



Decision and Reasons for Decision

Citation:	<i>S25 and Griffith University [2025] QICmr 2 (10 February 2025)</i>
Application Number:	317741
Applicant:	S25
Respondent:	Griffith University
Decision Date:	10 February 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - whether application which references a policy applies to documents created before the policy came into effect - whether terms of the application can be unilaterally expanded on external review - section 43 of the <i>Information Privacy Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - where agency has explained why documents do not exist - whether there are reasonable grounds to be satisfied the requested documents do not exist - section 67(1) of <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Griffith University (**University**) under the *Information Privacy Act 2009* (Qld) (**IP Act**). His application referred to a particular policy of the University – its ‘*Student Wellbeing and Safety Policy*’ (**Policy**)¹ – and sought access to:
 1. *Person Responsible: Manager, Student integrity*
 - a. *A record of all reported Student Wellbeing and Safety concerns made in relation to me.*
 - b. *All Report a Concern Forms & Fitness to Study Assessment Forms made in relation to me.*
 - c. *A record of all actions and outcomes associated with the process of Student Wellbeing & Safety; where those actions and outcomes pertain to me.*

Timeframe: 2016-2017

¹ When the applicant initially made his application on 6 November 2023, he referred to two policies, being the Policy and the University’s ‘*Student Sexual Assault, Harassment, Bullying and Discrimination Policy*’. In an email to the applicant on 7 December 2023, the University suggested to the applicant that he should limit the scope of his application to ‘*one category of information*’, and that he could lodge other requests for information after his initial request was completed. Subsequently, on 11 December 2023, the applicant amended his application to the terms set out in this paragraph.

2. *Person Responsible: Director, Student Health, Counselling & Wellbeing*

- a. *Any of my health information collected or used by the Director (Student Health, Counselling and Wellbeing) in relation to a level 2 student wellbeing & safety concern.*
- b. *Any action plans created by the Director (Student Health, Counselling and Wellbeing) in relation to a level 2 student wellbeing & safety concern; where those action plans pertain to me.*
- c. *Any referrals made by the Director (Student Health, Counselling and Wellbeing) in relation to a level 2 student wellbeing and safety concern; where those referrals pertain to me.*
- d. *Meta-data associated with the requested documents for this section.*

Timeframe: 2016-2017

3. *Person Responsible: Program Director – [Name of course applicant attended] (2016, 2017 inclusive)*

- a. *Any of my health information collected or used by the Program Director [Name of course applicant attended] (2016, 2017 inclusive)) in relation to a level 3 student wellbeing & safety concern.*
- b. *Any action plans created by the Program Director [Name of course applicant attended] (2016, 2017 inclusive)) in relation to a level 3 student wellbeing & safety concern; where those action plans pertain to me.*
- c. *Any referrals made by the Program Director [Name of course applicant attended] (2016, 2017 inclusive)) in relation to a level 3 student wellbeing and safety concern; where those referrals pertain to me.*
- d. *Meta-data associated with the requested documents in this section.*

Timeframe: 2016-2017

2. The University decided² to refuse to deal with the application on the basis that processing it would be a substantial and unreasonable diversion of the University's resources.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for an external review of the University's decision.
4. For the reasons set out below, I vary the University's decision and find that:
 - the documents raised by the applicant during the external review fall outside the scope of the access application; and
 - access to the documents responding to the access application may be refused on the ground they do not exist.⁴

Background

5. Early in the review, the University informed OIC that it no longer wished to refuse to deal with the applicant's access application on the basis relied on in its decision.⁵ Instead, the University submitted:

Following additional searches and discussions with various staff throughout the University it has been established that the applicant is requesting access to documents that are

² Decision dated 19 December 2023.

³ On 21 December 2023.

⁴ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁵ Letter dated 23 February 2024.

mentioned in the [Policy]. Given the applicant has advised that he has not knowingly been involved in any wellbeing matter, we assume that he has read the [Policy] and then wanted to know whether the [Policy] has been applied to him during his time at the University.

This policy did not come into effect until 2018. As such, the documents the applicant is requesting and the processes he is referring to, did not exist during the time period of the applicant's request. All files relating to the Student Wellbeing and Safety process only exist from 2018. Further, while the University has a Student Wellbeing and Safety team, this team was only established towards the end of 2022.

