



Decision and Reasons for Decision

Application Number: 210956

Applicant: CITG93

Respondent: Office of Health Practitioner Registration Boards

Decision Date: 30 June 2010

Catchwords: ADMINISTRATIVE LAW - FREEDOM OF INFORMATION - REFUSAL OF ACCESS - NON-EXISTENT DOCUMENTS - applicant seeks access to documents relating to her registration as a health practitioner - significant number of documents released - additional documents located through external review process - applicant maintains that further documents should have been located - whether there are reasonable grounds for the agency to be satisfied further documents do not exist - whether access can be refused to further documents under section 28A(1) of the *Freedom of Information Act 1992 (Qld)*

ADMINISTRATIVE LAW - FREEDOM OF INFORMATION - REFUSAL OF ACCESS - UNLOCATABLE DOCUMENTS - where applicant provided evidence on external review of an additional document not located by the agency - where agency then located an electronic version of the document but could not find original - whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession - whether the agency has taken all reasonable steps to find the document - whether access can be refused to the document under section 28A(2) of the *Freedom of Information Act 1992 (Qld)*

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REASONS FOR DECISION

Summary

1. In this external review, the Applicant contends that the Office of Health Practitioner Registration Boards (**Board**) has not located and provided her with all documents responding to her freedom of information application.
2. Having considered the Applicant's and Board's submissions, the evidence, relevant legislation, decisions and case law, I find that access to the additional documents sought by the Applicant can be refused under section 28A(1) or 28A(2) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**).

Background

3. The applicant is a registrant with the Board.¹ In recent years, the applicant has had various dealings with the Board in relation to her registration.
4. By letter dated 8 April 2009, the Applicant lodged a freedom of information application (**FOI Application**) with the Board seeking access to:

... a copy of my file held by the Psychologists Board of Queensland, including copies of all documents (E.g. emails, phone records, file notes, and minutes of meetings) provided to the Board.

5. By letter dated 16 June 2009, Ms C Knuth² informed the Applicant of the decision she had made on the FOI Application (**Original Decision**).³ The documents located by the Board in response to the FOI Application were:
 - documents held on the Applicant's registration file (**Registration File Documents**)
 - documents held on the Applicant's Health Assessment and Monitoring File (**HAM File Documents**)
 - electronic versions of minutes and agenda of Board and various committee⁴ meetings (**Electronic Meeting Records**)
 - registration renewal forms.

6. By letter dated 12 July 2009, the Applicant asked the Board to grant her a further 21 days in which to apply for internal review of the Original Decision. On 17 July 2009, the Board granted the Applicant an extension of time until 14 August 2009.

7. By letter dated 10 August 2009, the Applicant sought internal review of the Original Decision on the basis that:

... the documents provided to me were not complete and not in the manner that I requested. I wish to access complete copies of the original documents, rather than incomplete and computer generated extracts of documents.

¹ Specifically, the Psychologists Board of Queensland.

² Acting Manager, Records Management of the Board.

³ In the decision, Ms Knuth granted full access to 227 folios, partial access to 30 folios subject to the deletion of irrelevant matter under section 27(3) of the FOI Act, partial access to 15 folios subject to the deletion of exempt matter under section 44(1) of the FOI Act and partial access to 1 folio subject to the deletion of exempt matter under section 43(1) of the FOI Act.

⁴ The Committees include: Psychologist's Board of Queensland (**PBQ**) Registration Committee, PBQ Professional Standards and Health Monitoring Committee.

8. By letter dated 8 September 2009, Mr J O'Dempsey⁵ notified the Applicant of his decision to affirm the Original Decision in its entirety (**Internal Review Decision**). In the Internal Review Decision, Mr O'Dempsey stated that he was satisfied that the Board did not hold any other documents relevant to the Applicant's request.
9. By letter dated 2 October 2009, the Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Internal Review Decision (**External Review Application**) on the following bases:
 - *Documents were not complete and documents were not in the matter that I requested. Some information received appears incomplete. The documents which I was provided with were not copies of the original documents ... Content of different folios appears contradictory with regards to the conduct of official Board business.*
 - *Some information in critical documents appears to have been modified.*
 - *I do not believe it is possible for the internal review to have been conducted in an unbiased and impartial manner because of Jim O'Dempsey's previous involvement as Executive Officer in important matters regarding me, and the potential conflicts between his roles and obligations as Executive Officer and his role in relation to FOI.*

Decision under review

10. The decision under review is the Internal Review Decision referred to in paragraph 8 above.

Steps taken in the external review process

11. The steps taken in the external review process are set out in the Appendix to this decision.⁶

Issues in the review

Nonexistent and unlocatable documents

12. One of the bases for the External Review Application was that the Applicant believed the Board had not located all documents relevant to her FOI Application.⁷
13. During the review, a number of additional documents were located by the Board and released to the Applicant.⁸ However, the Applicant has maintained her submission that further relevant documents are in the possession of the Board.
14. The Board submits that it has reasonable grounds to be satisfied that no further documents exist and that it has conducted all necessary searches. This raises the following questions:
 - Are there reasonable grounds to be satisfied that the requested documents do not exist?
 - Have all reasonable steps been taken to find the documents?
 - Can access can be refused under section 28A(1) of the FOI Act?

⁵ The then Executive Officer of the Board.

⁶ The Appendix contains a number of defined terms. These are used throughout this decision.

⁷ See paragraph 6 and 9 of the Appendix.

⁸ See paragraphs 20, 33 and 55 of the Appendix.

15. There is also the issue of the 17 November 2008 Fax, the original version of which, the Board admits it should have in its possession but has been unable to locate. On this issue, I must determine whether:
- there are reasonable grounds to be satisfied that the 17 November 2008 Fax has been or should be in the Board's possession
 - all reasonable steps have been taken to find the 17 November 2008 Fax but it has not been located
 - access can be refused to the 17 November 2008 Fax under section 28A(2) of the FOI Act.

Refusal of access

16. The Applicant also sought external review of the Board's decision to refuse access to certain matter on the basis that it was irrelevant under section 27(3) of the FOI Act or exempt under sections 43(1) or 44(1) of the FOI Act.⁹
17. During this review, some matter which the Board had originally claimed was not relevant to the FOI Application under section 27(3) of the FOI Act, was released to the Applicant.¹⁰ With respect to the remaining matter, the Applicant accepted the Preliminary View that access could be refused under the FOI Act.¹¹
18. Therefore, the Board's decision to refuse access to matter under sections 27(3), 43(1) and 44(1) of the FOI Act is not the subject of this decision.

