



## Decision and Reasons for Decision

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**Application Number:** 210674

**Applicant:** Mr D Miranda

**Respondent:** Department of Justice and Attorney General

**Decision Date:** 18 November 2009

**Catchwords:** **ADMINISTRATIVE LAW – FREEDOM OF INFORMATION – REFUSAL OF ACCESS – applicant seeks access to documents relating to his former employment – a significant number of documents released – whether there are reasonable grounds for the agency to be satisfied additional documents do not exist – whether agency has taken all reasonable steps to locate additional documents – whether access can be refused to the documents sought under section 28A(1) of the *Freedom of Information Act 1992 (Qld)***

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## REASONS FOR DECISION

### Summary

1. In this external review the applicant seeks access to documents which the former Department of Employment and Industrial Relations (**Former DEIR**),<sup>1</sup> now the Department of Justice and Attorney General (**Department**) contends do not exist.
2. Having considered the parties' submissions and evidence, relevant legislation, and previous decisions of the Information Commissioner, I find that the Department is entitled to refuse access to the documents sought by the applicant under section 28A(1) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**) on the basis that there are reasonable grounds for the Department to be satisfied that the further documents sought do not exist.

### Background

3. By letter dated 3 July 2008 (**FOI Application**) Carne Reidy Herd applied to the Department on the applicant's behalf, seeking access to:

*all employee records and personnel file [of the applicant] and all documents relating to [the applicant's] employment with [the Department].*

4. By letter dated 20 August 2008 Ms A Moffat, FOI Officer of the Department made a decision on the FOI Application.
5. By letter dated 20 August 2008 (**Supplementary Decision**)<sup>2</sup> Ms Moffat identified additional documents<sup>3</sup> and issued a further decision, noting that the letter "supersedes [the] original decision letter dated 20 August 2009 in its entirety".
6. By letter dated 30 September 2008 (**Internal Review Application**) Carne Reidy Herd sought internal review of the Supplementary Decision in respect of:
  - documents exempted under section 43(1) of the FOI Act; and
  - the sufficiency of the Department's searches, listing eleven (11) further types of documents the applicant believed to be in the possession or control of the Department.
7. By letter dated 3 November 2008 Mr P Croft, Manager, Information Release, Administrative Law Unit at the Department issued a decision seeking to affirm the application of section 43(1) of the FOI Act and:
  - identifying the steps taken by the Department on internal review to locate additional documents; and
  - enclosing a small number of additional documents that the Department located on internal review.
8. By letter (including attachments) dated 28 November 2008 (**External Review Application**) the applicant applied to the Information Commissioner for external review

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<sup>1</sup> A change in the arrangement of administrative units under the *Administrative Arrangements Order (No. 1) 2009* means that the Department's functions have been assumed by the Department of Justice and Attorney-General and the Department of Employment Economic Development and Innovation.

<sup>2</sup> The Department indicates that this decision was issued on 1 September 2009 and it appears to have been received by the applicant's solicitors on 4 September 2009.

<sup>3</sup> These additional documents were provided to the FOI Unit by the Shared Services Agency (**SSA**).

of the decision notified by letter dated 3 November 2008 on the basis of sufficiency of search.

