ..., documentation from ... [Interstate TAFE campus], and decision letter...<sup>51</sup>). I refer to the Plagiarism Incident Report<sup>62</sup> ... in which it erroneously stated I was in possession of the text book ... Correction of this official documentation has in effect created the following situation:*

[Request 1]:

**First**, I have successfully challenged the full statement put forward as [the Educational Manager's] as being incorrect, not written by [the Educational Manager], that the signature has erroneously been put forward as [the Educational Manager's] signature on this document, and it is unknown to whom that signature belongs, even though [the Information Officer] has identified it erroneously as [the Educational Manager's] signature and erroneously confirmed the details, I have proved otherwise (see decision letter details<sup>53</sup> ..., second hearing minutes<sup>54</sup> ..., and ... documentation from [interstate TAFE campus]).

[Request 2]:

**Second**, I have had it clearly acknowledged that I was never seen with the text book or in possession of the text book ... as erroneously put forward in original documentation (see decision letter<sup>55</sup> ... and Plagiarism Incident Report<sup>56</sup> ...).

[Request 3]:

**Third**, I have had it clearly acknowledged that there was a great deal of time between my leaving the toilet and the toilet allegedly being searched and it was not a 'subsequent' immediate search as I left the toilet as erroneously put forward in original documentation, and I was not met by anyone on the way out of the toilet, as erroneously put forward in original documentation, but only observed by [the Examination Invigilator] from the room ... which is quite a distance from the toilets (see ... [interstate TAFE campus] map, second hearing minutes<sup>57</sup> ..., Plagiarism Incident Report<sup>58</sup> ..., determinations from ... [interstate TAFE campus], and decision letter<sup>59</sup> ...

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<sup>48</sup> Letter attached to the amendment application dated 1 August 2018.

<sup>49</sup> That is, Document A at paragraph 15 above.

<sup>50</sup> That is, Document G at paragraph 15 above.

<sup>51</sup> That is, document H at paragraph 15 above.

<sup>52</sup> That is, Document C at paragraph 15 above.

<sup>53</sup> That is, document H at paragraph 15 above.

<sup>54</sup> That is, document H at paragraph 15 above.

<sup>55</sup> That is, document H at paragraph 15 above.

<sup>56</sup> That is, Document C at paragraph 15 above.

<sup>57</sup> That is, document H at paragraph 15 above.

<sup>58</sup> That is, Document C at paragraph 15 above.

<sup>59</sup> That is, document H at paragraph 15 above.

[Request 4]:

**Fourth**, I have had it clearly acknowledged that there is no signed statement from [the Groundsperson] who [the Information Officer] puts forward as having found the text book in the toilet and then given it to her, and there were no witnesses to [them] finding the textbook in the toilet or to [them] giving it to [the Information Officer] (see decision letter<sup>60</sup> ...

[Request 5]:

**Fifth**, I have had it clearly acknowledged that [the Groundsperson's] search and finding of the text book relies solely on [the Information Officer's] 'say so' stating that [the Groundsperson] found it in the toilet and gave it to her however, the authenticity of this statement is seriously compromised by the fact that [the Information Officer] has been incorrect on so many other points, in particular [the Educational Manager's] signature and [their] version of events she confirmed as put forward by [the Educational Manager] which were incorrect (see second hearing minutes<sup>61</sup> ..., determinations from ... [interstate TAFE campus], decision letter<sup>62</sup> ...

[Request 6]:

**Sixth**, [the Information Officer] has been deliberately untruthful, verifying the signature and version of events put forward as [the Educational Manager's] on the Alleged Academic Misconduct Form<sup>63</sup> ..., which she must have known to be incorrect, officially through a Freedom of Information request by Central Queensland University..., when [the Information Officer] would have clearly known it to be incorrect at that time (see ... documentation from [interstate TAFE campus]).

[Request 7]:

Therefore, along with the above correct/annotation to my file can you also please correct/annotate my records to clearly state the following to avoid it being misleading:

*'There is nothing which connects [the applicant] to physically being in contact with the textbook on ..., the day of the exam, other than [the Information Officer's] account of events, that [the Groundsperson] found it in the toilet and gave it to her. This information is not backed up by signed documentation from [the Groundsperson], witnesses or any proof whatsoever. [The Information Officer] has been incorrect and untruthful about many other major details, such as [the Educational Manager's] signature and details of [their] statement. Therefore, [the Information Officer's] version of events regarding the text book and [the Groundsperson] is seriously compromised'*

[Applicant's emphasis]

56. As stated at paragraph 2 above, the University decided to amend information in the applicant's Academic Appeals file by adding notations. The notations added by the University are as follows:<sup>64</sup>

Request	Notation added
1	<i>The University's records show that the second signatory on the Alleged Academic Misconduct and Incident Report Form... is that of ... Educational Manager, [interstate TAFE campus].</i>
2	<i>The University's records show that [the applicant] was not seen with the textbook during the exam, or seen to be in possession of the textbook throughout the exam.</i>

<sup>60</sup> That is, document H at paragraph 15 above.