Out of scope matters

19. The Applicant also raised questions and concerns on external review as to Document Consistency Issues and deficiencies in the Board's recordkeeping practices.¹² During the review, AAC Jefferies and AAC Peters explained to the Applicant that these issues were largely outside of the external review jurisdiction as they did not concern access to documents under the FOI Act. The Applicant was also informed that the Board was not obliged to answer her questions under the FOI Act.¹³
20. As part of the informal resolution process, however, OIC asked the Board to consider the Applicant's questions and where possible, provide explanations as to why there were multiple copies of certain documents and variations/inconsistencies/discrepancies in some documents that had been released to the Applicant. The Board helpfully provided OIC with explanations addressing a number of these issues which were then conveyed by OIC to the Applicant throughout the review.¹⁴
21. I acknowledge that the Applicant remains concerned with these issues. However, as explained to the Applicant throughout the review, the Document Consistency Issues fall outside the scope of this review because they do not concern access to documents

⁹ See paragraph 6 of the Appendix.

¹⁰ Matter appearing in a Board committee meeting agenda dated 16 August 2007.

¹¹ See paragraph 52 of the Appendix.

¹² See paragraph 9 above and paragraph 28 of the Appendix.

¹³ See *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at paragraphs 30-31. In that decision, the then Information Commissioner identified that the FOI Act concerns access to documents and does not give people a legally enforceable right to obtain answers to questions from government agencies or to have agencies extract answers to questions from documents in their possession. However, the Information Commissioner also emphasised that it is not improper for an agency to provide answers to questions to assist members of the public and to achieve a negotiated resolution of an FOI dispute.

¹⁴ The Board explained that most of these issues had arisen as a result of typographical errors, incorrect reliance on draft documents and human error of staff members of the Board.

under the FOI Act.¹⁵ Therefore, these issues are not dealt with in this decision. The Board's recordkeeping practices and procedures are, however, examined in this decision where they are relevant to the issue of nonexistent and unlocatable documents and the analysis of section 28A of the FOI Act.

Relevant evidence

22. In reaching a decision in this external review, I have considered the following material:

- FOI Application, Internal Review Application and External Review Application
- Original Decision and Internal Review Decision
- relevant Registration File Documents, HAM File Documents, Electronic Meeting Records, Archived Meeting Records and Additional Documents
- 17 November 2008 Fax
- Applicant's First, Second and Third Submission
- Document Schedule, Search Certification and Search Schedule
- Board's First, Second and Third Submission
- email sent by Ms H Fua, Registration Assessment Officer at the Board to Ms C Knuth on 15 June 2010
- email sent by the Board to OIC on 15 June 2010
- file notes of the October Board Meeting, November Board Meeting, June Board Meeting and OIC Meeting
- file notes of telephone conversations held between OIC staff members and the Board on 8 March 2010 and 15 June 2010
- file notes of telephone conversations held between OIC staff members and the Applicant throughout the course of the review
- relevant provisions of the FOI Act as referred to in this decision
- previous decisions of the Information Commissioner as referred to in this decision
- relevant case law and decisions from other jurisdictions as referred to in this decision.

Applicable law

23. The FOI Act was repealed by the *Right to Information Act 2009 (Qld) (RTI Act)*¹⁶ which commenced on 1 July 2009. However, because the FOI Application was made under the FOI Act and has not yet been finalised, for the purposes of this decision, I must consider the application of the FOI Act (and not the RTI Act) to the matter in issue.¹⁷

Section 28A of the FOI Act

24. Section 28A of the FOI Act provides:

28A Refusal of access—documents 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

(2) *An Agency or Minister may refuse access to a document if –*

(a) the agency or Minister is satisfied the document has been or should be in the agency's or Minister's possession; and

¹⁵ And therefore, do not enliven my functions under section 101C of the FOI Act.

¹⁶ Section 194 of the RTI Act.

¹⁷ Section 199 of the RTI Act.

(b) all reasonable steps have been taken to find the document but the document cannot be found.

Examples-

- *documents that have been lost*
- *documents that have been disposed of under an authority given by the State Archivist.*

25. In *PDE and the University of Queensland*¹⁸ (*PDE*) I stated that:

*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.*¹⁹

26. In *PDE* I also considered how an agency was to satisfy itself as to the non-existence of documents sought by an applicant and indicated that to be satisfied that a document does not exist, it is necessary for the agency to rely upon 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)
- other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s
 - the nature of the government activity the request relates to.

Section 28A(1) of the FOI Act

27. Section 28A(1) is silent on the issue of how an agency is to satisfy itself that a document does not exist. When proper consideration is given to the key factors discussed at paragraph 26 and a conclusion reached that the document sought does not exist, it may be unnecessary for the agency to conduct searches. However, where searches are used to substantiate a conclusion that the document does not exist, the agency must take all reasonable steps to locate the documents sought.²⁰

28. Therefore, in applying section 28A(1) of the FOI Act it is relevant to firstly ask 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 sought do not exist, it is then necessary to consider whether the agency has taken all reasonable steps to find the additional documents sought.

¹⁸ Unreported, Queensland Information Commissioner, 9 February 2009.

¹⁹ At paragraph 34.

²⁰ See *PDE*.

Section 28A(2) of the FOI Act

29. For an agency to be entitled to refuse access to a document on the basis of section 28A(2) of the FOI Act, the questions to be answered are²¹:
- (i) are there reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession?
 - (ii) has the agency taken all reasonable steps to find the document?
30. In answering these questions, regard should be had to the circumstances of the case and the factors set out in paragraph 26.

Submissions

Applicant's submissions

31. The Applicant generally submits that the Board has not taken all reasonable steps to locate all the information it holds about the Applicant. As to the application of section 28A of the FOI Act, the Applicant submits that:

*Section 28a should not be allowed to be used to provide a level of protection for an agency with poor information management practices or low thresholds in the searches required to assist applicants.*²²

32. The particular additional documents which the Applicant contends should exist include:
- (i) additional electronic records relating to the Applicant (**Electronic Records**)
 - (ii) further emails, specifically an email between Ms P Portier and Ms J Cunningham (**Further Emails**)
 - (iii) further documents held by the HAM section of the Board (**HAM Documents**)
 - (iv) original version of the 17 November 2008 Fax.
33. The Applicant submits that OIC staff did not conduct enough inspections of the Board's records to ensure that all documents responding to her FOI Application were located.

