

## Government Information (Public Access) Act 2009

### NOTICE OF DECISION

Applicant:	<b>Christian O'Callaghan on behalf of the National Tertiary Education Union</b>
File Ref:	<b>LEXD 7630</b>
Decision-maker:	<b>Mark Dixon</b>
Date of decision:	<b>9 August 2016</b>

## Summary of access application

1. On 22 August 2014, the University received your access application under the *Government Information (Public Access) Act 2009* (GIPA Act). The application was accepted as valid by way of letter dated 16 September 2014.
2. On 13 October 2014, the University notified you that the decision period would be extended for a period of 15 days pursuant to section 57(2) of the GIPA Act. In the same correspondence the University advised that it would apply a processing charge to the application and required an advance deposit. The time frame for making a decision stops until the advance deposit is paid pursuant to section 68(2) of the GIPA Act. On 6 August 2015, after a determination of the New South Wales Civil and Administrative Tribunal (NCAT), the requested advance deposit was paid.
3. During the period prior to payment of the advance deposit, the University met twice with Kate Mitchell and Yvonne Hartman as representatives of the National Tertiary Education Union (the NTEU). In the opinion of the University, the request was too large to reasonably assess, and therefore, the NTEU was provided with an opportunity to refine the scope.
4. The outcome of the meetings was that the general preamble contained in Schedule A of the original application was deleted. The preamble was replaced by references to specific documents, figures, or types of documents. A list was created in relation to the request which was forwarded to the NTEU for review. In an email dated 11 May 2015, the NTEU forwarded an amended list to the University.
5. On 29 September 2015, I contacted Simon Kempton of the NTEU by email for clarification of Item 58. On 29 September 2015 Mr Kempton responded noting that in relation to Item 58, the NTEU seeks:
  - Remuneration of all current executives including:
    - All changes to remuneration since 2009 or when they commenced whichever was the earlier;
    - Any information used to rely on these changes including KPI's or similar targets.
  - Any further information relating to the annual reviews over the above period for each member of the executive.

Item 58 has been amended to reflect this position.

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6. The revised scope is outlined in the table of documents included in this notice of decision. It is noted that the relevant time period of the request is from September 2009 to the date of the application (22 August 2014).
7. On 26 August 2015 the University requested an extension of time to complete the request under section 57(4) of the GIPA Act. By email dated 2 September 2015, Simon Kempton of the NTEU accepted the request for an extension of time, making the date for providing a decision 25 September 2015.
8. The date for providing a decision has been exceeded, therefore, under section 71(2) of the GIPA Act, the deposit will be refunded. Under section 63(1), if an agency does not decide an application within time, the agency is deemed to have refused the application (which is a reviewable decision). However, under section 63(2) the deemed refusal does not prevent the agency from continuing to deal with the application and to give notice of a decision (late decision). Therefore, for the purposes of the GIPA Act, this decision is to be considered a late decision. Section 63(4) prohibits an agency imposing a processing charge on a late decision. As such, no processing charge is payable.
9. Further, due to the extensive nature of the request, the NTEU has agreed to a split decision. Under section 58(2) of the GIPA Act, more than one decision can be made in respect of a particular access application. This decision deals with items 1 – 52 of the table. A decision on items 52 to 60 will be completed once consultation with the individuals involved has concluded in accordance section 54 of the GIPA Act (third party consultation).

## Decision

10. I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.
11. In this Notice of Decision I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to tell you:
  - (a) the reasons for my decision and the findings on any important questions of fact underlying those reasons, and
  - (b) the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure.
11. Where appropriate, the reasons for my decision are contained in the document table. However, where I have relied on a public interest ground to not release a document, I have outlined my decision in this notice and referred to the applicable public interest considerations.
12. You can ask for a review of this decision. For details about how to do so, see part 9 of this notice.

## Searches for information

13. Under the GIPA Act, the University must conduct reasonable searches for the information you asked for in your application. To complete this search all members of the SCU Executive were contacted and asked to provide all information they hold, or have control over, that falls within the scope of the request. In addition, a search of University Council Minutes and Council Papers was undertaken by Governance Services.
13. In response I received the information and documents referred to in the document table. That information has been assessed for release against the provisions of the GIPA Act.
14. For ease of reference, the item number from the original request has been maintained. Where no documents responsive to the request were provided to me, I have noted that fact and if applicable stated reasons.

