



## Decision and Reasons for Decision

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Citation:	<i>E42 and The University of Queensland</i> [2020] QICmr 74 (17 December 2020)
Application Number:	314907
Applicant:	E42
Respondent:	The University of Queensland
Decision Date:	17 December 2020
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION</b> - information outside of the subject matter and date range of the access application - whether deleted information is irrelevant to the terms of the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT</b> - application for all documents related to a public interest disclosure lodged by the applicant - whether documents sought are prohibited from disclosure by a listed Act - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a), 48, and schedule 3, section 12(1) of the <i>Right to Information Act 2009</i> (Qld) and section 65(1) of the <i>Public Interest Disclosure Act 2010</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENT NONEXISTENT OR UNLOCATABLE</b> - documents about committee meetings - minutes of meetings - applicant contends additional documents should exist - whether the information sought is nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the University of Queensland (**UQ**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to the following three types of documents:<sup>2</sup>

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<sup>1</sup> On 26 July 2019.

<sup>2</sup> Referred to as Part 1 documents, Part 2 documents and Part 3 documents respectively in this decision.

[T]he final submission by [the Principal Investigator], UQ Integrity and Investigations Unit to the Chief Human Resources Officer ...

[The Chief Human Resources Officer's] response to UQ Integrity and Investigations Unit where it is stated that [the Chief Human Resources Officer] agreed with the findings of the report'

The minutes of any meetings and/or interviews held and any other documentation associated with this matter.

2. In response to the application, UQ located 3183 pages<sup>3</sup> (**Original Documents**) and decided<sup>4</sup> to fully release 238 pages, partially release 489 pages, and refuse access to the remainder.
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of UQ's decision.<sup>5</sup> Further information was located and released to the applicant during the review.
4. For the reasons set out below, I affirm UQ's decision and find that the information remaining in issue may be deleted on the basis it is irrelevant information;<sup>6</sup> or access may be refused on the ground it is exempt information, namely information prohibited from disclosure by the *Public Interest Disclosure Act 2010* (Qld) (**PID Act**).<sup>7</sup> I also find that access to further information responding to the application may be refused on the basis it is nonexistent or unlocatable.<sup>8</sup>

## Background

5. The applicant made a disclosure under the PID Act about alleged wrongdoing at UQ. UQ's Integrity and Investigations Unit (**IU**) investigated the allegations. The resulting report of the IU's Principal Investigator was referred to the Chief Human Resources Officer for consideration. The Chief Human Resources Officer agreed with the report's findings and conclusion that the allegations were not substantiated. The applicant was then notified of this outcome.
6. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

## Reviewable decision

7. The decision under review is UQ's decision dated 16 September 2019.

## Issues for determination

8. The issues for determination in this external review are:
  - whether information may be deleted on the basis it is irrelevant to the access application<sup>9</sup>
  - whether access to information may be refused on the ground that it is exempt information, namely information prohibited from disclosure by the PID Act;<sup>10</sup> and

<sup>3</sup> 262 pages of Part 1 documents; 3 pages of Part 2 documents; and 2918 pages of Part 3 documents.

<sup>4</sup> On 16 September 2019.

<sup>5</sup> On 14 October 2019.

<sup>6</sup> Section 88 of the IP Act.

<sup>7</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>8</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

<sup>9</sup> Section 88 of the IP Act.

<sup>10</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the RTI Act.

- whether UQ has undertaken all reasonable steps to locate documents relevant to the access application, and access to further documents may be refused on the ground that they are nonexistent or unlocatable.<sup>11</sup>

### Evidence considered

9. The applicant provided written submissions to OIC supporting his case. While I have carefully reviewed all of those submissions, the alleged conduct that prompted the applicant's disclosure under the PID Act and the manner in which UQ dealt with that disclosure are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act. Accordingly, in reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination on external review.
10. In reaching my decision, I have had regard to these submissions, UQ's submissions and the evidence, legislation and other material referred to throughout these reasons (including footnotes and Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>12</sup> particularly the right to seek and receive information as recognised in section 21 of the HR Act. I consider that a decision-maker will, when observing and applying the law prescribed in the IP and RTI Acts, be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act.<sup>13</sup> I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between the Victorian equivalents of Queensland's IP and RTI Acts and HR Act: '*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>14</sup>

### Information in issue

12. During the external review, I identified that some information<sup>15</sup> was neither exempt information nor contrary to public interest information. UQ accepted my view and released this information to the applicant.<sup>16</sup>
13. UQ located additional documents as a result of conducting further searches and inquiries required by OIC (**Additional Documents**). Some of these documents<sup>17</sup> contain information which I considered to be within the scope of the application and neither exempt information nor contrary to public interest information. UQ accepted my view and released this information to the applicant.<sup>18</sup> The balance of these documents and the entirety of other documents located during the external review<sup>19</sup> are addressed, along with the bulk of the Original Documents remaining in issue, under the headings '*Irrelevant information*' and/or '*Exempt information*' below.

<sup>11</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

<sup>12</sup> Relevant provisions of which commenced on 1 January 2020.