Electronic Records

34. The Applicant believes that the Board should hold further electronic records that relate to her. This concern has arisen because, in some of the documents released to the Applicant, her name was spelt incorrectly and her registrant number appeared differently.²³ In her Second Submission, the Applicant contended:

... from other documents released it appears as though information referring to me has been stored under other names and other registration numbers The Board has not searched under these name and numbers which the Board has used incorrectly to identify me, and I request that comprehensive searches be conducted across the Board's records that include but not restricted to these additional references.

I request these additional searches be comprehensively undertaken and demonstrated across the Board and its programs' record systems, considering that in relation to my FOI request the Board has a history (evidenced during the external review process) of failing

²¹ See *PDE* at paragraph 44.

²² Page 2 of the Applicant's Third Submission.

²³ In folio 20, a Minute of the Registration, Supervisory and Training Committee Meeting on 21 August 2008 and folio 39, page one of a briefing note dated 10 February 2009.

*to store documents in accordance with its own record-keeping practices; failing to perform sufficient searches; and of making administrative and 'human errors.'*²⁴

35. In her Third Submission, the Applicant maintained this concern and submitted that:

It is not unreasonable to request to have searches under all of the names and identifying numbers that the agency uses to identify an applicant through out their records – not just the applicants legal name and registration number.

Further Emails

36. The Applicant is concerned that the Board has not adequately searched its email records. Her submissions on this point include:

... what measures were taken to search and retrieve emails in the Board's email systems and in possession of Board's staff in response to my request for emails in April 2009?

I kindly request an explanation from the Board why it has taken almost a year to provide me with the email documents I received through external review 19/3/10, when I had clearly stipulated the inclusion of emails in my initial FOI request/application (and this was acknowledged and quoted by the Board back to me in its correspondence).

37. The Applicant submits that a further email between Board staff members, J Cunningham and P Portier, should exist on the basis that:

...a number of documents which I know to exist, and which ought to exist in the Board's records, are yet to be provided. These include the following.

...

*... Email from Jackie Cunningham to Pauline Portier Thursday 10 April 8.47am (released amongst additional documents received 19/3/10), **I request the reply to this email.***

[my emphasis]

HAM Documents

38. The Applicant also raised concerns that records of the HAM unit at the Board were not adequately searched. On this point, she submitted that:

*In the Board's submission... the Board names three programs where they state searches were undertaken, however this does not mention their Health Assessment and Monitoring program. I was under the impression that this section of the Health Practitioner Registration Boards also fell within the scope of my FOI request. Should I assume from the Board's response that the HAM program/section and their records have not been searched?*²⁵

17 November 2008 Fax

39. The Applicant submits that the Board should have the original version of the 17 November 2008 Fax in its records. The Applicant originally raised her concerns about the absence of this document from the records released to her at the OIC Meeting.²⁶ In the Second Submission, the Applicant contended that:

... a number of documents which I know to exist, and which ought to exist in the Board's records, are yet to be provided. These include the following.

²⁴ Page 1 of the Applicant's Second Submission.

²⁵ Page 2 of the Applicant's Second Submission.

²⁶ However, at the OIC Meeting, the Applicant did not disclose the particular nature of the document or the relevant date.

Copy of document faxed to Board on 17 November 2008 (as discussed with you at meeting 22/12/09) is still missing and is of such importance that it should have been maintained on my file.²⁷

40. In the Third Submission, the Applicant stated that:

The document/s I request (several page document) genuinely exist and have been received by the agency. I can support this assertion that I make. As I have made it clear to the OIC I do not consent to providing a copy of this evidence to be shared or disseminated, I am however happy to allow the Information Commissioner as an independent person, to sight proof that this document does exist and should be in the agency's possession.

41. As set out in the Appendix,²⁸ the Applicant provided OIC with a copy of the 17 November 2008 Fax and agreed to the document being sent to the Board as a basis for OIC requesting further searches.

Board's submissions

42. The Board submits that it '*comprehensively searched for, located and identified all relevant records*' responding to the FOI Application that are in its possession or control.

43. The Board states that when it received the FOI Application, it made enquiries of relevant staff members which confirmed that the Board held the Registration File Documents and the HAM File Documents. It submits that it released all documents in their entirety,²⁹ except for those which post-dated the FOI Application.

44. In relation to searches, the Board submits that searches were conducted of records of the following areas:

- Registration Services Program
- Board Support and Advisory Program
- Professional Standards Program
- Records Management Unit
- Information Technology Unit.

45. In its Search Schedule, the Board provided a detailed description of the searches conducted and identified particular locations searched within each area, the names of Board officers involved in searching for documents and the time spent conducting these searches.

46. To support its searches and submissions, the Board's Executive Officer³⁰ certified, in writing that searches had been conducted for documents responding to the Applicant's FOI Application and that all relevant documents located within his area of responsibility had been located and provided to the Applicant. The Executive Officer also certified that an explanation as to why the documents did not exist or could be located had been provided by the Board.

²⁷ The document contained the Applicant's submission in response to a Show Cause Notice of the Board's intention to cancel her registration.

²⁸ See paragraph 52 of the Appendix.

²⁹ Except for matter in some of the documents to which access was refused under sections 43(1) and 44(1) of the FOI Act on the basis that it was exempt.

³⁰ Mr M Demy-Geroe.

Electronic Records

47. The Board submitted that electronic searches were conducted as follows:

As [the Applicant] requested records of those present at meetings, searches of the electronic copies of minutes were conducted to identify the documents with these details. The terms of the search were all files containing ... which is the registration number assigned to [the Applicant]. In conducting these searches, the electronic copies of agendas were also identified and were included for completeness.

48. The Board has submitted that the incorrect registration number which appears in folio 20 was the result of a typographical error. In folio 39, the Board has explained that the reference to a different number is likely the result of human error in that a template was used to prepare the briefing note and the document author did not adequately update all of the information in the template.

Further Emails

49. The Board submitted that any emails relating to the Applicant should have been held on her Registration File and HAM File.