### Document Table

Item No.	Information Requested	Actual document/information sought.	Information Received	Decision
1	All disclosed interests (including declared conflicts of interest) for each University Council Member, including the Vice Chancellor	List of declared interests for University Council Members (Name and Interest)	1.1 List of declared interests	Release – refer also to notes in paragraph 19
2	Arrangements for the procurement of the Unit Course Management System including cost(s), quotes, ongoing work arrangements/fees, declarations of interest, individuals involved, internally and externally.	Seeking: <ul style="list-style-type: none"> <li>Costs (amount already spent, amount budgeted for future);</li> <li>Name of external companies awarded contract;</li> <li>Level of approval at SCU and who approved.</li> </ul>	2.1 UCMS Software Licence Agreement between SCU and The University of South Australia	Release – Cost of Software. See paragraph 20 for information relating to this item.
3	Current balance sheets showing movement of cash reserves and their depletion.	Line Item in Budget. Remove 'and their depletion', the figures will reveal if cash depleting.	3.1 Statement of Financial Position as at 31 December 2014	Release
4	Accumulated debt	Line Item in Budget	See Item 3	Release
5	University Council meeting minutes and Risk Management	Deleted as agreed by applicant		

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	reports, including any due diligence carried out by, or on behalf of, University Council members and Executive Officers.			
6	University Council's decision to achieve \$6 million in savings in 2014 to return the budget to a cash surplus	University Council Paper	No document/s matching this description were located and provided for assessment.	N/A
7	Details of who exactly made the above decision, the basis for it and Council Member voting	University Council Minute	See above Item 6.	N/A
8	Pressures from financial institutions and SCU's response(s) to those institutions.	Request is for correspondence to and from financial institutions about pressures.	No document/s matching this description were located and provided for assessment.	N/A
9	Any loans that impacted the decision to reduce the deficit, including documents containing loan terms and conditions.	Loan Document	9.1 ANZ Loan Document	Withhold redacted section 14 3(a) and 4(d)
10	Rationale for increasing cash reserves generally	Deleted as agreed with applicant.		
11	Alternatives the University Council and Executive Members considered to reduce deficit (other than reducing staff numbers)	University Council minutes that contain all discussions on strategies to reduce deficit	11.1 Council Minutes, item G3, 2014 Budget - Council Meeting November 2013	Release
12	Discussions/communications on the presentation/communication of the financial situation to staff, students and the wider community.	Deleted as agreed with applicant.		
13	Proportion of casual	Only Academic statistics,	13.1 SCU Institutional	Release

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	academic employees (FTE) by major categories, the actual cost, and whether it has increased.	not general staff. <ul style="list-style-type: none"> <li>• Total number of Academic Staff;</li> <li>• Number of Full Time Permanent Academic Staff;</li> <li>• Number of Casual FTE Academic Staff.</li> </ul>	review Page 25 – Factsheet: Staffing 2010 - 2014	
14	For the period August 2010 to present, all documents regarding the engagement of casual staff, including University Council and Executive Officer Policy, formal or informal.	Not “All documents” Request: <ul style="list-style-type: none"> <li>• Cost of casual staffing now;</li> <li>• Cost for projected budget;</li> <li>• Any papers to University Council re casual staff numbers.</li> </ul>	14.1 Operating Statement Dec 2014	Release
15	For the period August 2010 to present, expenditure on casual staff and future expenditure plans for casual staff	Delete, now covered by Item 14		
16	Future casual staff engagement generally	Delete, now covered by Item 14		
17	Total number of students by campus, including onshore and offshore campuses, projected effect on income and measures to reverse trend		17.1 2014 Budget Parameters 1 Aug 2013  17.2 Financial report - 6 months to June 2013  17.3 2014 - 2016 Budget – Friday 27 September	17.1 – Release – out of scope information redacted.  17.2 – Release - out of scope information redacted.  17.3 – Out of scope

			2013	information redacted.
				Withhold information on page 10 s 14 – 4(a) and 4(d)
			17.4 – Report to Finance Committee October 2009	17.4 – Release - Out of scope information redacted.
			17.5 – Report to Finance Committee October 2010	17.5 – Release – Out of scope information redacted.
			17.6 - Report to Finance Committee October 2008	17.6 – Release - Out of scope information redacted
			17.7 – SCU Profile 2009 to 2014	17.7 Release
			17.8 - Confidential Briefing to Vice Chancellor’s Executive Committee – 8 March 2013 – Student Retention	17.8 Release
			17.9 - Confidential Briefing to Vice Chancellor’s Executive Committee – 3 October	17.9 – Withhold redacted information