### Steps taken in the external review process

9. By letter dated 3 December 2008 I informed the applicant that the External Review Application had been accepted. I confirmed that the scope of the External Review was limited to six classes of documents that the applicant contended had not been provided to him by the Department and asked the applicant to provide submissions in relation to each class.<sup>4</sup>
10. By letter dated 3 December 2008, I notified the Department that the External Review Application had been accepted and asked the Department to conduct searches for the documents within the scope of the External Review Application and to provide additional information about any earlier searches undertaken to locate the requested documents.
11. By letter dated 19 December 2008 the applicant provided written submissions relating to each class of documents.
12. By letter dated 8 January 2009 the Department provided written submissions regarding the documents requested by the applicant and its search process.
13. In a telephone discussion on 14 January 2009 the Department made further submissions relating to documents requested by the applicant.
14. On 16 January 2009 a staff member of the Office of the Information Commissioner (**OIC**) received a call from the applicant who indicated that he wanted to know the basis for the Department's refusal to grant him access to documents and why the Department claimed that the documents did not exist. The applicant also made inquiries regarding the Department's Internal Review Decision.
15. On 21 January 2009 a staff member of the OIC telephoned the applicant to discuss this review. The applicant confirmed that his External Review Application concerned sufficiency of search matters and made submissions on why he believed further documents exist but had not been located by the Department.
16. On 20 April 2009 a staff member of the OIC telephoned the applicant to communicate a preliminary view in relation to three of the applicant's external review matters. However, the applicant indicated to the OIC staff member that he would need to make an appointment for the staff member to speak with him. The OIC staff member requested a meeting time. The applicant declined to make a time and indicated he would get back to the staff member at a later date. However, the applicant did not subsequently contact the staff member to make a time to discuss the reviews.
17. On 12 May 2009 the applicant telephoned the OIC to obtain an update on the progress of his external review applications. A staff member of the OIC discussed the reviews and their progress with the applicant.
18. Later on 12 May 2009 the applicant emailed the OIC to:

*express [his] concern at the inordinate amount of time that has been taken to progress*

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<sup>4</sup> As many of the classes sought answers to questions or were outside of the scope of the FOI Application.

*[his] review applications.*

19. On 15 May 2009 I provided the applicant with a written update on the progress of three external reviews concerning him and provided an opportunity for him to forward submissions in relation to two other external review applications received from him by the OIC.
20. In an email to the Information Commissioner dated 16 May 2009 the applicant indicated that he had not received an update on his applications for external review and expressed concern that he was “*not being afforded access to a fair, objective, and transparent review process*”.
21. On 18 May 2009 I emailed a copy of my letter of 15 May 2009 to the applicant.
22. Shortly after receiving my letter of 15 May 2009, the applicant emailed the Information Commissioner to make a complaint of maladministration in relation to my letter of 15 May 2009 and the handling of his external review applications by OIC staff. In particular, the applicant expressed concern that I had:

*not observed [the] ethical obligation not to supply protracted and onerous explanations in order to demonstrate a veneer of objectivity and fairness.*
23. By email dated 19 May 2009 the Information Commissioner responded to the applicant’s complaint.
24. By email dated 21 May 2009 the applicant made further allegations of maladministration by staff of the OIC and disputed statements made by the Information Commissioner in the email above. The applicant asked the Information Commissioner to expedite his applications for external review and asked that he be provided with written preliminary views in relation to each of his applications.
25. By letter dated 24 August 2009 I conveyed my preliminary view on the issues in this review to the applicant.
26. By email dated 7 September 2009 the applicant indicated that he did not accept my preliminary view.
27. In a telephone discussion with a staff member of the OIC on 12 November 2009, Ms Moffat of the Department provided further information about the searches conducted to locate documents responding to the FOI Application.
28. In a telephone discussion with a staff member of the OIC on 13 November 2009 and in an email to me on the same date, Stuart Woods of the Department provided further information regarding the searches conducted to locate documents responding to the FOI Application.
29. In reaching a decision in this external review, I have taken the following into consideration:
  - the FOI Application, Internal Review Application and External Review Application<sup>5</sup>

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<sup>5</sup> Including the attachments.