6. In addition, the University stated that, while the Policy did not exist before 2018, and therefore did not exist when the applicant was a student at the University in 2016 and 2017, it had conducted a general search of the applicant's student file on the 'University's CRM', but there was no information relating to any wellbeing concern.
7. After considering the University's submission, OIC conveyed a preliminary view to the applicant that the information sought by him could be refused on the ground it did not exist. In this regard, OIC stated that, as the Policy had not commenced when he was a student at the University, the requested information had not been created.⁶
8. The applicant does not accept OIC's preliminary view.⁷ He submits that the scope of his application should be interpreted as covering documents created before the Policy came into effect. He also submits that the Policy was, in fact, in effect when he was a student, and therefore further searches for relevant documents should be conducted.

Reviewable decision

9. The decision under review is the University's decision dated 19 December 2023.

Evidence considered

10. Significant procedural steps relating to the external review are set out in the Appendix.
11. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken into account the applicant's submissions to the extent they are relevant to the issue for determination in this review.
12. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁰ '*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*'.¹¹

Issues for determination

⁶ Letter dated 1 March 2024.

⁷ Letter received on 15 March 2024 (incorrectly dated 23 February 2023).

⁸ Section 21(2) of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ *XYZ* at [573].

13. The issues for determination in this review are:

- whether the access application¹² can be taken to include documents created before the Policy came into effect in 2018; and
- whether access to the documents requested in the access application may be refused on the ground that they are nonexistent.

Does the application cover documents created before the Policy commenced in 2018?

Relevant law

14. The IP Act requires that an access application must ‘give sufficient information concerning the document to enable a responsible officer of the agency or Minister to identify the document’.¹³
15. The Information Commissioner has previously recognised¹⁴ that the scope of an access application should not be interpreted legalistically or narrowly – however, balanced against this is the need for agencies to be able to restrict their searches for documents with reference to the terms used in the application. There are sound practical reasons for the documents sought being clearly and unambiguously identified. The terms of an application set the direction and parameters of an agency’s search efforts¹⁵ and are therefore of primary importance where an applicant contends – as is the case in this review – that the agency has not located all relevant documents. For these reasons the scope of an access application may not be unilaterally widened on external review.¹⁶

Findings

16. During the review, OIC informed the applicant that the University had submitted that the Policy did not exist during the timeframe referred to in the access application (that is 2016-2017). The applicant submitted:¹⁷

While it is true that I used [the University] policy documents to identify the types of documents of interest to me, that was not done to impose conditions on the application’s terms of access.

...

Providing these details was not to say that the documents I was requesting must be documents issued directly in connection with a specific version of a particular policy document, it was to help [the University’s] RTI unit understand that the (types of) documents I was requesting are mentioned in connection with particular domains or spheres of responsibility within the [U]niversity.

¹² As referred to at paragraph 1 above.

¹³ Section 43(2)(b) of the IP Act.

¹⁴ *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) (**Fennelly**) at [21].

¹⁵ In this regard, I note the following observations of the Information Commissioner in *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8], when addressing similar considerations under the predecessor to the RTI Act, the *Freedom of Information Act 1992* (Qld) (**FOI Act**): ‘The terms in which an FOI access application is framed set the parameters for an agency’s response under Part 3 of the FOI Act, and in particular set the direction of the agency’s search efforts to locate all documents of the agency which fall within the terms of the FOI access request. The search for the relevant documents is frequently difficult and has to be conducted under tight time constraints. Applicants should assist the process by describing with precision the document or documents to which they seek access’. These observations were cited with approval in *Rolfe and Banana Shire Council* (Unreported, Queensland Information Commissioner, 9 October 2009) at [104], *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].

¹⁶ *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 [21].

¹⁷ Letter received on 15 March 2024 (incorrectly dated 23 February 2023).