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			2012	- 4(a) and 4(d) Out of Scope Information Redacted in Appendix 1
			17.10 - Confidential Briefing to Vice Chancellor's Executive Committee – 1 May 2013	17.10. - Withhold redacted information - s 14 – 4(a) and 4(d) – Out of Scope information redacted on page 1
			17.11 - Confidential Briefing to Vice Chancellor's Executive Committee – 16 May 2013	17.11 - Withhold redacted information - s 14 – 4(a) and 4(d)
			17.12 - Confidential Briefing to Vice Chancellor's Executive Committee – March 2014	17.12 - Withhold redacted information - s 14 – 4(a) and 4(d) Out of Scope information redacted on page 1
			17.13 – Student retention Strategies 2013: Initial Overview	17.13 - Withhold redacted information - s 14 – 4(a) and 4(d)
			17.14 – Early Engagement	17.14 -



			<p>Call Campaign</p> <p>Publicly available information – contained in annual report and SCU budget.</p> <p><a href="http://scu.edu.au/docs/annual_report/">http://scu.edu.au/docs/annual_report/</a></p> <p><a href="http://scu.edu.au/docs/annual_report/index.php/dds?cat_id=757#cat757">http://scu.edu.au/docs/annual_report/index.php/dds?cat_id=757#cat757</a></p> <p>2014 Annual Report (student numbers at p3)</p> <p>The 2012 (p5) and 2013 (p3) annual reports also include student data</p> <p><a href="http://scu.edu.au/docs/annual_report/index.php/dds?cat_id=863#cat863">http://scu.edu.au/docs/annual_report/index.php/dds?cat_id=863#cat863</a></p> <p>Student data is also available on the SCU at a Glance tables available on the SCU website</p> <p><a href="http://scu.edu.au/pgr/">http://scu.edu.au/pgr/</a> (2011 – 2014)</p>	<p>Withhold redacted information - s 14 – 4(a) and 4(d)</p>
18	Current trend of low student numbers and viability of any SCU campus, particularly Coffs Harbour	Papers in relation to any proposal to close Coffs Harbour	No document/s matching this description were located and provided for assessment.	N/A
19	Plan(s) to increase domestic and international students at SCU	Request is for Final Plans/Proposals/Memos of this nature	Collation of information would substantially divert the resources of the university	See paragraph 23 in relation to Section 53(5)
20	Dependency on student load income compared to other regional Universities	Deleted as agreed with applicant.		

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21	Consideration of student load income in decision making processes pertaining to capital investments	Any University Council minutes pertaining to student load	21.1: Council Minutes – September 2011 21.2: Council Minutes – June 2011 21.3 Council Minutes – February 2012 21.4 Council Minutes – September 2012 21.5 Council Confidential Minutes – Feb – 2013 21.6 Council Minutes – June 2013 21.7 Council Minutes – August 2013 21.8 Council Minutes – September 2013 21.9 Council Minutes – November 2013 21.10 Council Minutes – Feb 2014 21.11 Council Confidential Minutes – April 2014	21.1 – Release 21.2 – Release 21.3 – Release 21.4 – Release 21.5 – Release 21.6 – Release 21.7 – Release 21.8 – Release 21.9 – Release 21.10 – Release 21.11 – Release
22	Consideration of financial productivity of capital investments, including measures taken to improve their financial productivity	Only relates to the School of Engineering and the Library.  Request is for final papers or business cases	22.1 SCU EIF Application – Cost Benefit Analysis March 2012  22.2 Finance Committee Briefing Paper – Financial Acquittal and Final Progress Report – Engineering and Science Precinct	22.1 – Withhold redacted information – 1(d), 1(e), 4(a), (c) and (d)  22.2 Release
23	Marketing budget	Line Item in Budget –	23.1 Marketing PR line	23.1