50. The Board explained that the additional emails that were located on external review³¹ were not located in its original searches because the emails had not been placed on the Applicant's Registration File or HAM File and were instead, stored on Board staff members' personal email systems. To explain this oversight, the Board submitted that, at the relevant time:

- the Board did not have a written procedure in place regarding the types of emails to be maintained on a registrant's file but has since developed policies regarding the storage of emails
- standard practice was to store only emails of substance/significance on a registrant's file and not internal administrative correspondence or read receipts.

51. As to the search terms used to conduct searches of its email system, the Board submitted that:

... we searched for [both spellings of the Applicant's name]. In consultation with one of our IT staff, we were able to replicate the exact searches of the email systems that were conducted on 24 February 2010. The results have confirmed that we did search for and identify emails that contained both spellings. While we did also conduct a search for emails containing [Applicant's surname], we found that it would be very time consuming and difficult to go through the thousands of emails that contain this word, and it was noted that almost all of them do not pertain to [the Applicant]. These emails do not only relate to the Psychologists Board, but the whole of the OHPRB and the Office of the Medical Board, and in order to retrieve each email from the archive system it would require our IT officer to individually click and save each one separately.

52. As to a document comprising an email reply from P Portier and J Cunningham, the Board submitted that this document does not exist because these staff members discussed the matter orally and did not engage in further written correspondence.

³¹ See paragraph 33 of the Appendix.

HAM Documents

53. The Board submits that the documents held by the HAM unit were searched and that these resulted in 71 pages being released to the Applicant.³²
54. The Search Schedule also sets out the steps that were taken by the Board to locate the HAM File Documents and the associated inquiries that were made with relevant staff members, specifically, Ms J Cunningham, HAM Manager.

17 November 2008 Fax

55. The Board submits that it has conducted searches of all relevant areas and consulted relevant officers in an effort to locate the original version of the 17 November 2008 Fax. However, the Board has not been able to locate this document in this review. The Board did however, locate a scanned version of the 17 November 2008 Fax in the electronic records of the Board's Meeting Support Unit. In this regard, the Board provided the following submission:

*...we located a copy of the facsimile dated 17 November 2008 and we supplied you with an email from Hildred Fua, Registration Assessment Officer which confirms that she found it in the electronic archive copy of the Board's agenda for 19 February 2009. I have since retrieved from storage the original archive copy of the Board's agenda for this meeting and we have sighted that a copy of this facsimile is also held there. We consulted with relevant officers in an effort to locate the original facsimile, however to date we have been unable to locate it.*³³

56. The email from Ms Fua sets out the steps that were taken to locate the 17 November 2008 Fax, as follows:
 - *I went through [the Applicant's] registration file and rechecked all correspondence*
 - *I spoke to Board support regarding a Briefing Note from the Professional Advisor that was considered at Board meeting 19 February 2009*
 - *I requested an archive copy of this agenda. As this is currently located [offsite in archives] I requested they search the electronic copy of the agenda of this meeting*
 - *A search [description of filepath] found that the briefing note to the Board included 2 attachments ...*
 - *The hardcopy is not in the registration file & Board support advised that they do not receive the hardcopies of this information and that a copy would have been given to them by the Professional Advisor – I also confirmed with the Professional Officer that copies of briefing notes to the Board are always stored in the registration file. The information is not filed in any other location.*
57. The Board also provided the following information regarding its relevant recordkeeping practices:
 - the original versions of all correspondence received from and sent to a registrant are maintained on their Registration File
 - where a document on a registrant's file is relevant to an item for discussion at a Board meeting, a **copy** of the file document is provided to the Meeting Support Unit
 - the Meeting Support Unit then scans the copy document into its electronic system and stores it, electronically, with the relevant Board meeting agenda
 - the Meeting Support Unit then returns the original version of the file document to the Registration File.

³² The HAM File Documents.

³³ Board's Third Submission.

58. Specifically in relation to the 17 November 2008 Fax, the Board submits that:
- the 17 November 2008 Fax was relevant to the 19 February 2009 Board meeting and therefore, it was scanned into the Board's computer system and stored in the electronic records of the Meeting Support Unit
 - the original version of the 17 November 2008 Fax should have remained on the Applicant's registration file after it was copied and provided to the Meeting Support Unit, however, this appears not to have occurred in this instance.
59. As to why the 17 November 2008 Fax was not located by the Board through its original searches or at an earlier stage in the external review process, the Board submits that:
- prior to the Applicant disclosing the evidence of the 17 November 2008 Fax, the Board did not have any reason to believe that it held any additional correspondence from the Applicant that was not already on her Registration File
 - while electronic searches for the date "17 November 2008" were conducted, the document was scanned into the Meeting Support Unit records in "PDF" format and therefore, the text of the document was not able to be searched
60. The Board submits that there are no grounds for it to believe that the Meeting Support Unit would have any further documents relevant to the FOI Application because:
- standard recordkeeping practice³⁴ requires the Meeting Support Unit to deal only with copies of file documents and not originals
 - documents that are annexed to meeting agenda should, similarly, only be copies of file documents and not originals
 - it is Board policy to maintain all original correspondence relating to a registrant on their Registration File.
61. The Board has apologised to the Applicant for this oversight in its recordkeeping and has confirmed that a copy of the 17 November 2008 Fax has now been placed on the Applicant's Registration File.

Findings and application of the law

Application of section 28A(1) of the FOI Act

(i) Are there reasonable grounds for the Board to be satisfied that further electronic records, emails or HAM documents relating to the FOI Application do not exist?

62. The answer to this question is 'yes'.

Findings of fact

63. Having considered the submissions made by the Applicant and the Board in this review, I find that:
- the incorrect registration number which appears in folio 20 was the result of a typographical error by the Board and that which appears in folio 39 can be attributed to the document creator not fully updating the document template with the Applicant's details when preparing the briefing note
 - the Board has conducted searches of its email system using the correct spelling of the Applicant's first name and surname and also using the incorrect spelling

³⁴ As set out in paragraphs 57-58 above.

version in consultation with the Systems Administrator of the Board's Information Technology Unit

- the Board conducted searches of its staff members' personal email systems for documents relevant to the FOI Application in February 2010
- P Portier did not send an email reply to J Cunningham in response to the email sent by J Cunningham on 10 April 2008
- at the time when the FOI Application was processed, the Board did not have a written procedure in place regarding storage of email records on registrant files
- the HAM section of the Board is part of the Board's Professional Standards Program
- the Board conducted searches for documents held by the HAM section of the Board in consultation with Ms J Cunningham, HAM Manager, Professional Standards Program.