<sup>13</sup> See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>14</sup> XYZ at [573].

<sup>15</sup> Parts of 19 pages (specifically pages 3-9, 11-12, 15-22 and 30-31 of Part 1 documents) in the Original Documents and a recording of an interview with the applicant on 1 March 2019 located by UQ during the review.

<sup>16</sup> On 22 June 2020.

<sup>17</sup> That is, the Complaint Action Log and email chains referred to at [51] and [54] respectively below.

<sup>18</sup> On 16 October 2020.

<sup>19</sup> That is, four file notes (all referred to at [54] below and two also referred to at [59] below) and a recording of an interview with another individual (referred to at [57] below).

14. The applicant confirmed '*I was not seeking information that I had already sent to UQ, I did not want the unimportant information that you refer to in your letter for example, mobile telephone numbers, email addresses and signatures*'.<sup>20</sup> I have, therefore, excluded two types of information from consideration in this decision – namely information that the applicant provided to UQ, and information that does not contain any of the applicant's personal information and is wholly personal information of individuals other than the applicant.<sup>21</sup>
15. The remaining **Information in Issue** comprises 2449 full pages, 1 interview recording and 373 part pages.

### **Preliminary issue - expanding scope of application on external review**

16. Before addressing the three issues for determination in this external review, I will address a preliminary issue. The applicant has submitted:<sup>22</sup>

*[OIC] must determine that UQ must release all information to me across all time-frames that are related to the commencement of the period of my employment in December 2012 to the current day.*

17. This submission seeks to significantly expand the terms of the access application (set out at [1] above). However, an access application can only apply to documents in existence on the day the application is received<sup>23</sup> and an applicant cannot expand the scope of their application on external review.<sup>24</sup> Accordingly, this decision only considers documents within the scope of the access application.

### **Irrelevant information**

18. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. 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.
19. 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>25</sup>
20. UQ deleted parts of four pages of the Information in Issue that it considered were not relevant to the scope of the access application. Having carefully reviewed this information:
  - I note that all of the information on three pages<sup>26</sup> and some of the information on the fourth page<sup>27</sup> comprises information that does not relate to UQ's investigation of the applicant's PID—namely, information about file allocation processes unrelated to the applicant and entries in a log recording UQ's actions concerning the applicant but

<sup>20</sup> Original emphasis, by email dated 16 March 2020. This email confirmed earlier comments the applicant made by telephone on 28 November 2019.

<sup>21</sup> Including names and email addresses of private individuals; mobile telephone numbers of UQ employees; leave arrangements of UQ employees; and signatures. Confirmed by email with the applicant on 17 November 2020.

<sup>22</sup> On 26 October 2020.

<sup>23</sup> Section 47(1) of the IP Act.

<sup>24</sup> See *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]; *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013) at [17] to [21]; *Simpson MP and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 29 July 2011) at [11] to [22].

<sup>25</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>26</sup> Page 13 of the Part 3 documents in the Original Documents. and pages 2 and 3 of the Complaint Action Log in the Additional Documents.

<sup>27</sup> Page 1 of the Complaint Action Log in the Additional Documents.

relating to matters other than the PID investigation. Given this information does not relate to UQ's investigation of the applicant's PID, I am satisfied that it is outside the terms of the access application, as set out at [1] above.

- Further, I note that the remaining information on the fourth page<sup>28</sup> comprises entries made in the log after the applicant submitted his access application to UQ. I am satisfied that this information is outside the date range of the access application.<sup>29</sup>
21. On being advised of my view in this regard,<sup>30</sup> the applicant submitted that:<sup>31</sup>
- [OIC's view is] completely unreasonable and support [sic] my assertion that the OIC is subservient to UQ's self interest. OIC are hiding behind interpretations of the legislation by forcing me, a person whose life has been placed in jeopardy numerous times as a direct result of UQ's maladministration, to jump through more hoops by making me submit more applications at a time when my health is severely compromised. This approach places OIC as not being empathetic to my plight doing me a massive disservice. UQ is being assisted by OIC to continue to avoid scrutiny of their processes, investigations, interviews and outcomes.*
22. This submission is misconceived. Given the Information Commissioner's external review functions,<sup>32</sup> external review is merits review – that is, an administrative reconsideration of a case that can be described as 'stepping into the shoes' of the primary decision-maker, to determine what is the correct and preferable decision. Accordingly, OIC is required to consider and apply the legislation—that is, the IP and RTI Acts—when conducting an external review of an access decision.<sup>33</sup> This includes determining whether an agency or Minister is entitled to delete information that is irrelevant to the scope of the access application under section 88 of the IP Act.
23. I have, as set out at [20] above, determined that the parts of the four pages in question are outside the terms or date range of the access application. It follows that I am satisfied that these four part pages are not relevant to the access application. Accordingly, I find that UQ was entitled to delete this information under section 88 of the IP Act.