- the Original Decision, Supplementary Decision and letter dated 3 November 2008 from Mr Peter Croft, Manager, Information Release at the Department to the applicant
- the applicant's written submission dated 19 December 2008
- submissions made by the applicant during a telephone discussion with a staff member of the OIC on 21 January 2009
- written submissions made by the Department dated 8 January 2009
- submissions made by the Department during telephone discussions with staff of the OIC on 14 January 2009 and 12 November 2009
- file note released to the applicant by the Public Service Commission under the FOI Act<sup>6</sup>
- FOI document 527, a letter from Mr Simon Blackwood, Acting General Manager, Workplace Health and Safety Queensland<sup>7</sup>
- show cause notice from Mr Peter Henneken to the applicant (including attachment)<sup>8</sup>
- email and file note dated 13 November 2008 recording further information provided by Stuart Woods to the OIC regarding the searches conducted to locate documents responding to the FOI Application
- emails between Alison Moffat and those individuals outlined in paragraph 62 of this decision, dated 1-3 October 2008
- relevant provisions of the FOI Act as referred to in this decision; and
- decisions of the Information Commissioner as referred to in this decision.

### **Decision under review**

30. Under section 52(6) of the FOI Act, if on internal review, an agency does not decide an application and notify the applicant of the decision within 28 days after receiving the application, the agency's principal officer is taken to have made a decision at the end of the period affirming the original decision.
31. A decision on the applicant's internal review application was to be notified to the applicant on 28 October 2008.<sup>9</sup> Mr Croft's letter was dated 3 November 2008 and was received by the applicant on 12 November 2008.
32. As the applicant was not notified of the internal review decision within the statutory time frame, the Department's principal officer is taken to have affirmed the Supplementary Decision, and on this basis, the deemed affirmation of the Supplementary Decision is the decision under review. However, I have treated Mr Croft's letter of 3 November 2008 as if it were a submission received from the Department, for the purpose of this decision.

### **Issue in the review**

33. On internal review the applicant contested the Department's decision to exempt documents under section 43(1) of the FOI Act. On external review the applicant did not seek review of this aspect of the Department's decision. However, the applicant

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<sup>6</sup> Attached to the External Review Application, refer paragraph 43 of this decision.

<sup>7</sup> Attached to the External Review Application, refer paragraph 47 of this decision.

<sup>8</sup> Attached to the External Review Application, refer paragraph 34 of this decision.

<sup>9</sup> The Internal Review Application was faxed to the Department on 30 September 2008.

contends that the Department has not located all documents responding to the FOI Application.

34. As explained at paragraph 9 above, by letter dated 3 December 2008 I confirmed to the applicant that in this external review I would consider six classes of documents that he contends had not been provided to him by the Department (**Requested Documents**). These documents can be described as follows.

Description	Referred to as
Documents detailing allegations made by Jennie Hunt or Stuart Woods to other agencies regarding the applicant's conduct	<b>Allegation Documents</b>
Documents addressed to the applicant (or his solicitors) which show how [the applicant] did not demonstrate respect for the law and system of government as stated by Peter Henneken in the Show Cause Notice <sup>10</sup>	<b>Show Cause Documents</b>
Documents addressed to the applicant (or his solicitors) that indicate which allegations from the Show Cause Notice were found to be substantiated and deserving of the penalty of termination	<b>Substantiated Allegation Documents</b>
Documents addressed to the applicant constituting warnings for poor work performance or misconduct or disciplinary action taken by the Department prior to the Show Cause Notice	<b>Warning Documents</b>
Documents addressed to the applicant identifying the specific position that was declared surplus to the requirements of the Department as outlined by Simon Blackwood on 8 October 2007	<b>Surplus Position Documents</b>
Documented complaints made by Denise Adams and Phil Cranston concerning [the applicant's] work performance.	<b>Complaint Documents</b>

35. The Department contends that it has carried out extensive searches to locate documents responding to the FOI Application and no further documentation can be located.
36. The issue to be determined in this external review is whether there are reasonable grounds for the Department to be satisfied that the Requested Documents do not exist.

### Relevant law

37. The FOI Act was repealed by the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>11</sup> which commenced on 1 July 2009.<sup>12</sup> However, because the FOI Application was made under the FOI Act and has not yet been finalised, for the purposes of this decision, I am required to consider the application of the FOI Act (and not the RTI Act) to the matter in issue.<sup>13</sup>

<sup>10</sup> The relevant show cause notice is dated 7 December 2007 and was issued by Peter Henneken.