17. During the review, I conveyed a preliminary view to the applicant¹⁸ that, while he may not have intended to limit his application to only documents in relation to the Policy, the amended wording of it did just that. I advised that his reference to the Policy, his use of the specific terminology used in the Policy, and his framing of his request with reference to the various processes for managing concerns raised about a student as set out in the Policy, were such that it was reasonable for a responsible officer of the University to interpret the request as seeking access to documents relating to concerns raised about the applicant's wellbeing and safety *under* the Policy.
18. The applicant did not accept this preliminary view. He submitted that his application is worded widely enough to cover documents that were created *before* the Policy came into effect in 2018.¹⁹
19. In terms of this position, the applicant submitted²⁰ that the circumstances in his matter were distinguishable from those in *Fennelly* (which I had referenced in my view). He considered that, in *Fennelly*, the applicant's submissions on external review about the intended meaning of her access application were inconsistent with the language used by her in her application, and that applying her reasoning would mean that the scope of her request was '*expanded potentially exponentially to include additional entities and documents that were in no way bound by the original terms of access*'. In contrast, the applicant submitted that his application:

... is written in a language consistent with the documents authored by the [U]niversity relating to the safety and wellbeing of its students. I have never tried to expand the terms of access and as I have previously stated, the only reason I included additional details such as the person likely to be responsible for the documents and the [P]olicy I found the information guiding my request was to add context and clarity to the application.
20. As I understand it, the applicant contends that he is not attempting to expand the scope of his application. He considers that his application sought documents about his wellbeing and safety generally, and he included 'additional details' regarding the Policy for guidance, context and clarity – not to confine his application to documents created under the Policy.
21. While the scope of an application should not be interpreted legalistically or narrowly, unilateral expansion of scope is not possible. The question I must consider is whether the application gives sufficient information concerning the documents the applicant contends are covered by it – namely documents relating to the applicant's wellbeing and safety in 2016 and/or 2017, before the Policy came into effect in 2018 – to enable a responsible officer of the University to identify them.
22. The applicant accepted that parts 2 and 3 of his application '*use very specific language*'; however, regarding part 1 of the application, he maintained:²¹
 - this part '*can be applied as relating to the process of student wellbeing and safety generally*'
 - his request was only concerned with documents relating to '*reports made about me concerning the subject of student wellbeing and safety; there is no limiting clause*'

¹⁸ Letter dated 18 October 2024..

¹⁹ While, in making this argument, the applicant appears to accept that the Policy only came into effect in 2018, he has also advanced an alternative argument, that the Policy was already in effect in 2016-2017, and the University has failed to locate documents created under the Policy in those years. This is addressed below in my reasons regarding the second issue for determination – whether access to the requested documents may be refused on the ground they are nonexistent.

²⁰ Letter dated 1 November 2024.

²¹ Letter dated 1 November 2024.

- the ‘*report a Concern Forms*’ were used across multiple policies and could not be taken to be documents exclusive to the Policy;²² and
 - in relation to part 1.c. of the application, the terms were very general and ‘*can be taken to reach any documents which record the actions and outcomes relevant to any undertaking concerning a student’s wellbeing and safety*’.
23. Insofar as the applicant contends that the terminology and processes referenced in his application appear not just in the Policy, but also in other policies:
- When I asked the applicant to point to where ‘*report a Concern Forms*’ appeared in the multiple policies he had referred to,²³ the applicant acknowledged that all of these policies were created post 2017, and stated that he had formed the opinion that ‘*fulfilling [OIC’s] request will have no effect on any decision made by the OIC*’.²⁴
 - In terms of policies in effect during the timeframe referred to in the access application – that is 2016 to 2017 – I requested copies of relevant policies²⁵ from the University. Having received²⁶ and perused these, I am satisfied that none use the Policy’s terminology or refer to its processes. Specifically, none reference ‘*report a Concern Forms*’; the responsible persons referred to in parts 1 to 3 of the access application; the various levels of intervention that comprise processes in the Policy, being Levels 1, 2 and 3; or any other similar processes to those referred to in the Policy.
24. Insofar as the applicant submits that his application should be read as requesting any documents relating to his wellbeing and safety generally, I do not consider it reasonable to expect a responsible officer of the University, when reading the terms of his application as a whole, to adopt this general interpretation. The only aspect of the application that could reasonably be construed as suggesting this general interpretation is the timeframe of 2016-2017, given this timeframe precedes commencement of the Policy. However, this alone is insufficient, given the extent to which the amended terms of the application are framed with reference to the Policy.
25. Parts 1 to 3 of the application each relate to specific stages of the process for reporting a concern about student wellbeing and safety under the Policy, namely the various levels of intervention required and referred to as Levels 1, 2 and 3. In addition, parts 1 to 3 each use terminology relevant to the particular level of intervention and make reference to the title of the particular staff member that is referred to in the Policy as being responsible for that intervention. Accordingly, the references to the Policy in the application are not, as the applicant has suggested, ‘additional details’ provided by him to guide the University’s understanding of his application. Rather, the references to the Policy are the only details. The entire application is framed with reference to the Policy’s terminology and processes.
26. Given this, the application clearly and unambiguously identifies documents created under the Policy as relevant. However, the scope cannot, in my opinion, reasonably be taken to also give sufficient information concerning documents which do not reference