## Exempt information

### Relevant law

24. Access to a document can be refused to the extent it comprises exempt information.<sup>34</sup> Schedule 3 of the RTI Act sets out various types of exempt information – that is, information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.<sup>35</sup> Relevantly, schedule 3, section 12(1) of the RTI Act provides that information is exempt information if its disclosure is prohibited by a number of listed provisions, including, relevantly, section 65(1) of the PID Act, which provides:

*(1) If a person gains confidential information because of the person's involvement in this Act's administration, the person must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than under subsection (3).*

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<sup>28</sup> Part of page 1 of the Complaint Action Log in the Additional Documents.

<sup>29</sup> Noting that an access application can only apply to documents in existence on the date it is received by the agency – section 47(1) of the IP Act.

<sup>30</sup> On 14 October 2020.

<sup>31</sup> On 26 October 2020.

<sup>32</sup> Section 137 of the IP Act.

<sup>33</sup> Or amendment application.

<sup>34</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act.

<sup>35</sup> Section 48(2) of the RTI Act.

25. The main purpose of the PID Act is to facilitate the disclosure, in the public interest, of information about wrongdoing in the public sector and provide protection from reprisals for persons who make public interest disclosures.<sup>36</sup> Part of that protection lies in section 65(1) of the PID Act which, as set out above, prohibits copying or disclosing '*confidential information*' gained through a person's involvement with the PID Act's administration.
26. Confidential information is defined in section 65(7) as including information about the identity of the person who made the public interest disclosure and about whom the disclosure is made. It also covers the information disclosed by the public interest disclosure, information about a person's personal affairs and information that, if disclosed, may cause detriment to a person.
27. Section 65(2) of the PID Act provides that a person gains confidential information because of their involvement in the PID Act's administration '[i]f [the] *person gains information because the person is a public officer who receives a public interest disclosure for a proper authority*'.
28. Section 65(3) of the PID Act sets out certain exceptions to the prohibition in section 65(1) of the PID Act including, for example, to discharge functions under the PID Act or another Act, for a proceeding in a court or tribunal, or if the written consent of relevant persons has been obtained.
29. Schedule 3, section 12(2) of the RTI Act also sets out an exception, providing that information is not exempt information under schedule 3, section 12(1), if it is only personal information of the applicant.
30. In summary, to be protected information under the PID Act and thus exempt from disclosure under the RTI Act, the remaining Information in Issue (**Remaining Information**) must:<sup>37</sup>
  - be confidential information as defined in section 65(7) of the PID Act
  - have been received by a person involved in the PID Act's administration as explained in section 65(2) of the PID Act
  - not be subject to an exception listed in section 65(3) of the PID Act; and
  - not be subject to the exception listed in schedule 3, section 12(2) of the RTI Act.

### **Findings**

31. I have reviewed the Remaining Information – that is, 2449 full pages, 1 interview recording and 371 part pages.<sup>38</sup> While the IP Act prevents me from disclosing or revealing any of the Remaining Information,<sup>39</sup> I can confirm that it includes an investigation report, an interview recording with an individual other than the applicant and other documents related to UQ's investigation of the applicant's PID. I can also confirm that the Remaining Information generally comprises either the shared personal information of the applicant and other persons (whose identity I cannot reveal, as this would reveal information claimed to be exempt<sup>40</sup>) or information that is solely that of the other persons.

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<sup>36</sup> See preamble to PID Act.

<sup>37</sup> *U04ENJ and Queensland Health* (Unreported, Queensland Information Commissioner, 9 March 2012) (*U04ENJ*) at [14].

<sup>38</sup> Two pages (pages 1 and 2 of the Complaint Action Log in the Additional Documents) had partial redactions on multiple grounds – that is, irrelevant deletions and PID exempt refusals. This accounts for the disparity in part pages refused. Further, the part page count includes the partial redactions erroneously marked as '*CTPI*' on pages 4, 5 and 6 of the version of the Complaint Action Log which UQ released to the applicant on 16 October 2020.

<sup>39</sup> Section 121(3) of the IP Act.

<sup>40</sup> Again, section 121(3) of the IP Act.

32. Noting that confidential information, as defined in section 65(7) of the PID Act, includes information about persons against whom a public interest disclosure has been made, information about individuals' personal affairs, and information that may cause detriment to a person, as well as information about the person who made the disclosure and the disclosure itself, I am satisfied that the Remaining Information is confidential information for the purpose of section 65 of the PID Act.<sup>41</sup>
33. I am also satisfied that the Remaining Information comprises or records information gained by UQ staff because of their involvement in the PID Act's administration, as provided in section 65(2) of the PID Act. Further, I am satisfied that none of the circumstances listed in section 65(3) of the PID Act apply to the Remaining Information.
34. It follows that I am satisfied that the Remaining Information is subject to the prohibition against disclosure in section 65(1) of the PID Act.
35. Such information qualifies as exempt information under schedule 3, section 12(1) of the RTI Act unless it falls within the exception in schedule 3, section 12(2). This exception applies when information is '*only personal information of the applicant*'. I have therefore considered whether the Remaining Information is '*only personal information of the applicant*'.<sup>42</sup>
36. As noted at [31], some of the Remaining Information is solely information about other persons, not the applicant. The schedule 3, section 12(2) exception cannot apply to such information.
37. The rest of the Remaining Information is the shared personal information of the applicant and other persons. Having carefully considered this information, I consider that the applicant's personal information is interwoven with the personal information of other persons to the extent that it cannot be separated.<sup>43</sup> In these circumstances, I am satisfied that severance or deletion of information about other persons from the shared personal information under section 89 of the IP Act is not possible; and, therefore, the schedule 3, section 12(2) exception cannot apply to the shared personal information.<sup>44</sup>
38. In these circumstances, I am satisfied that the entirety of the Remaining Information is exempt information.
39. I acknowledge the applicant's extensive submissions to OIC, in writing and by telephone, outlining his view on disclosure with reference to various public interest considerations including accountability and transparency.<sup>45</sup> I also note the applicant's submissions that:

*I believe that I have an unconditional right to access the [PID exempt information].<sup>46</sup>*

and

*OIC needs to decide if they are part of the problem or part of the solution in relation to this matter. ... OIC has the authority to release this information to me....*

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<sup>41</sup> UQ accepted my view that some information in the Complaints Information Log did **not** fall within the definition of confidential information in section 65(7) of the PID Act, and this information was among the information released to the applicant on 16 October 2020.

<sup>42</sup> UQ accepted my view that some information (namely pages 3-9, 11-12, 15-22 and 30-31 of the Part 1 documents in the Original Documents and a recording of an interview with the applicant on 1 March 2019 located by UQ during the review) was solely about the applicant and released this information to the applicant on 22 June 2020.

<sup>43</sup> *U04ENJ* at [25] to [27].

<sup>44</sup> *SYT and Department of Health* (Unreported, Queensland Information Commissioner, 15 March 2010) at [33].

<sup>45</sup> Received on 14 October 2019, 23 January 2020, 16 March 2020, 22 June 2020 and 26 October 2020.

<sup>46</sup> Received on 23 January 2020.

*The first step in this process is for OIC to step-up and display some moral fibre which to date has been lacking. They must determine that UQ must release all information to me ...*<sup>47</sup>

40. While the IP Act confers a right to access documents of an agency on an individual to the extent the documents contain that individual's personal information,<sup>48</sup> this right is not, as the applicant has asserted, unconditional. Rather, the right applies '*unless, on balance, it is contrary to the public interest to give the access.*'<sup>49</sup> Relevantly, as noted at [24] above, Parliament has considered that disclosure of exempt information, would, on balance, be contrary to the public interest.<sup>50</sup> Consequently, as part of conducting merits review, as mentioned at [22] above, the question of whether the Remaining Information is exempt information arises for consideration.
41. The applicant's submissions to OIC were general in nature. They have not addressed the application of schedule 3, section 12 of the RTI Act and section 65 of the PID Act to the Remaining Information. Rather, the applicant has raised public interest considerations in favour of disclosure. However, given Parliament considers that disclosure of exempt information is, on balance, contrary to the public interest, OIC cannot take into account further public interest considerations or an applicant's reasons for seeking access to information.
42. The applicant has also suggested that OIC has the authority to release the Remaining Information to him. However, while an agency may decide to release information despite it qualifying as exempt information,<sup>51</sup> the Information Commissioner cannot do so.<sup>52</sup>
43. Accordingly, I find that access to the Remaining Information may be refused on the ground it is exempt information, namely information prohibited from disclosure by section 65(1) of the PID Act.<sup>53</sup>

## Sufficiency of search

### Relevant law

44. Another ground for refusing access is if the document is nonexistent or unlocatable.<sup>54</sup>
45. A document is *nonexistent*<sup>55</sup> if reasonable grounds that the document does not exist are satisfied. In making this determination, regard should be had to a number of key factors including:<sup>56</sup>
  - the administrative arrangements of government
  - the agency structure
  - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)

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<sup>47</sup> Applicant submission received on 26 October 2020. This submission goes on to refer to information extending beyond the scope of the applicant's access application. The applicant's attempt to expand scope on external review has been addressed at [16] to [17] above.

<sup>48</sup> Section 40 of the IP Act.

<sup>49</sup> Section 3(1)(b) of the IP Act.

<sup>50</sup> Section 48(2) of the RTI Act.

<sup>51</sup> Section 48(3) of the RTI Act.

<sup>52</sup> Section 121 of the IP Act.

<sup>53</sup> Section 67(1) of the IP Act and section 47(3)(a) and 48 and schedule 3, section 12(1) of the RTI Act.

<sup>54</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

<sup>55</sup> Section 52(1)(a) of the RTI Act.

<sup>56</sup> *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of which are replicated in section 52 of the RTI Act; and *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19].