(ii) Has the Board taken all reasonable steps to locate additional electronic records, emails and HAM documents relating to the FOI Application?

64. The answer to this question is 'yes'. In determining this point, I have had regard to the following:

- the Board's standard recordkeeping practices and customs that were in place at the relevant time in relation to storage of documents relating to Board registrants
- the locations in which any further documents would be stored, if they existed
- the searches conducted by the Board in processing the FOI Application and during the course of this review
- the organisational structure of the Board.

65. I accept the Board's submissions above³⁵ in relation to its search and enquiry process. Although the terms of the FOI Application were limited to a request for the Applicant's "file", the Board had regard to its structure and did not confine its search efforts to only documents held on the Applicant's Registration File and HAM File. Instead, the Board's Records Management Unit used its knowledge of the Board's organisational structure and appropriately identified relevant areas within the Board that would hold documents relevant to the Applicant's request, eg. the HAM section of the Professional Standards Program and the Meeting Support Unit. The Board subsequently identified and made enquiries with relevant officers who were expected to have knowledge of the particular documents sought by the Applicant.

66. The Board has indicated that until recently, it had limited recordkeeping policies and procedures surrounding the storage of registrant documents, particularly emails. However, the Board submitted that there were recordkeeping practices and customs in place which they had regard to in conducting searches for documents responding to the FOI Application.³⁶ For example, when conducting its searches, the Board had particular regard to its office policy which requires originals of all registrant related correspondence and extracts of relevant Board meeting minutes to be kept on their registration file. I am satisfied that the Board took into account its relevant recordkeeping practices and customs (despite there being no formal written procedures in place at the time) and conducted extensive searches to locate both hard-copy and electronic documents relevant to the FOI Application. The search terms used by the

³⁵ In paragraphs 42 to 44, 47, 51 and 53 to 54.

³⁶ Evidence of a general practice or custom in a business or government department can give rise to an inference that the usual system was followed in a particular case. See *Ugur and Human Rights and Equal Opportunity Commission* [2009] AATA 563 at paragraph 155 citing *Connor v Blacktown District Hospital* [1971] 1 NSWLR 713.

Board to search its electronic records were comprehensive and extended to account for the possible incorrect spelling of the Applicant's name.

67. With respect to the Applicant's concern as to incorrect registration numbers and her corresponding submission that the Board should have conducted searches using these incorrect numbers for documents relating to her, I am not satisfied that this gives rise to reasonable grounds to believe that further documents exist. The Board has submitted that the incorrect numbers were the result of typographical error and administrative oversight and I accept that submission. I consider that it would be unreasonable to expect the Board to conduct searches of its records using various incorrect formats of the Applicant's registration number and equally, using numbers that the Board does not use to identify the Applicant.
68. The Applicant submits that records held by the HAM section of the Board were not adequately searched. This submission seems to be based on the Applicant's analysis of the search locations as identified in the Board's submissions and Search Schedule. The Board has identified that searches were conducted of the records of the Professional Standards Program. The staff member that was consulted for the purpose of these searches was Ms J Cunningham, HAM Manager. The Board has explained that the HAM section forms part of the larger Professional Standards Program and that Ms Cunningham is the Manager of that particular section. On that basis, I am satisfied that the Board has taken reasonable steps to search for HAM documents relating to the Applicant.
69. On the basis of the above, I am satisfied that the Board has reasonable grounds to be satisfied that further electronic records, emails and HAM documents relevant to the FOI Application do not exist. The Board's Executive Officer provided signed certification to OIC that all documents relating to the FOI Application in the possession of the Board have been located. I accept this certification as further evidence that the Board has reasonable grounds to be satisfied that further documents relevant to the FOI Application do not exist and that therefore, access can be refused to further documents under section 28A(1) of the FOI Act.

Application of section 28A(2) of the FOI Act

Findings of fact

70. Having considered the submissions and evidence provided by the Applicant and the Board, I am satisfied that:
- the 17 November 2008 Fax was received by the Board on that date by facsimile
 - the Meeting Support Unit scanned the 17 November 2008 Fax and kept an electronic PDF version of this document in its records for the purpose of attaching to the 19 February 2009 Board meeting agenda
 - the original version of the 17 November 2008 Fax was not stored on the Applicant's Registration File in accordance with the Board's standard recordkeeping practice at the time
 - at the time the FOI Application was made, the Board held a copy of the 17 November 2008 Fax in (i) the electronic records of the Meeting Support Unit and (ii) the hard copies of the Archived Meeting Records
 - the Board did not locate the 17 November 2008 Fax in its previous searches of the Meeting Support Unit records and Archived Meeting Records because it did not have any reason to believe additional documents would be kept in these locations

- the Board has conducted searches of the Applicant's Registration File, HAM File Meeting Support Unit records for the 17 November 2008 Fax and has been unable to locate the original version of this document.

(i) Are there reasonable grounds for the Board to be satisfied that the original version of the 17 November 2008 Fax has been or should be in its possession?

71. The answer to this question is 'yes'.
72. I accept the Board's submissions set out in paragraphs 55 to 60 above in relation to this document. The Board's submissions as to its standard recordkeeping practices suggest that this document should have been maintained on the Applicant's Registration File. The 17 November 2008 Fax also contains a Board "date stamp" confirming that it was received by the Board on that date.
73. Based on the Board's submissions and the face of the document itself, I am satisfied that the original version of the 17 November 2008 Fax was and should still be in possession of the Board.

(ii) Has the Board taken all reasonable steps to find the 17 November 2008 Fax?