²² In particular the applicant referred to the following documents ‘*Student Critical Incident Management Policy*’, ‘*Student Critical Incident Management Procedures*’, ‘*Procedures for Reporting and Responding to Student Sexual Assault, Harassment, Bullying and Discrimination*’, ‘*Student Reports of Bullying, Harassment, Discrimination and Sexual Harm*’ and ‘*Reporting and Resolution of Staff Sexual Assault, Harassment, Bullying and Discrimination Procedures*’.

²³ Email dated 6 November 2024.

²⁴ Email dated 14 November 2024.

²⁵ As listed in the University’s letter dated 15 August 2024.

²⁶ On 11 December 2024. Iterations of policies regarding Health and Safety, Resolution of Breaches within Residential Colleges Policy, Staff Guidelines on Decision-Making, Student Grievances, Student Misconduct, and Students with Disabilities in force across 2016 and 2017 were provided.

the Policy's terminology and processes, such as documents created before the Policy came into effect in 2018.

27. For these reasons, I find that any documents relating to the applicant's wellbeing and safety which may have been created in 2016 and/or 2017, before the Policy came into effect, do not fall within the scope of the application. As such, the University was not required to conduct searches for them.

Can access to the requested documents be refused on the ground they are nonexistent?

Relevant law

28. Under section 40 of the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁷ This right is subject to limitations, including grounds for refusal of access.²⁸
29. The Information Commissioner's external review functions include investigating whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.²⁹ However, access may be refused in circumstances where a document is nonexistent.³⁰
30. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.³¹ To be satisfied that a document does not exist, the Information Commissioner has previously had regard to various key factors, including an agency's record keeping practices and procedures (including, but not limited to, its information management approaches).³² By considering relevant factors, the decision maker may conclude that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
31. The agency that made the decision under review has the onus of establishing that the decision was justified, or the Information Commissioner should give a decision adverse to the applicant.³³ However, where an external review involves the issue of missing documents, the applicant bears a practical onus to establish reasonable grounds which demonstrate that the agency has not discharged its obligation to take all reasonable

²⁷ *Personal information* is defined in section 12 of the IP Act as '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 reasonably be ascertained, from the information or opinion'.

²⁸ Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

²⁹ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

³⁰ Sections 47(3)(e) and 52(1) of the RTI Act.

³¹ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

³² *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* addresses the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant.

³³ Section 100(1) of the IP Act.

steps to locate the requested documents. Suspicion and mere assertion will not satisfy this onus.³⁴

Findings

32. The issue that I must consider is whether there are reasonable grounds to be satisfied that the documents referred to in the scope of the application do not exist.
33. As noted above, during the review, the University explained to OIC that, as the Policy had not commenced when the applicant was a student at the University, the requested information had not been created.³⁵ OIC then conveyed a preliminary view to the applicant that the information sought by him could be refused on the ground it did not exist. This view noted that his application specified a timeframe of 2016-2017, whereas the Policy did not come into effect until 2018.³⁶
34. As has already been addressed above, the applicant contended that the scope of his application was broad enough to cover documents created before the Policy came into effect. However, he also submitted that the Policy was already in effect in 2016-2017. In this regard, he submitted that the University's explanation that the documents were nonexistent was '*false*' and that he had '*multiple pieces of information*' which proved that the Policy existed prior to 2018.³⁷ As such, the applicant was taken to contend that documents relevant to his application – that is documents created under the Policy in 2016 and 2017 – exist and should have been located by the University.
35. The information provided by the applicant as evidence that the Policy was in effect prior to 2018 relates to the University's Policy Governance Procedures (**Procedures**). The Procedures state that when policies are created, changed or rescinded, the event should be noted in the '*Register of Policy Changes*' (**Register**). In this respect, the applicant submitted that the current Register, which is publicly available, does not contain an entry in relation to the creation of the Policy.³⁸ On this basis, the applicant submitted that the Policy was not introduced in 2018, rather it was renewed without any major change or amendment. In addition, the applicant stated that he found it '*extremely unlikely that a corporation exceeding \$1 billion in annual revenue would wait until 2018 to create policies aimed at addressing wellbeing and safety issues amongst students*'.
36. Further, in relation to the University's submission that it had searched the applicant's student file,³⁹ the applicant submitted:⁴⁰
 - student files do not contain information relating to student wellbeing and safety.
 - according to the Policy, such information is held by the Manager of Student Integrity on a business system; and
 - students including the applicant may not have been consulted about a student wellbeing and safety concern because there is nothing in the Policy that requires a student to be notified of the concern or resulting process.