- 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 the request relates to.
46. When proper consideration is given to relevant factors, it may be unnecessary for searches to be conducted to establish that a document does not exist. However, if an agency or Minister relies on searches to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the requested documents.<sup>57</sup>
47. A document is *unlocatable*<sup>58</sup> if reasonable grounds are satisfied that the requested document has been or should be in the agency's possession; and the agency has taken all reasonable steps to find the document and it cannot be located. In making this determination, regard should again be had to the circumstances of the case and the key factors.<sup>59</sup>

### **Findings**

48. During the external review, the applicant submitted<sup>60</sup> that UQ had not located all relevant documents. Specifically, the applicant identified references to Complaint Management Committee (**CMC**) meetings in released portions of the Original Documents and queried the absence of meeting minutes and other documents.<sup>61</sup> Further, the applicant submitted that particular documents attached to entries in a Complaint Action Log had not been located.<sup>62</sup>

#### **a) CMC minutes and other documents associated with the matter**

49. I requested<sup>63</sup> that UQ conduct searches for minutes of CMC meetings in which the applicant's PID was discussed.<sup>64</sup> In response, the Associate Director of UQ's IIU advised that the CMC does not record minutes as they are not required, and provided OIC with a copy of the CMC's terms of reference in support of this submission.<sup>65</sup>
50. The terms of reference state that the CMC is the primary decision-making body for managing serious complaints received by UQ. They also state that the CMC takes steps including reviewing and discussing new complaints, referring complaints externally and internally, and discussing updates on existing complaints at fortnightly meetings. I considered that it was likely that the CMC would produce some records when taking these steps and fulfilling its role regarding serious complaints. Accordingly, I requested that UQ conduct further searches for documents—not limited to minutes—of the CMC referring to the applicant and the management or investigation of his PID.<sup>66</sup> I also requested that UQ complete a search certificate noting areas searched, by whom, and search terms used.
51. In response,<sup>67</sup> UQ confirmed that no agendas or minutes for CMC meetings were held by the Provost, who chaired the meetings. The Associate Director of UQ's IIU explained that *[t]he documents provided to the [CMC] are in the form of print outs from our master*

<sup>57</sup> PDE at [38].

<sup>58</sup> Section 52(1)(b) of the RTI Act.

<sup>59</sup> Pryor at [20] to [21].

<sup>60</sup> On 16 March 2020, 7 April 2020 and 26 October 2020.

<sup>61</sup> On 16 March 2020 and 7 April 2020.

<sup>62</sup> On 26 October 2020.

<sup>63</sup> Under section 115(1) of the IP Act.

<sup>64</sup> On 20 April 2020.

<sup>65</sup> UQ's email to OIC dated 24 April 2020.

<sup>66</sup> On 14 May 2020. I asked that UQ complete a search certificate noting areas searched, by whom, and search terms used.

<sup>67</sup> On 23 June 2020.

file (spreadsheet) which lists all matters under investigation and their status'. UQ provided OIC with an extract from this master file (spreadsheet). The extract consists of the entries in the master file (spreadsheet) that log actions taken regarding the applicant's PID (**Complaint Action Log**). Where relevant, the entries have documents relating to the applicant's PID attached to them.

52. Following receipt of UQ's initial submission,<sup>68</sup> discussions with UQ<sup>69</sup> resulted in a large component of the Complaint Action Log being released to the applicant.<sup>70</sup>
53. I reiterated my request that UQ provide OIC a completed search certificate,<sup>71</sup> in order to obtain information sufficient to determine whether UQ had taken all reasonable steps to locate the documents requested at Part 3 of the applicant's access application – that is, *'the minutes of any meetings and/or interviews held and any other documentation associated with this matter'*. In addition to the completed search certificate, I specifically sought UQ's confirmation that all documents attached to entries in the Complaint Action Log had been located by UQ.
54. UQ provided an incomplete search certificate<sup>72</sup> and contended that my search requests were predicated on a broader than appropriate interpretation of the access application's scope.<sup>73</sup> Nevertheless, the searches outlined in UQ's response proceeded on the basis of my interpretation of scope<sup>74</sup> and UQ responded to my specific request about documents attached to entries in the Complaint Action Log as follows:
  - UQ provided copies of four additional file notes<sup>75</sup> located as a result of further searches. These are addressed under the heading *'Exempt information'* above.
  - UQ also provided copies of a number of email chains.<sup>76</sup> UQ had located these while processing the access application but did not address them in its decision because it had considered that they were outside the scope of the access application. After discussions,<sup>77</sup> UQ accepted my view that some email chains were in scope<sup>78</sup> and could be released to the applicant<sup>79</sup> and did so.<sup>80</sup>
  - Otherwise, UQ submitted:<sup>81</sup>

<sup>68</sup> On 23 June 2020, in which UQ claimed that the entirety of the Complaint Action Log was exempt information.

<sup>69</sup> On 29 June 2020, 3 July 2020, 20 July 2020, 10 August 2020, 21 September 2020 and 12 October 2020.

<sup>70</sup> On 16 October 2020. The Complaint Action Log was released minus portions of information which are addressed under the headings *'Irrelevant information'* or *'Exempt information'* above, and portions of information which are wholly the personal information of individuals other than the applicant which, as noted at [14] above, the applicant has excluded from further consideration in this review.