<sup>11</sup> Section 194 of the RTI Act.

<sup>12</sup> With the exception of sections 118 and 122 of the RTI Act.

<sup>13</sup> Section 199 of the RTI Act.

## **Section 28A of the FOI Act**

38. Section 28A(1) of the FOI Act provides:

### **28A Refusal of access—document nonexistent or unlocatable**

- (1) *An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.*

Example—

*documents that have not been created*

39. In *PDE and the University of Queensland*<sup>14</sup> (*PDE*) the Information Commissioner indicated that:<sup>15</sup>

*Sections 28A(1) and (2) of the FOI Act address two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.*

40. Section 28A(1) is silent on the issue of how an agency is to satisfy itself that a document does not exist. In *PDE* the Information Commissioner considered how an agency was to satisfy itself as to the non-existence of documents under section 28A(1) of the FOI Act and indicated that it is necessary for the agency to rely on its particular knowledge and experience with respect to various key factors including:

- 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)
- 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.

41. When proper consideration is given to the key factors discussed above and a conclusion reached that the document sought does not exist, it may be unnecessary for the agency to conduct searches. However, if searches are used to conclude that the documents sought do not exist, the agency must take all reasonable steps to locate the documents sought.<sup>16</sup>

42. In applying section 28A(1) of the FOI Act it is relevant to ask first whether there are reasonable grounds for the agency to be satisfied that the requested documents do not exist. If the agency has used searches to satisfy itself that the additional documents

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<sup>14</sup> (Unreported, Queensland Information Commissioner, 9 February 2009).

<sup>15</sup> At paragraph 34.

<sup>16</sup> See *PDE*.

sought do not exist, it is also necessary to consider whether the agency has taken all reasonable steps to locate the documents sought.

## **Applicant's Submissions**

### ***Allegation Documents***

43. The applicant enclosed, in his External Review Application, a copy of a file note released to him by the Public Service Commission (**PSC File Note**) under the FOI Act. The PSC File Note records:

- a telephone conversation between Ms Janice Saleh of PSC and Ms Jennie Hunter of the Department regarding the applicant's suitability for deployment; and
- the outcome of a meeting between staff of the Department<sup>17</sup> and PSC<sup>18</sup> on 7 November 2007 regarding the applicant's suitability for deployment.

44. In his submission dated 19 December 2008, the applicant contends that he sought to establish the existence of the Allegation Documents after he discovered, through his FOI Application to the PSC, that Department staff had disclosed information regarding the applicant's conduct. The applicant further contends:

*section 12 of the Public Service Regulation 2007 and the principles of natural justice are applicable to the disclosure of these documents (if they exist).*

### ***Show Cause and Substantiated Allegation Documents***

45. In his submission dated 19 December 2008, the applicant seeks to establish the existence of the Show Cause Documents by contending that the Show Cause Notice does not provide specific details of allegations made against him. Similarly, the applicant seeks to establish the existence of the Substantiated Allegation Documents in order to determine which specific allegations in the Show Cause Notice were found to be substantiated.

### ***Warning Documents***

46. In relation to the Warning Documents, the applicant submits that:

*section 12 of the Public Service Regulation 2007 and the principles of natural justice are applicable to the disclosure of these documents (if they exist).*

### ***Surplus Position Documents***

47. The applicant enclosed a copy of FOI document 527, a letter from Mr Simon Blackwood, Acting General Manager, Workplace Health and Safety Queensland, with the External Review Application. In this letter Mr Blackwood states:

*[the applicant's] substantive position has been identified as surplus to requirements.*

48. In his submission dated 19 December 2008 the applicant explains that he seeks documents identifying the specific position that was declared surplus to the requirements of the Department as Mr Blackwood's letter failed to identify this position.

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<sup>17</sup> Ms Jennie Hunter and Mr Stuart Woods.

<sup>18</sup> Ms Janice Saleh and Ms Carolyn Fraser.