³⁴ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

³⁵ Letter dated 23 February 2024.

³⁶ Letter dated 1 March 2024.

³⁷ Letter received on 15 March 2024 (incorrectly dated 23 February 2023). In addition to the letter, the applicant provided OIC with the University's '*Policy Governance Procedure*', '*Register of Policy Changes*', '*Policy and Delegations update, October 2020*' and a copy of the Policy that was approved on 9 December 2021.

³⁸ Which at the time the applicant accessed it, it stated that it covered changes from 10 May 2016 to 6 December 2023.

³⁹ As noted at paragraph 6 above.

⁴⁰ Letter received on 15 March 2024 (incorrectly dated 23 February 2023).

37. OIC provided the University with details of the applicant's submissions and asked the University to provide a response.⁴¹ The University submitted:⁴²
- The Policy did not appear in the Register of Policy Changes due to '*administrative oversight*', as the spreadsheet was only manually updated.
 - In 2016 there was '*no overarching student safety/wellbeing policy*'. The current concept of '*student wellbeing*' has evolved within the sector over the past decade.
 - Prior to the Policy, student wellbeing and safety would have been covered in a range of policy documents.⁴³
 - The University's policy provision for the timeframe referred to in the access application would have aligned in relation to legislative and sector standards at the time.
 - For sake of completeness regarding the history of the Policy, this Policy had been rescinded and replaced as part of review of various student policies and procedures by the Academic Committee on 16 November 2023.⁴⁴
38. In addition, the University provided a copy of the Policy which on the front page shows its approval date as 3 December 2018. It also provided a copy of the '*Student Wellbeing and Safety Procedures*', again showing an approval date of 3 December 2018, and extracts from the:
- agenda for the meeting of the University's Council (**Council**) on 3 December 2018, in which the approval of the Policy was an agenda item
 - meeting Minutes, indicating that the Council had resolved to approve the Policy with immediate effect; and
 - the University's Policy Library, which shows the date declared for the Policy as 3 December 2018.⁴⁵
39. OIC provided the applicant with details of the documents referred to above, and conveyed a preliminary view that the documents supported the University's submission that the Policy did not come into effect until 2018.⁴⁶
40. In his submissions responding to this view,⁴⁷ the applicant did not accept that the information provided by the University supports that the Policy came into effect at this time. He submitted that:
- the University's provision of extracts of documents serves to '*mislead and deceive the true nature of the committee meeting documents*'
 - recommending the Policy would have been an agenda item regardless of whether the Policy was introduced or reviewed in 2018⁴⁸
 - the approval of the Policy does not necessarily mean that the policy in question is a new policy, as approvals are needed for continuing policy documents under review
 - the fact that the copy of the Policy provided by the University shows that it was approved on 3 December 2018, does not imply that this was a newly developed policy document, given that the Procedures state that whenever a document is

⁴¹ Letter dated 22 July 2024.

⁴² Letter dated 15 August 2024.

⁴³ The University listed the relevant policy documents that it says would have been in effect for the timeframe referred to in the access application.

⁴⁴ With a '*Student Conduct, Safety and Wellbeing Policy*' effective from Trimester 1 2024.

⁴⁵ The University also provided a copy of the University's '*Student Charter*' and an extract of the Policy Library in relation to the Student Charter.

⁴⁶ Letter dated 18 October 2024.

⁴⁷ Letter dated 1 November 2024.