74. The answer to this question is 'yes'.
75. Following receipt of the Applicant's evidence of the 17 November 2008 Fax, the Board undertook thorough searches of its records in an effort to locate this document.³⁷ I am satisfied that the Board made appropriate inquiries with the relevant staff members of the Meeting Support Unit to determine where the original version of the 17 November 2008 Fax may be located.
76. As set out in paragraph 72 above, the Board should have been able to locate the 17 November 2008 Fax on the Applicant's Registration File. However, through a combination of administrative oversight and human error, the original version of this document has not been kept in the appropriate location. This indicates that, at the relevant time, the Board did not follow its standard recordkeeping practice in storing the original version of the 17 November 2008 Fax.
77. I have read the 17 November 2008 Fax.³⁸ It indicates that the Applicant's registration with the Board has been the subject of a substantial process in which various issues were vigorously contested. The Applicant's continued concern as to the whereabouts of the original version of this document suggest that she was, and remains, aggrieved by this process and is seeking a further explanation of the basis on which the Board made decisions associated with her registration. This is understandable as issues affecting employment and profession have a significant impact on individuals' lives. However, these concerns cannot be addressed through the external review process. The issues in this review and which are the subject of this decision are whether there are reasonable grounds for the Board to be satisfied that the original version of the 17 November 2008 Fax should be in the Board's possession and whether all reasonable steps have been taken to find the document.
78. On the basis of the Board's searches conducted when the FOI Application was received and during this review, I am satisfied that the Board has taken all reasonable steps to locate the 17 November 2008 Fax and that this document cannot be located. Therefore, I find that access can be refused to the original version of the 17 November 2008 Fax under section 28A(2) of the FOI Act.

³⁷ See paragraphs 55-56 above.

³⁸ I have also read the Briefing Note to which the fax was attached for the purpose of a Board meeting.

DECISION

79. I vary the decision under review and find that access can be refused to:

- additional electronic records, emails and HAM documents relevant to the FOI Application under section 28A(1) of the FOI Act
- the 17 November 2008 Fax under section 28A(2) of the FOI Act.

Julie Kinross
Information Commissioner

Date: 30 June 2010

APPENDIX

Steps taken in the external review process

1. By letter dated 6 October 2009, OIC informed the Applicant that it had received her External Review Application.
2. On 7 October 2009, OIC contacted the Board to inform it of the External Review Application and to request a copy of the schedule of documents which formed part of the Original Decision (**Document Schedule**). The Board provided OIC with a copy of the Board's Schedule on that date.
3. On 8 October 2009, the Applicant provided OIC with further submissions in support of her External Review Application. On this date, a staff member of OIC spoke with the Applicant to clarify the scope of her External Review Application and to explain the external review process.
4. By letter dated 12 October 2009, OIC informed the Applicant that her External Review Application had been accepted and to set out the steps OIC had taken to progress the review.
5. By letter dated 12 October 2009, OIC notified the Board that the External Review Application had been accepted and requested the Board provide OIC with copies of the documents containing matter to which the Board had refused access under the FOI Act.
6. By email dated 15 October 2009, the Applicant clarified the scope of her External Review Application (**Scope Submission**). The Applicant identified that, in addition to seeking external review of the partially released documents, she was also concerned with the sufficiency of the searches conducted by the Board for documents responding to her FOI Application. In her email, the Applicant provided submissions in support of her claim that further relevant documents should exist.
7. On 15 October 2009, Acting Assistant Commissioner (**AAC**) Jefferies spoke with the Applicant to acknowledge receipt of the Scope Submission and to confirm that in this external review, the Information Commissioner would also look at the issue of sufficiency of search in addition to reviewing the Board's decision to grant partial access to documents.
8. On 19 October 2009, the Board provided OIC with copies of documents relevant to this review.
9. On 21 October 2009, the Applicant telephoned OIC to confirm that she was also concerned with the sufficiency of the Board's searches and requested OIC to send her an email confirming that this issue would be considered in the review.
10. On 21 October 2009, a staff member of OIC notified the Board that the Applicant was also seeking review in relation to sufficiency of search and that therefore, the Information Commissioner would consider this issue in the review.
11. On 21 October 2009, AAC Jefferies confirmed to the Applicant, by email, that in addition to reviewing the Board's decision to refuse partial access to documents, the following issues would be considered in this review:
 - whether the Board has located all documents responding to her FOI Application

- whether the documents provided to the Applicant are true and correct versions of the Board's records.
12. On 28 October 2009, two OIC staff members attended the Board's offices. At this meeting (**October Board Meeting**), the Board:
 - made the Applicant's Registration File and HAM File available for inspection
 - explained its record keeping practices and procedures, particularly in relation to minutes and agenda of Board and committee meetings
 - explained the way in which searches of electronic and physical files were conducted for documents responding to the FOI Application
 - confirmed that searches of hard copy versions of Board meeting records, which are kept in archive storage (**Archived Meeting Records**), had not been searched for the purpose of the FOI Application.
 13. On 30 October 2009, AAC Jefferies asked the Board to retrieve the Archived Meeting Records and to make these available for OIC's inspection.
 14. On 30 October 2009, AAC Jefferies informed the Applicant that, as a result of the October Board Meeting, OIC had requested the Board to retrieve the Archived Meeting Records and that OIC would inspect these records once they became available.
 15. On 6 November 2009, the Board informed OIC that it had lodged a retrieval request for the Archived Meeting Records and expected them to be available within the next few days.
 16. On 9 November 2009, a staff member of OIC contacted the Board to inquire when the Archived Meeting Records would be available. The Board advised that it expected the records would be available within the next few days.
 17. On 16 November 2009, a staff member of OIC contacted the Board to inquire as to the availability of the Archived Meeting Records. The Board confirmed that all records had been retrieved and were available for inspection.
 18. On 17 November 2009, a staff member of OIC arranged to attend the Board's offices on 20 November 2009 to inspect the Archived Meeting Records.
 19. On 18 November 2009, AAC Jefferies notified the Applicant that an OIC staff member would attend the Board's office on 20 November 2009 to examine the Archived Meeting Records.
 20. On 20 November 2009, an OIC staff member attended the Board's office to inspect the Archived Meeting Records (**November Board Meeting**). At this meeting, the Board:
 - provided further submissions on its recordkeeping practices
 - explained that it had not provided the Applicant with certain pages of the Archived Meeting Records because it considered these were duplicates of other documents that were released to the Applicant³⁹

³⁹ The documents released were extracts of Board and Committee meeting minutes which were held on the Applicant's Registration File and HAM File (**Meeting Minute Extracts**). The Board explained that following Board and Committee meetings, relevant parts of the minutes are "extracted" and placed on the relevant registrant's file, thereby creating an additional document concerning only that particular registrant. According to this practice, the Meeting Minute Extract held on a registrant's file should contain the same information that appears in the corresponding Archived Meeting Record or Electronic Meeting Record.