### **Complaint Documents**

49. In relation to the Complaint Documents, the applicant submits that:

*section 12 of the Public Service Regulation 2007 and the principles of natural justice are applicable to the disclosure of these documents (if they exist).*

### **The Department's Submissions**

50. In addition to providing submissions detailing the search process undertaken to locate documents responding to the FOI Application, the Department also made submissions in relation to the specific classes of documents.

51. In the Department's submission dated 8 January 2009, Mr Peter Croft states generally:

*From the outset, I wish to point out that I believe this agency has taken more than reasonable steps to identify, locate and supply [the applicant] with all the documents within the scope of [the applicant's] original Freedom of Information request. It has at times been difficult to locate certain items due to changes within the department during [the applicant's] term of employment (ie: HR functions removed to external providers, Machinery of Government changes, etc).*

*It is very unclear what [the applicant] is seeking in many of the itemised issues in the Application for Review, and [the applicant] is perhaps presuming documents exist when they in fact may not.*

*The FOI decision makers' responsibility does not extend to justifying the content of released documents. Such queries should be made by [the applicant] through the normal channels.*

### **Allegation Documents**

52. In relation to the Allegation Documents the Department explained that as the PSC File Note was authored by an employee of the PSC and not by Department staff this document did not form part of the documents responding to the FOI Application. The Department further submits:

*It should be made clear to [the applicant] that this document is/was not a document of this agency and, on that basis, there should be no inference implied that this was in any way withheld by this department.*

### **Show Cause Documents and Substantiated Allegation Documents**

53. In a submission dated 8 January 2009, Mr Peter Croft of the Department contends that the applicant appears to be seeking an explanation of allegations made against him over 12 months ago:

*It is clearly not a function of a decision maker (nor the Freedom of Information legislation) to provide an explanation of the content of a document where it is not evident within the document itself. This document was not authored by the decision-maker and such queries should be directed through other channels rather than an FOI review process.*

54. I also note that the Show Cause Notice to which the applicant seeks an explanation included an attachment<sup>19</sup> in which the author appears to have identified the behaviours/incidents which formed the basis of the Show Cause Notice and provided

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<sup>19</sup> Titled "Attachment A", provided to this Office in the External Review Application.

this to the applicant for his response. This document has been identified as responding to the FOI Application and released to the applicant by the Department.

### **Warning Documents**

55. In relation to the Warning Documents, the Department submits that:

*The FOI decision makers responsibility does not extend to justifying the content of released documents. Such queries should be made by Mr Miranda through the normal channels.*

### **Surplus Position Documents**

56. With its submission dated 8 January 2009, the Department provided this Office with a report extracted from the Human Resource Database (Aurion) at the time the applicant left the Department which indicated his job title. I proposed, and the Department agreed, that a copy of this report could be provided to the applicant. The report was provided to the applicant as an enclosure to my letter dated 24 August 2009 notifying the applicant of my preliminary view.

### **Search and enquiry process**

57. By letter dated 3 December 2008, I asked the Department to detail the searches undertaken to locate documents responding to the FOI Application. In its submissions dated 8 January, the Department included a chronology of events and explained the search and enquiry process, as follows:

- in the FOI Application, Carne Reidy Herd sought the applicant's employee records, personnel file and all documents relating to his employment with the Department, identifying Corporate Solutions Queensland, now Shared Services Agency (**SSA**) as the area which would hold the documents<sup>20</sup>
- the Department commenced processing the FOI Application as seeking documents of the type held by SSA
- the FOI unit was aware that there would be other areas within the Department that held documents relating to the applicant's employment, so the Department extended the search beyond SSA to other areas including the:
  - HR Management Unit, Executive and Strategic Services, Brisbane (**HR Unit**)
  - Internal Audit and Ethics Unit at the Department; and
  - Corporate Legal Unit at the Department; and
- the FOI Unit asked all four areas to conduct electronic, email and physical searches for the documents.