<sup>61</sup> That is, document H at paragraph 15 above.

<sup>62</sup> That is, document H at paragraph 15 above.

<sup>63</sup> That is, Document A at paragraph 15 above.

<sup>64</sup> The notations correspond with the issues raised by the applicant in the letter attached to the amendment application dated 1 August 2018. For ease of reference, I have inserted headings for Requests 1 to 7 into the except from this letter as set out at paragraph 55 above.



	<p><i>The University's records show that upon discovery of the textbook in the restrooms by ... Groundsperson, [interstate TAFE campus], the textbook was provided to [the Information Officer], [interstate TAFE campus], and was retained by [the Information Officer].</i></p> <p><i>It is unknown if [the applicant] was in possession of the textbook prior to the exam ...</i></p> <p><i>The University's records show that the textbook in question contains [the applicant's] contact details on the inside front cover.</i></p>
3	<p><i>The University's records show that [the Groundsperson] was asked by [the Information Officer] to check the ... toilets however, the toilets were all full so [they] left and came back later. Consequently, the subsequent (immediate) check upon [the applicant's] leaving the toilet was never completed.</i></p> <p><i>The University's records show that [the applicant] was not met by [the Information Officer], [the Educational Manager] or [the Groundsperson] on the way out of the toilet. The University's records show that [the Examination Invigilator] observed [the applicant] leave the toilet.</i></p> <p><i>The University's records show that [the Groundsperson] returned later to search the toilets and found a text book ...</i></p>
4	<p><i>The University's records show there is no signed statement from [the Groundsperson].</i></p> <p><i>The University's records show [the Groundsperson] was asked by [the Information Officer] to check the ... toilets however, the toilets were all full so [they] left and came back later. Consequently, the subsequent (immediate) check upon [the applicant's] leaving the toilet was never completed.</i></p> <p><i>The University's records show that [the Groundsperson] returned later to search the toilets and found a text book ...</i></p>
5	<p><i>The University's records show that [the Groundsperson] was asked by [the Information Officer] to check the ... toilets however, the toilets were all full so [they] left and came back later. Consequently, the subsequent (immediate) check upon [the applicant's] leaving the toilet was never completed.</i></p> <p><i>The University's records show [the Groundsperson] returned later to search the toilets and found a text book...</i></p> <p><i>The University's records show that [the Information Officer] inferred [the Educational Manager] completed part of the Alleged Academic Misconduct and Incident Report Form ...</i></p>
6	<p><i>The University's records show that the second signatory on the Alleged Academic Misconduct and Incident Report Form ... is that of ... Educational Manager, [interstate TAFE campus].</i></p>
7	<p><i>The University's records show that [the applicant] was not seen with the textbook during the exam, or seen to be in possession of the textbook throughout the exam.</i></p> <p><i>The University's records show that upon discovery of the textbook in the restrooms ... Groundsperson, [interstate TAFE campus], the textbook was provided to [the Information Officer], [interstate TAFE campus], and was retained by [the Information Officer].</i></p> <p><i>It is unknown if [the applicant] was in possession of the textbook prior to the exam...</i></p> <p><i>The University's records show that the textbook in question contains [the applicant's] contact details on the inside front cover.</i></p>

57. In seeking internal and external reviews, the applicant contended<sup>65</sup> that the notations added to the Academic Appeals file by the University are general statements and the applicant is appealing the University's decision 'not to write my own words and documentary evidence'. As set out at paragraph 14 above, my jurisdiction on external review does not extend to review of the University's decision to permit amendment of the

<sup>65</sup> Internal review application dated 5 September 2018 and external review application dated 25 September 2018.

applicant's personal information within the Academic Appeals file, nor the resulting amendments made by notation. I am, however, able to consider the University's internal review decision that it was *'not satisfied the personal information not amended by notation by [the original decision] that you are seeking to amend is inaccurate, incomplete, out of date or misleading'*<sup>66</sup> given this decision is, in effect, a decision refusing to amend further information in the relevant documents.