<sup>71</sup> Telephone call and email on 29 June 2020.

<sup>72</sup> On 3 July 2020. UQ did not complete the second page of the search certificate outlining the areas searched, by whom, when, and search terms used.

<sup>73</sup> Specifically, UQ contended that my interpretation of the phrase *'any other documentation associated with this matter'* in Part 3 of the applicant's access application was too broad. I considered that the matter referred to in this phrase was UQ's investigation of the applicant's PID; however, UQ suggested that the matter referred to in this phrase should be confined to CMC minutes and/or interviews relevant to UQ's decision.

<sup>74</sup> As had UQ's searches prior to its decision, which located the Original Documents, and its earlier searches during the review, which located the recording of an interview with the applicant on 1 March 2019. On 21 September 2020, UQ expressly confirmed that it accepted my view that Part 3 of the access application included a request for any other documentation associated with UQ's investigation of the applicant's PID.

<sup>75</sup> Dated 11 February 2019 at 11:30am, 14 February 2019 at 1:30pm, 19 February 2019 at 2:00pm and 14 March 2019 (no time specified) and together constituting a 12 page pdf document received from UQ on 9 July 2020.

<sup>76</sup> Together constituting a 43 page pdf document received from UQ on 9 July 2020.

<sup>77</sup> On 10 August 2020, 21 September 2020 and 12 October 2020.

<sup>78</sup> That is, pages 4-17 and 32-43 of the 43 page pdf document. It was my view that pages 1-3 were irrelevant to the application, and pages 18-31 were a duplicate of pages 4-17.

<sup>79</sup> Except for 3 part pages which are addressed under the heading *'Exempt information'* above and mobile telephone numbers which, as noted at [14] above, the applicant has excluded from further consideration in this review.

<sup>80</sup> On 16 October 2020.

<sup>81</sup> On 3 July 2020.

*The [IIU] investigated [the applicant's] complaint about maladministration and the investigation report was referred to the Chief Human Resources Officer for consideration. I consider it was reasonable to expect documents to be held in these areas only and it would be unreasonable to search other areas of the University.*

and

*[a]part from the above documents, I am of the view that all other documents were considered in the original application. On this point, I note that UQ considered nearly 3,000 pages of emails from both the Integrity and Investigations Unit and Human Resources and you have a copy of these documents on file.'*

55. While UQ provided additional documents and general advice regarding its searches of the work units, it did not state what information management systems were searched, who conducted the searches, or the search terms used. Consequently, I again requested that UQ provide a completed search certificate.<sup>82</sup>
56. UQ observed<sup>83</sup> that staff turnover had made it difficult to identify the extent of its initial searches, objected to providing a completed search certificate, and contended that requiring an agency to keep records of the searches undertaken by it in response to access applications is an unnecessary imposition, and not a requirement of the RTI and IP Acts.<sup>84</sup> Despite this, UQ provided a comprehensive submission regarding the nature and extent of its searches as follows:<sup>85</sup>

*In relation to the searches carried out in the Integrity and Investigations Unit, the Associate Director Integrity and Investigations Unit has advised:*

- (a) The Integrity and Investigations Unit has exhausted all avenues of inquiry and searches for any responsive documents. [The Principal Investigator], who is no longer employed at UQ, conducted the initial searches last year and then I did it again in 2020.*
- (b) The Integrity and Investigations Unit operates a Complaints Management System (CMS) where each case is entered and from which a unique case number is generated. CMS acts as both a running log and a management tool. We provide updates to it so that when reporting is required, we are providing accurate updates. We add important documents to CMS so that searches can be conducted quickly when required.*
- (c) The bulk of the documents associated with an individual case however are stored in a folder within our secure (password protected) T:drive.*
- (d) So there are only two places where documents exist and what exists in CMS exists in the T:drive.*
- (e) When we conduct a search for documents we look straight away at the relevant file, both in the T:drive and CMS, there are no other places.*

...

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<sup>82</sup> On 9 July 2020.

<sup>83</sup> On 10 July 2020.

<sup>84</sup> On 10 August 2020, I confirmed to UQ that, while the RTI and IP Acts do not expressly require that agency staff keep records of their searches, OIC is unlikely to be able to find that all reasonable searches have been conducted without such information, and is therefore unlikely to be able to find that a certain document raised by an applicant may be refused on the ground that it is nonexistent or unlocatable (except in circumstances where the agency can explain why a document is nonexistent rather than relying on searches to demonstrate this). Given this, keeping records of searches is generally a practical, if not express, requirement of the two Acts. I also confirmed that OIC cannot simply accept the agency's assurance that all relevant searches have been conducted, or that a particular staff member who no longer works for the agency would have conducted all such searches. Rather – as occurred in this review, once UQ provided OIC with a sufficient level of detail regarding its searches – it is necessary that OIC consider the nature and extent of the searches undertaken. Accordingly, it is prudent that agencies keep sufficient records of their searches to be able to explain them to OIC, regardless of staffing changes. Further, I confirmed that, while OIC accepts submissions about an agency's searches in any form, OIC generally asks that the agency complete a search certificate to elicit a reasonable level of detail about the nature and extent of an agency's searches in an efficient manner.