58. The Department confirms that all four areas provided the decision maker with a total of 1361 folios for assessment.

59. The Department also submits<sup>21</sup> that:

- preliminary searches were made of the J: drive and Lotus Notes - the Former DEIR's electronic database;<sup>22</sup> and

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<sup>20</sup> Corporate Solutions Queensland, now Shared Services Agency (**SSA**) is the Department's external service provider for HR and employment records.

<sup>21</sup> On 12 November 2009, Alison Moffat of the Department provided further information about the searches conducted to locate documents responding to the FOI Application

- there is no central email register or email archiving system, therefore the FOI Unit identified the individual employees and associated units who had some involvement with matters concerning the applicant and asked that they conduct searches of their email records and electronic drives as well as physical searches for relevant documents.<sup>23</sup>
60. Mr Croft has indicated that in the search process, the FOI Unit used the documents located to identify relevant staff who were involved with the applicant's employment. Where those staff were still employed by the Department, the FOI Unit contacted them, asking that they search their filing cabinets and email systems for documents responding to the FOI Application.
61. The Internal Review Application listed particular documents which the applicant contended were not disclosed in the Supplementary Decision. The Department submits that it conducted further extensive searches within the Department and at SSA, focussing its attention on the documents itemised in the Internal Review Application.
62. Each of the following officers of the Department and the SSA were contacted because of their possible role (or their work units' possible role) in creating, receiving and/or having knowledge of the existence of documents itemised in the applicant's Internal Review Application:
- Brett Walker, General Manager, Executive & Strategic Services
  - Stuart Woods, Assistant Director – HR, Executive & Strategic Services
  - Neil Griffith, Principal Policy Officer – HR, Executive & Strategic Services
  - Anita Jackson, Senior HR Officer, the Department Team, SSA
  - Denise Adams, Director, Workplace Health & Safety Qld
  - Cindy Downey, Acting Principal Consultant, Consultancy Services
  - Phil Cranston, Acting Business Manager, Workplace Health & Safety Qld
  - Tim Eldridge, Director – Programs, Workplace Health & Safety Qld
  - David Clark, Senior Corporate Lawyer, Executive & Strategic Services
  - Carolyn Armstrong, Executive Officer (Correspondence), Office of the Director-General; and
  - Lorna Hindle, Executive Co-ordination Officer, Office of the Executive Director.
63. The Department provided the OIC with copies of email correspondence between the FOI Unit and the Departmental officers above which evidence requests for searches for the various documents sought by the applicant on internal review.
64. Stuart Woods, Assistant Director, HR, coordinated the searches of the Department's HR Unit. Mr Woods has indicated that:<sup>24</sup>
- HR has a central file repository located within the HR Unit which has restricted access
  - all relevant hard copy files held by the HR Unit were provided to the FOI Unit
  - all emails are filed into archives, particularly in complex matters
  - there was a specific email archive in relation to the applicant which contained all emails to or from the applicant's lawyers, to or from the applicant as well as emails about the applicant; and

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<sup>22</sup> The Lotus Notes system records all activity on a matter. If mail is received, it can be scanned and attached to Lotus Notes files. There was no central correspondence register to search as Lotus Notes adequately recorded and stored incoming/outgoing mail where that function was required.

<sup>23</sup> Filing cabinets are assigned to individual staff and work units.

<sup>24</sup> In a telephone discussion with a staff member of the OIC on 13 November 2009 and in an email to me on the same date.

- all electronic materials, including information stored in HR's electronic archive, were provided to the FOI Unit.