58. The applicant's position is that *'there is nothing which connects [them] to physically being in contact with the textbook on ..., the day of the exam'*.<sup>67</sup> Given this, it is my understanding that the applicant considers that Documents A, C, G and H are inaccurate or misleading to the extent that they connect the applicant with the textbook. The information of concern to the applicant regarding the textbook appears to be as follows:
- Document A – the word *'text book'* entered into a box following the question *'[w]hat materials were confiscated (if applicable)'* and the statement *'[s]tudent emerged from toilet as I got there. Subsequent check of the toilet found the accompanying text book'* on a form completed by the Examination Invigilator.
  - Document C – the statement *'[s]tudent was in the toilet for approx. 20 minutes. Found with textbook and handwritten notes'* on a report created approximately two weeks after the examination.
  - Document G – transcripts of interviews of the Information Officer and Examination Invigilator by the Academic Appeals Committee.
  - Document H – findings of fact regarding the textbook made by the Academic Appeals Committee, as set out in its Statement of Reasons.
59. Documents A and G are the recollections, opinions or understanding of matters held by the Information Officer and Examination Invigilator at the time that those Documents were created. There is nothing before me to suggest that these individuals did not hold the recollections, opinions or understandings at that time, nor that those recollections, opinions or understandings were not accurately recorded in Documents A and G.
60. Document C appears to be a report generated on the basis of the recollections, opinions or understanding of matters held by the Information Officer and Examination Invigilator. It appears to reflect the University's position regarding the matter at the time that it was created. Again, there is nothing before me to suggest that the position recorded in Document C was not the University's position at that time, nor that there were any inaccuracies in the recording of the University's position.
61. Finally, Document H comprises findings of fact by the Academic Appeals Committee. On the material before me, I am satisfied that these findings of fact were, in fact, made and that they are accurately recorded.
62. As noted previously, the Remaining Documents detail matters in contention between the applicant and the University regarding the textbook, and consequently it is unsurprising that the applicant disagrees with the details recorded in the Remaining Documents. However, such disagreement does not render the information which the applicant seeks to amend within the Remaining Documents to be inaccurate, incomplete, out of date and misleading for the purpose of the amendment provisions in the IP Act. The applicant's submissions have not raised any objective evidence which would demonstrate, on the balance of probabilities, that any information contained within the Remaining Documents is inaccurate, incomplete, out of date or misleading. Whilst I acknowledge the applicant's views regarding the textbook as set out in the amendment application, I am satisfied that

<sup>66</sup> At page 2 of internal review decision dated 24 September 2018.

<sup>67</sup> Final paragraph of amendment application, set out at paragraph 55 above.

the various parties actually held and accurately recorded their recollections, opinions, understanding and position based on their consideration of the information before them.

63. Again, I do not consider that the statements made in the Remaining Documents could reasonably be said to cause any of the detriments described in paragraph 42 above. I am further satisfied that inclusion of the applicant's requested notations at paragraph 55 above is not necessary to ensure that the Remaining Documents are up to date and complete.
64. On the basis of the above, I therefore find that, in relation to the amendment application the subject of external review 314177, the information sought to be amended in the Remaining Documents is not inaccurate, incomplete, out of date or misleading. Therefore, the University was entitled to refuse the applicant's amendment request.
65. In view of my finding at paragraph 64 above, it is not necessary for me to consider the amendment request for this information further. However, for completeness, I have addressed the discretion to amend information at paragraphs 66 to 71 below.

### **Should the discretion to amend the Photographs and Documents be exercised?**

66. No, for the reasons that follow.
67. As stated at paragraph 21 above, even where there is evidence to support an applicant's contention that information is inaccurate, incomplete, out of date or misleading, this would merely enliven my discretion to consider the requested amendment. There are a number of considerations a decision-maker may appropriately take into account in determining whether or not to exercise the discretion to amend a record of information.
68. In *3DT2GH*, the Assistant Information Commissioner noted that the Information Commissioner has previously recognised the relevance of the following criteria when considering whether the discretion should be exercised:<sup>68</sup>
  - (a) *the character of the record, in particular whether it purports to be an objective recording of purely factual material or whether it merely purports to be the record of an opinion/report of one person;*
  - (b) *whether the record serves a continuing purpose;*
  - (c) *whether retention of the record in unamended form may serve a historic purpose;*
  - (d) *whether the record is dated;*
  - (e) *whether amendment is being sought as a de facto means of reviewing another administrative decision;*
  - (f) *the extent to which access to the record is restricted;*
  - (g) *whether creation of the record or any of its contents was induced by malice*
  - (h) *whether the record is part of a group of records and, if so, whether the other records modify the impact of the record in dispute.*