- consented to OIC providing the Applicant with the pages of the Archived Meeting Records containing the same information as the Meeting Minute Extracts already provided to her
 - confirmed that it does not retain hard copy versions of minutes and agenda of the meetings of its various committees.⁴⁰
21. On 20 November 2009, an OIC staff member telephoned the Applicant to convey the outcome of the November Board Meeting and to explain the next steps in this review.
22. On 27 November 2009, an OIC staff member contacted the Board to clarify issues relating to the Board's documents and recordkeeping practices.
23. On 27 November 2009, OIC wrote to the Applicant to:
- confirm the outcome of the October Board Meeting and November Board Meeting
 - provide copies of the Archived Meeting Records relevant to her FOI Application
 - respond to the Applicant's concerns about the appearance of information in the documents provided to her by the Board (**Document Consistency Issues**)
 - convey the preliminary view (**Preliminary View**) that:
 - the Board had provided the Applicant with all documents in the Board's possession that contain information relating to the FOI Application
 - a small amount of information to which access was refused by the Board under section 27(3) of FOI Act was relevant to the FOI Application and could be released to the Applicant
 - sections 27(3), 43(1) and 44(1) of the FOI Act apply to the remaining information to which the Applicant was refused access by the Board.
24. On 11 December 2009, the Applicant indicated to OIC that she would like to meet with OIC staff to discuss issues in this review.
25. On 11 December 2009, a staff member of OIC asked the Board to further investigate one of the Document Consistency Issues.⁴¹ On 16 December 2009, the Board provided OIC with a response on this issue.⁴²
26. By email dated 18 December 2009, AAC Jefferies:
- conveyed to the Applicant the Board's further submissions on the Document Consistency Issues
 - invited the Applicant to meet with OIC staff on 22 December 2009 to discuss outstanding issues in this review
 - requested the Applicant to provide written submissions in response to the Preliminary View by 15 January 2010
27. On 22 December 2009, the Applicant attended a meeting at the OIC (**OIC Meeting**). At this meeting, AAC Jefferies clarified the scope of this review and explained the external review process, including the limits of the Information Commissioner's jurisdiction. At this meeting, the Applicant:

⁴⁰ The Board provided the OIC with an email from the recordkeeping area of the PBQ confirming this issue.

⁴¹ In relation to whether a certain Board member attended a particular Board meeting as two folios showed conflicting information on this point, ie. one folio said the member was present and the other showed an apology.

⁴² The Board confirmed that the particular Board member was formally registered as an apology for the meeting in question and that the Board's financial records showed that the member did not receive payment for the meeting. The Board attributed the discrepancy in the records to human error.

- raised a number of concerns about missing documents and discrepancies in the documents provided to her
 - sought information about the Board's recordkeeping policies and procedures
 - questioned the application of section 44(1) of the FOI Act to certain information
 - agreed to provide OIC with written submissions in January 2010.
28. On 12 January 2010, the Applicant provided OIC with written submissions (**Applicant's First Submission**) comprising:
- 16 issues arising out of the OIC Meeting in respect of which the Applicant sought clarification
 - 28 questions relating to the Board's recordkeeping policies and procedures and Document Consistency Issues.
29. On 20 January 2010, OIC notified the Board that the Applicant had made written submissions in relation to the issues in this review and sought the Board's agreement to consider the Applicant's submissions. The Board agreed to consider the Applicant's submissions and respond as necessary.
30. In a telephone conversation with an OIC staff member on 22 January 2010, the Applicant raised further Document Consistency Issues.
31. By letter dated 9 February 2010, OIC:
- provided the Board with a copy of the Applicant's First Submission and sought the Board's response on the issues raised in the submission
 - asked the Board to provide a submission on the searches the Board had conducted for documents responding to the FOI Application, including any explanation the Board could offer as to why no further documents exist.
32. By letter dated 9 February 2010, OIC provided the Applicant with an update on the status of the external review, including the recent requests OIC had made of the Board.
33. On 26 February 2010, the Board provided a submission to OIC (**Board's First Submission**) which:
- explained the searches undertaken for documents responding to the FOI Application and set the searches out in schedule format (**Search Schedule**)
 - identified that additional documents falling within the scope of the FOI Application had been located and could be released to the Applicant (**Additional Documents**)⁴³
 - certified that all relevant documents had been located and provided to the Applicant (**Search Certification**)
 - responded to some of the matters raised in the Applicant's First Submission.
34. On 8 March 2010, OIC contacted the Board to clarify issues in the Board's First Submission and to obtain further information about the Board's recordkeeping practices.

⁴³ The Additional Documents comprised 31 pages of emails and 25 pages of printouts from the Board's registration database. The Board agreed to release all pages to the Applicant, subject to the deletion of a small amount of information in one email on the basis of section 44(1) of the FOI Act. This email was a duplicate of folio 97 from the Applicant's Registration File which had previously been released to the Applicant by the Board.

35. On 12 March 2010, OIC asked the Board to send the Additional Documents to the Applicant. The Board posted the Additional Documents to the Applicant on this date.
36. By letter dated 16 March 2010, AAC Jefferies provided the Applicant with a copy of the Board's First Submission and confirmed the Preliminary View that:
 - the Board has taken all reasonable steps to locate documents responding to the FOI Application and no further documents can be located by the Board
 - section 28A(1) of the FOI Act applies to any further documents which the Applicants contends the Board should have located on the basis that those documents do not exist
 - the information which was deleted from documents under section 27(3) of the FOI Act is irrelevant to the FOI Application as it concerns other students and matters relating to general business of the Board and Committees
 - the information to which the Board refused access under section 43(1) and 44(1) of the FOI Act meets the requirements for exemption under those provisions.
37. In the 16 March 2010 correspondence, AAC Jefferies explained to the Applicant that if she:
 - was to accept the Preliminary View, the review would be finalised on an informal basis
 - maintained her submission that the Board should have located further documents, I would make a formal decision in this matter, following consideration of any final submissions she wished to make on the issues in this review.
38. On 16 March 2010, the Applicant informed OIC that she had not yet received copies of the Additional Documents from the Board and on that basis, sought an extension of time within which to respond to AAC Jefferies 16 March 2010 letter.
39. On 17 March 2010, OIC made inquires with the Board as to the Additional Documents and on this date, the Board confirmed that the Additional Documents had been posted to the Applicant on 12 March 2010.⁴⁴
40. On 17 March 2010, OIC informed the Applicant that her request for an extension of time within which to provide submissions had been granted until 7 April 2010.
41. On 26 March 2010, the Applicant raised concerns about the appearance and content of the Additional Documents and the accuracy of the Search Certification. On that date, OIC provided the Applicant with a response to these issues and confirmed that her final submissions were due by 7 April 2010.
42. On 7 April 2010, the Applicant provided OIC with further submissions (**Applicant's Second Submission**) in which she:
 - contended that further documents should have been located by the Board and explained her reasons for this position
 - identified, and sought a response in relation to, "outstanding matters" in this review (**Outstanding Matters**)
 - explained that until the Outstanding Matters were addressed, the Applicant would not be in a position to provide her final submissions in this review.