<sup>85</sup> On 20 July 2020.

*In relation to searches carried out in the Human Resources Division, [a Senior Workplace Relations Consultant] coordinated the searches but was not the only person in the Human Resources Division who performed the searches. [The Senior Workplace Relations Consultant] has advised:*

- (g) I was only one of several HR staff who undertook searches to identify any relevant documents.*
- (h) From HR, [the Chief Human Resources Officer]; [the Deputy Director of Human Resources]; [the Central HR Relationship Manager]; and me, were involved in carrying out searches. This included searching of respective email accounts and files maintained (on secure HR network drives) so as to identify and locate documents within the scope and date range of the request.*
- (i) The reason for these search locations was because the HR staff abovementioned were involved with the matters identified in the document request, and the documents requested are ordinarily located on email accounts or secure HR network files.*
- (j) The results of the searches carried out in HR were provided to the RTI & Privacy Office by way of a USB on or about 22 August 2019.*

57. In terms of the extent of information provided to and generated by CMC meetings, UQ confirmed that:<sup>86</sup>

- i) The only documents provided to the CMC are print outs from UQ's master file (spreadsheet) which lists all matters under investigation and their status (Complaint Action Log); and*
- ii) No minutes, agendas or other documents recording the CMC's consideration of, and decisions, are created or used by the CMC.*

#### **b) Documents attached to certain Complaint Action Log entries**

58. On receiving a copy of the Complaint Action Log referred to at [13] above, the applicant raised concerns about documents attached to certain entries which had not been located.<sup>87</sup> I am satisfied that one document<sup>88</sup> is an email from the applicant to UQ – and is therefore a document that the applicant excluded from further consideration in this review (as noted at [14] above).

59. I am also satisfied that the remaining documents raised by the applicant either form part of the Original Documents<sup>89</sup> or have been located and provided to OIC as a result of searches conducted by UQ on external review.<sup>90</sup> In either instance, I am satisfied that these documents are exempt information, namely information prohibited from disclosure by the PID Act.<sup>91</sup> They form part of the Remaining Information addressed under the heading 'Exempt information' above.

#### **Conclusion**

60. I note that, prior to making its decision, UQ located 3183 pages relevant to the access application. I also note that, during the review, UQ located a recording of an interview

<sup>86</sup> On 21 September 2020.

<sup>87</sup> Submission dated 26 October 2020.

<sup>88</sup> The document 'Issue identified during [applicant's] investigation (1).msg' referred to in an entry in the Complaint Action Log on 15 May 2019 (not 16 May 2019, as incorrectly stated in the applicant's submission dated 26 October 2020).

<sup>89</sup> The document 'RE [applicant] (Frm ... 4).msg' referred to in an entry in the Complaint Action Log on 15 March 2019.

<sup>90</sup> The 'Interview summary to be completed' referred to in an entry in the Complaint Action Log on 19 February 2019 at 2:00pm and 'Corrupt Conduct Assessment - ... - 2019-003.pdf' referred to in an entry in the Complaint Action Log on 14 March 2019 comprise two of the four file notes received from UQ on 9 July 2020. UQ provided copies of these to OIC on 30 October 2020, along with the 'Audio copy attached' referred to in the same entry in the Complaint Action Log on 19 February 2019. Note – although received by OIC twice, the 'Interview summary to be completed' and 'Corrupt Conduct Assessment - ... - 2019-003.pdf' documents are each only counted once in the 2449 full pages which form part of the Information in Issue.

<sup>91</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the RTI Act.

with the applicant mentioned in the Original Documents<sup>92</sup> and released this to the applicant.<sup>93</sup> I further note that, in terms of the specific concerns regarding the sufficiency of UQ's searches raised by the applicant:

- a) UQ has located additional CMC documents and other documents associated with UQ's investigation of the applicant's PID on external review. Some of these (namely, the Complaint Action Log and email chains) have been released to the applicant, except for parts of them which the applicant has excluded from further consideration, parts that are irrelevant to or outside the scope of the access application, and parts that may be refused on the ground that they are exempt information. Otherwise, the located documents (specifically, the four file notes, two of which were also considered in terms of the documents mentioned in the Complaint Action Log) form part of the information which I am satisfied is exempt information.
  - b) Further, all of the documents attached to Complaint Action Log entries raised by the applicant have been accounted for. One of the documents is a document that the applicant excluded from further consideration, and the remaining documents have been located and form part of the information which I have found may be refused on the ground that it is exempt information.
61. The documents that have not been located are minutes, agendas and other documents of the CMC and any further '*documentation associated with this matter*' – that is, any other documentation associated with UQ's investigation of the applicant's PID.
  62. In terms of minutes, agendas and other documents of the CMC, I accept UQ's explanation regarding the CMC's processes, and why such documents do not exist, as set out at [57]. I also note that a version of the Complaint Action Log used by the CMC containing all entries regarding the applicant's PID has, as mentioned at [60(a)] been released to the applicant.
  63. In terms of any further documentation associated with UQ's investigation of the applicant's PID, I have considered the totality of UQ's submissions regarding its searches, noting in particular the submissions at [56] above. I have carefully considered the searches conducted by UQ, and its explanation of those searches in its submissions, in light of the factors listed in *PDE* as set out above.<sup>94</sup> I have noted which staff conducted searches before UQ's decision and on external review. I have also noted the information management systems searched and UQ's explanations regarding its record keeping practices, which indicated why these locations, and not others, were searched. The material before me indicates that UQ conducted comprehensive searches in all appropriate locations. Accordingly, I find that UQ has taken all reasonable steps to locate further documents associated with UQ's investigation of the applicant's PID, but they either cannot be located or do not exist.
  64. For these reasons, I find that UQ is entitled to refuse access to minutes, agendas and other documents of the CMC and further documents associated with UQ's investigation of the applicant's PID on the ground that they are nonexistent or unlocatable.<sup>95</sup>