⁴⁸ In this respect, the applicant submits that the Procedure implies that '*recommendations are only made upon review*'.

approved, whether because it was introduced or renewed a new document will be created

- in the interests of justice,⁴⁹ OIC should ask for a complete copy of the Minutes associated with the approval of the Policy on 3 December 2018; and
- the Minutes of the Council meeting that took place on 3 December 2018 will prove without doubt whether the Policy was created in 2018 and the applicant considers this is the reason why the University has *'withheld that document'*.

41. I acknowledge the applicant's submissions. However, having had the benefit of considering the documents provided by the University, I am satisfied that they demonstrate that the Policy came into effect on 3 December 2018. This position is not only supported by the provided documents. It is consistent with, and explicable in terms of, the University's practices and procedures regarding both policy and record keeping generally (despite what I accept was an oversight regarding the Register of Policy Changes). Also, it is plausible and reasonable, in that seems usual and uncontroversial in terms of agency governance. Accordingly, I consider it unnecessary to require the University to provide a full copy of the Minutes from the Council meeting that was held on 3 December 2018 in order to find that the Policy commenced on 3 December 2018.
42. I am satisfied that the applicant's submissions contesting the University's explanation about the Policy offer no reasonable basis for concluding that relevant documents exist, and therefore cannot satisfy the onus on the applicant to show that the University failed to conduct all reasonable searches for such documents. The University's explanation regarding when the Policy commenced enables, in and of itself, a finding that relevant documents do not exist. I do not consider it necessary for the University to conduct any searches, let alone all reasonable searches, for relevant documents in order to reach this finding.⁵⁰
43. During the review, the applicant also submitted that the University should conduct additional searches for documents that may have been transferred to Queensland State Archives (QSA).⁵¹ Given my conclusion that no relevant documents exist, it follows that I am satisfied that there can be no reasonable basis for expecting that any such documents were transferred to QSA, and I need not address this aspect of the applicant's submissions further.
44. In these circumstances, I find that:
 - the Policy did not become effective until 3 December 2018 – that is after the timeframe of 2016-2017 specified in the access application
 - it is therefore reasonable and appropriate to accept the University's explanation that no documents responding to the access application were created, and therefore no such documents exist; and
 - access to the requested documents may be refused on this ground.

DECISION

45. For the reasons set out above, I vary the decision under review by finding that:

⁴⁹ In this respect, the applicant refers to a separate access application that he made to the University and states the University has not provided him *'with one single document'* and that he has subsequently applied to OIC for an external review of the University's decision.

⁵⁰ Nevertheless, I acknowledge the constructive nature of the University's general search of the applicant's student file on the *'University's CRM'* noted at paragraph 6 of this decision.

⁵¹ Email dated 10 July 2024.

- documents that may have been created before the Policy came into effect, as raised by the applicant during this review, fall outside the scope of the access application; and
- access to documents responding to the access application may be refused on the ground they do not exist under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

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

A Rickard
Assistant Information Commissioner

Date: 10 February 2025

APPENDIX

Significant procedural steps

Date	Event
21 December 2023	OIC received the application for external review from the applicant.
21 December 2023	OIC requested preliminary documents from the University.
3 January 2024	OIC received the preliminary documents from the University.
12 January 2024	OIC advised the applicant and the University that the application for external review had been accepted and requested further information from the University about how processing the application would substantially and unreasonably divert the University's resources.
22 January 2024	OIC received a submission from the University.
2 and 5 February 2024	OIC requested further information from the University about how processing the application would substantially and unreasonably divert the University's resources.
23 February 2024	OIC received a submission from the University.
1 March 2024	OIC conveyed a preliminary view to the applicant.
15 March 2024 and 10 July 2024	OIC received submissions from the applicant.
22 July 2024	OIC provided the University with details of the applicant's submissions and requested a response.
30 July 2024	OIC requested further information from the applicant.
16 August 2024	OIC received a submission from the University.
28 August 2024	OIC received a submission from the applicant.
18 October 2024	OIC conveyed a preliminary view to the applicant.
1 November 2024	OIC received a submission from the applicant.
6 November 2024	OIC requested further information from the applicant.
14 November 2024	OIC received a submission from the applicant.
27 November 2024	OIC requested further information from the University.
11 December 2024	OIC received further information from the University.