69. Further, in considering whether to exercise the discretion to refuse to amend information, a decision-maker may take into account the fact that it is not the purpose of the amendment provisions to:

- re-write history,<sup>69</sup> as this destroys the integrity of the record-keeping process;

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<sup>68</sup> As noted in, for example, *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008) (**Shaw**) at [41], quoting with approval the decision of Deputy President Todd of the Administrative Appeals Tribunal in *Re Cox and Department of Defence* (1990) 20 ALD 499 at 502-503.

<sup>69</sup> *DenHollander and Department of Defence* [2002] AATA 866 at [96].

- determine disputed questions of opinion (including expert opinion), when that opinion was actually held and accurately entered in the official record;<sup>70</sup>
- re-write a document in words other than the author's;<sup>71</sup>
- review the merits or validity of official action;<sup>72</sup>
- correct any perceived deficiencies in the work undertaken by agencies or re-investigating matters.<sup>73</sup>

70. This approach continues to be adopted in decisions of the Information Commissioner.<sup>74</sup>

71. Even if all of the requirements for amendment of the Photographs and Documents in accordance with the applicant's application were otherwise met, I am satisfied that the discretion to refuse amendment could be exercised in this case.

72. I acknowledge that the applicant disputes various matters relevant to alleged academic misconduct. However, the amendments by notation the applicant would seek to make would have the effect of altering the record of matters then in dispute, including the views and understandings relevant to issues in dispute between the applicant and the University as recorded by University and staff of the interstate TAFE campus. The purpose of the amendment provisions of the IP Act is not to allow the University's record of the alleged academic misconduct against the applicant to be distorted by artificially overlaying the views of an individual on the views genuinely held, recorded and conveyed by University and staff of the interstate TAFE campus. Permitting the requested amendments by notation in this circumstance would, in my view, destroy the integrity of the relevant public records and amount to a re-writing of history.

## Conclusion

73. I am satisfied, for the reasons stated above, that each of the applicant's amendment requests can be refused under section 72(1)(a) of the IP Act.

## DECISION

74. For the reasons set out above, I affirm the University's three internal review decisions to refuse the applicant's requested amendments under section 72(1)(a) of the IP Act.

75. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**A Rickard**  
**Assistant Information Commissioner**

**Date: 11 April 2019**

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<sup>70</sup> *Crewdson* at [34].

<sup>71</sup> *Re Traynor and Melbourne & Metropolitan Board of Works* (1987) 2 VAR 186, 190. In this decision of the Administrative Appeals Tribunal (Vic), Member Galvin considered the requirements of section 39 of the *Freedom of Information Act 1982* (Cth), which at that time was substantially similar to section 53 of the FOI Act.

<sup>72</sup> *Crewdson* at [24].

<sup>73</sup> *Shaw* at [57].

<sup>74</sup> For example, see *U5OR8D and Department of Housing and Public Works* [2018] QICmr 19 (2 May 2018) and *G78QTW and Department of Education* [2019] QICmr 5 (20 February 2019).

## APPENDIX

### Significant procedural steps

Date	Event
28 August 2018	OIC received the applicant's application for external review 314124.
4 September 2018	OIC received the applicant's application for external review 314140.
14 September 2018	OIC received information relevant to the applications from the University in relation to external reviews 314124 and 314140.
25 September 2018	OIC received the applicant's application for external review 314177.
10 October 2018	OIC received a submission from the applicant.
11 October 2018	OIC asked the University whether it would consider attaching a document to the applicant's Academic Appeals file as a notation. OIC received information relevant to the application from the University in relation to external review 314177.
18 October 2018	OIC received a submission from the applicant.
22 October 2018	OIC accepted external reviews 314124, 314140 and 314177. OIC discussed attaching a document to the applicant's Academic Appeals file as a notation, as a means of informally resolving the reviews. The applicant advised OIC that they wished to proceed to a decision to finalise these reviews.
11 November 2018	OIC received a submission from the applicant.
7 December 2018	OIC conveyed a preliminary view to the applicant.
8 December 2018	OIC received a submission from the applicant.
12 December 2018	OIC wrote to the applicant clarifying issues raised in the applicant's submission dated 8 December 2018. OIC received a further submission from the applicant.