### Findings and application of the Law

65. The decision as to whether an agency has taken all reasonable steps to find a document, and whether access can be refused under section 28A(1) of the FOI Act, must be made on a case by case basis, with reference to relevant key factors, including those identified at paragraph 40 above.
66. I am satisfied that the Department has taken all reasonable steps to locate the documents described at paragraph 34 above and that there are therefore reasonable grounds for DEIR to be satisfied that no further documents responding to the FOI Application exist. I explain my reasons for reaching this conclusion below.
67. In relation to the Allegation Documents, I accept the Department's submission that the existence of the PSC File Note does not indicate that it was withheld by the Department as I am satisfied that the PSC File Note is not a document of the Department. However, the applicant's submission does not seem to suggest that the Department had not located this document, but rather that the PSC File Note suggests to him the possible existence of documents concerning 'allegations' made by Jennie Hunter or Stuart Woods to other agencies.
68. I have read the PSC File Note. The author of the PSC File Note records a request from Jennie Hunter of the Department for Departmental officers to meet with officers of the Public Service Commission to discuss the possibility of registering the applicant for service wide deployment and issues relating to this. Jennie Hunter provided background to these issues. The PSC File Note also records that officers of the PSC met with Jennie Hunter and Stuart Woods on 7 November 2007 as well as the outcome of that meeting.
69. The PSC's role includes providing support to Queensland Government agencies in relation to various matters, including deployment. The PSC File Note records interaction between the Department and the PSC which comes within this role. There is nothing in the PSC File Note to suggest that Jennie Hunter or Stuart Woods made 'allegations' to other agencies. In my view the PSC File Note does not point to the possible existence of other documents.
70. In relation to the Allegation Documents and the Warning Documents the applicant submits that these documents (if they exist) should be released to him under section 12 of the *Public Service Regulation 2007*. As I have reached the conclusion set out at paragraph 66 above, the applicant's submission, which relates to access to documents, is not a relevant consideration in the circumstances.
71. In relation to the Show Cause Notice and the Substantiated Allegation Documents, I acknowledge that, as discussed in paragraph 54 above, the Department disclosed Attachment A to the Show Cause Notice. The Department provided the OIC with a copy of Carne Reidy Herd Lawyers' response to the Show Cause Notice. The applicant also provided various documents as attachments to the External Review Application concerning his employment with the Former DEIR. These documents indicate that the applicant's employment issues have been part of a substantial process in which the issues were vigorously contested. The way the applicant's requests for documents and submissions are framed suggest that he was, and remains, aggrieved by this process and in particular, is seeking more explanation of the basis on which, for example, decisions were made or evidence was gathered. This is understandable, as issues

affecting employment have a significant impact on individuals' lives. Nonetheless, the issue in this review and which is the subject of this decision is whether there are reasonable grounds for the Department to be satisfied that the Requested Documents do not exist.

72. As the Department has used searches to determine that no documents fitting the description of those identified at paragraph 34 above exist, it is necessary to consider whether the Department has taken all reasonable steps to locate these documents.
73. I accept the Department's submissions at paragraphs 57 to 64 above in relation to its search and enquiry process. The FOI Application was cast in broad terms. In undertaking its searches, the Department had regard to its structure and did not confine its search efforts to the area identified in the FOI Application and appropriately identified all relevant areas in the Department that would hold the documents relating to the applicant's employment, including the Requested Documents. The Department subsequently identified and made enquiries with relevant personnel who would have knowledge of the particular documents sought. I am also satisfied that the Department has taken account of relevant practices and procedures, particularly in terms of its record management, and has conducted extensive searches, in response to the FOI Application and the Internal Review Application, to locate both hard-copy and electronic documents<sup>25</sup> responding to the FOI Application, including the Requested Documents.
74. Accordingly, I find that:
- the Department has taken all reasonable steps to locate the Requested Documents
  - there are reasonable grounds for the Department to be satisfied that the Requested Documents do not exist; and
  - the Department is entitled to refuse access to the Requested Documents under section 28A(1) of the FOI Act.

## DECISION

75. As a small number of additional documents were located in response to the Internal Review Application, I must vary the decision under review in relation to the documents sought in the FOI Application. In respect of the Requested Documents, I find that access may be refused under section 28A(1) of the FOI Act.
76. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* Qld.

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**Suzette Jefferies**  
**Acting Assistant Commissioner**

**Date: 18 November 2009**

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<sup>25</sup> Including emails.