⁴⁴ The Board confirmed that the Additional Documents had been sent by registered post and on request of the OIC, provided the Applicant with the Australia Post registered post reference number to aid her in tracking delivery of the posted item.

43. On 12 April 2010, OIC informed the Applicant that it would make inquiries with the Board in relation to the Outstanding Matters and on that basis, granted the Applicant an extension of time until 30 April 2010 to provide a further response to the Preliminary View.
44. By email dated 15 April 2010, OIC asked the Board to investigate the Outstanding Matters and respond to OIC on these matters by 23 April 2010.
45. In a series of emails and phone calls on 20 April 2010 and 22 April 2010, the Board provided OIC with a response on the Outstanding Matters (**Board's Second Submission**).
46. By email dated 23 April 2010, OIC asked the Board to provide the Applicant with copies of two documents relevant to its investigation of the Outstanding Matters.⁴⁵
47. On 29 April 2010, the Applicant informed OIC that the documents provided to her by the Board did not address the Outstanding Matters.
48. By letter dated 29 April 2010, AAC Jefferies:
 - informed the Applicant of the outcome of OIC's recent inquiries with the Board
 - addressed matters raised in the Applicant's First Submission and Applicant's Second Submission
 - confirmed that if the Applicant did not accept the Preliminary View, a formal decision would be issued in this matter
 - requested the Applicant's final submissions by 9 May 2010.
49. By email dated 6 May 2010, the Applicant sought an extension of time until 26 May 2010 to respond to AAC Jefferies' 29 April 2010 correspondence. On 11 May 2010, OIC granted the Applicant an extension until 26 May 2010.
50. By email dated 26 May 2010 (**Applicant's Third Submission**), the Applicant:
 - submitted that she did not accept the Preliminary View that the Board had located all relevant documents
 - raised concerns about the steps taken during the external review process
 - submitted that a document which she knew to exist had not been located by the Board and indicated that she had evidence to support existence of this document.
51. By email dated 4 June 2010, AAC Peters asked the Applicant to clarify two matters raised in the Applicant's Third Submission as follows:
 - that she did not contest the Preliminary View that section 27(3), section 43(1) and section 44(1) of the FOI Act apply to certain information contained in documents located by the Board and on that basis, the application of those sections would not be considered in the final decision on this matter
 - if the Applicant wished OIC to consider evidence of a missing document in the review, the Applicant would need to provide OIC with a copy of that evidence and consent to it being provided to the Board for its response and for reasons of procedural fairness.

⁴⁵ Folio 37, HAM File and folio 40, Registration File. These documents had previously been provided to the Applicant but were provided again to ensure the Applicant was in possession of all relevant documents.

52. On 8 June 2010, the Applicant:
- confirmed that she did not contest the application of section 27(3), section 43(1) and section 44(1) of the FOI Act
 - sought to have it acknowledged in the final decision that during the course of the external review, certain information to which access was originally refused under section 27(3) of the FOI Act was released to her as it was found to be relevant to her FOI Application
 - provided OIC with evidence of the missing document (**17 November 2008 Fax**) and agreed to this evidence being provided to the Board.⁴⁶
53. On 11 June 2010, AAC Peters:
- informed the Board that the Applicant did not accept that the Board had located all documents and had provided OIC with evidence of the 17 November 2008 Fax
 - provided the Board with a copy of the evidence of the 17 November 2008 Fax
 - requested the Board undertake further searches of its records for the 17 November 2008 Fax
 - indicated to the Board that OIC would need to conduct a further inspection of its records on 16 June 2010.
54. By email dated 11 June 2010, AAC Peters informed the Applicant that, based on the evidence of the 17 November 2008 Fax, OIC had arranged to conduct a further inspection of the Board's records.
55. On 15 June 2010, the Board informed OIC that it had located a copy of the 17 November 2008 Fax⁴⁷ and provided submissions to explain why it had not been located in the Board's previous searches. On that date, the Board emailed OIC a copy of the 17 November 2008 Fax.
56. On 16 June 2010, AAC Peters attended the Board's office to inspect its records and to obtain further submissions on its recordkeeping and document management practices (**June Board Meeting**). At this meeting, OIC asked the Board to provide OIC with further written submissions as to:
- its recordkeeping practices and searches conducted, particularly in relation to emails relevant to the FOI Application
 - the searches conducted by the Board for the 17 November 2008 Fax and reasons why the original version of the 17 November 2008 Fax could not be located.
57. On 21 June 2010, the Board provided further submissions to OIC on its searches and the issue of the 17 November 2008 Fax (**Board's Third Submission**).
58. On 24 June 2010, AAC Peters asked the Board to send the Applicant a copy of the 17 November 2008 Fax which it had located in its records.

⁴⁶ The evidence provided was a Facsimile Transmission Verification Report of a fax dated 17 November 2008 that was sent by the Applicant's then solicitors to the Board.

⁴⁷ This was not the original version of the 17 November 2008 Fax, but a scanned version located in the electronic records of the area of the Board that prepares minutes and agenda for Board meetings (**Meeting Support Unit**). See paragraphs 71 to 78 of the above reasons for decision for analysis of this issue.

59. On 24 June 2010, AAC Peters notified the Applicant:
- that the Board had located a version of the 17 November 2008 Fax and would send her a copy of this document
 - of the Board's reasons as to why the 17 November 2008 Fax had not been located previously and an explanation of the Board's relevant recordkeeping practices.
60. On 24 June 2010, the Applicant telephoned AAC Peters to obtain further information as to the reasons why the Board had been unable to locate the 17 November 2008 Fax and the associated recordkeeping practices.