## DECISION

65. I affirm UQ's decision and find that:

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<sup>92</sup> As confirmed in UQ's email dated 24 April 2020.

<sup>93</sup> As confirmed by UQ on 22 June 2020.

<sup>94</sup> *Pryor* at [21].

<sup>95</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

- four part pages may be deleted under section 88 of the IP Act as they are irrelevant to the access application
  - access to the Remaining Information may be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act, on the ground it comprises exempt information under schedule 3, section 12(1) of the RTI Act; and
  - access to further documents may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act, on the ground they are nonexistent or unlocatable.
66. 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: 17 December 2020**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
14 October 2019	OIC received the application for external review.
17 October 2019	OIC notified the applicant and UQ that the external review application had been received and requested procedural documents from UQ.
31 October 2019	OIC received the procedural documents from UQ.
11 November 2019	OIC notified the applicant and UQ that the external review application had been accepted, and requested the information in issue as well as search records from UQ.
21 November 2019	OIC received the information in issue from UQ.
28 November 2019	OIC discussed the issues on review with the applicant by telephone.
23 January 2020	The applicant provided a submission.
4 March 2020	OIC conveyed a preliminary view to the applicant.
16 March 2020	The applicant provided a submission by email in response to OIC's preliminary view.
20 March 2020	OIC conveyed a preliminary view to UQ.
25 March 2020	OIC discussed the issues on review with UQ by telephone, and requested further information from the applicant in writing.
30 March 2020	UQ provided a submission in response to OIC's preliminary view.
7 April 2020	The applicant provided the information requested by OIC on 25 March 2020 and a further submission.
15 April 2020	OIC requested that the applicant clarify the scope of his application. The applicant confirmed the scope of his application.
20 April 2020	OIC conveyed a preliminary view to UQ, detailing a proposal for informal resolution as well as requesting further searches.
24 April 2020	UQ provided a submission in response to OIC's preliminary view.
14 May 2020	OIC conveyed a further preliminary view to UQ.
1 June 2020	UQ advised OIC that it accepted OIC's preliminary view, and would release further information to the applicant.
11 June 2020	OIC reiterated its request to UQ that further searches be conducted.
12 June 2020	The applicant provided a submission. OIC wrote to the applicant, clarifying some of the matters on review.
22 June 2020	The applicant advised OIC that UQ had not released any documents to the applicant and provided a further submission. OIC made enquiries with UQ about release of the documents to the applicant. UQ advised OIC that it had now released the documents to the applicant.

Date	Event
23 June 2020	UQ provided a submission about the applicant's concerns regarding the released documents, and the information remaining in issue.
29 June 2020	OIC discussed the matters on review with UQ by telephone. OIC requested specific search information and submissions from UQ.
3 July 2020	UQ provided partial search records and a submission.
9 July 2020	OIC wrote to UQ concerning the matters on review and requested submissions and further documents. UQ provided OIC with one part of the requested documents.
10 July 2020	OIC discussed the matters on review with UQ by telephone and UQ made a submission.
20 July 2020	UQ provided a submission.
10 August 2020	OIC confirmed to UQ it accepted the totality of its submissions regarding searches in this review, and conveyed a preliminary view on disclosure of certain information in the Additional Documents.
21 September 2020	UQ responded to OIC's correspondence sent 10 August 2020.
12 October 2020	OIC asked UQ to release some information in the Additional Documents to the applicant by 19 October 2020.
12 October 2020	OIC conveyed a preliminary view to the applicant on all of the categories of refused documents.
16 October 2020	UQ confirmed to OIC that it had released the information in the Additional Documents to the applicant.
26 October 2020	The applicant made a further submission in response to OIC's preliminary view.
28 October 2020	OIC requested copies of certain documents raised by the applicant in his further submissions from UQ.
30 October 2020	UQ provided OIC with copies of the requested documents.
17 November 2020	OIC wrote to the applicant to address his further submission, confirm that the next step would be a formal decision, and confirm the issues that would be considered in the decision.