	with a particular emphasis on sums allocated to bolster student attraction to SCU's teaching and learning experience.	Total Marketing	item	Release
24	Marketing Strategy, including details of how factors unique to SCU (eg small classes regional ambience) were included in marketing.	Marketing Strategy – University Wide.  The request is for high level document/s, not each individual marketing plan.	24.1 August 2012 Internationalization & Enterprise Green Paper;  24.2 Regional Campus Descriptors  24.3 Domestic Marketing Strategies	24.1 – Withhold redacted information 4(a), 4(c) and 4(d)  24.2 – Release  24.3 - Withhold redacted information 4(a), 4(c) and 4(d)
25	The VC and SDVC accessibility to staff and students	Deleted as agreed with applicant.		
26	Feedback provided to students through Pulse and to staff at change@scu	Deleted as agreed with applicant.		
27	Sale of Tweed Riverside Building to Tweed Council,, including sum, terms of sale and policy/procedure followed.	<ul style="list-style-type: none"> <li>• Sale Amount</li> <li>• Contract for Sale</li> <li>• Property Disposal Policy</li> </ul>	27.1 Contract for Sale of Land	Withhold section 14 1(g), 4(b), 4(a) and 4(d)
28	Reasons for not following SCU policies in the sale of this asset	Deleted as agreed with applicant.		
29	Amount spent on corporate executive recruitment, appointment and payout since 2009	Dollar Figure	Collation of information would substantially divert the resources of the university	See comments in relation to section 53(5) and 75
30	Amount spent on academic executive recruitment,	Dollar Figure	Collation of information would substantially divert the resources of the	See comments in relation

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	appointment and payout since 2009		university	to section 53(5) and 75
31	Date Uni was made aware of the number of short term executive level appointments made since 2009	University Council minutes relating to numbers of short term executive level appointments	No document/s matching this description were located and provided for assessment.	
32	Date Uni was made aware of the negative financial impact on SCU such appointments had	Deleted as agreed with applicant.		
33	Analysis undertaken to inform Council decision to introduce 3 session teaching calendar with shortened teaching periods	Council Paper	All documents in relation to this query are out of scope.	Out of Scope – see explanation in paragraph 28
34	Consideration of feedback provided by staff and students prior to its introduction was taken into account in the decision making process.	Request copies of staff and student: <ul style="list-style-type: none"> <li>• Feedback;</li> <li>• Consideration of feedback</li> <li>• Response to feedback</li> </ul> <p>In relation to 3 session teaching calendar</p>	All documents in relation to this query are out of scope.	Out of Scope – see explanation in paragraph 28
35	Any further analysis undertaken evaluating the effect of the change after its implementation with particular regard to current attrition, new enrolment and impact on international students.	Any papers undertaking analysis of 3 session teaching calendar post implementation	35.1 Confidential Briefing to Vice Chancellor's Executive Committee 20 June 2012 – Teaching Calendar Progress Report  35.2 Council paper item C - VC's Report to Council 2 August 2013  35.3 All Staff 131.11.09	35.1 Release  35.2 Release in scope information – redacted information is out of scope.  35.3

				Release
			35.4 All Students ~ 2010 Teaching Calendar email	35.4 Release
			35.5 Attachment A Report of the Teaching Calendar Working Party ~ Final	35.5 Release
			35.6 Attachment B Examination duration consultation paper March 2010	35.6 Out of Scope
			35.7 Attachment C ReqandAKnow_Final Draft_14March2011 Recommendations	35.7 Out of Scope
			35.8 Attachment D Student Services Academic Board (2)	35.8 Release – redacted information out of scope
			35.9 Excerpt VCEC Notes 20 June 2012	35.9 Release - redacted information out of scope
			35.10 Report of the Teaching Calendar Working Party ~ Final	Duplicate of 35.5
			35.11 SCU final report- 9.11.09 (2)	35.11 Release
			35.12 Teaching Calendar Progress Report June 2012	35.12 Release
			35.13 van Ernst - SCU Briefing paper _Final version_ 6 10 09	35.13 Release
			35.14 VC Response to Teaching Calendar	35.14

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			report	Release
36	Councils decision to invest in BEng	Council Paper	36.1 Council Paper, item 11 "Late Paper: Course Accreditation Submission: Bachelor of Engineering (Civil)" – Council Meeting November 2011;  36.2 Council Paper, Item D8 "Bachelor of Engineering (Civil) Business Case" - Council Meeting February 2013	36.1 Release - redacted information out of scope  36.2 Release in part – withhold redacted portion – s 14 (1f) and 4(d)
37	Business Plan, data and reasons supporting the investment.	Business Plan	See Item 22 CIS Cost Benefit Analysis	
38	Analysis regarding any impact on ongoing programs	Analysis of impact on Engineering on other SCU programs	No document/s matching this description were located and provided for assessment.	
39	Cost to establish and implement BEng including infrastructure and staffing	Costs of build and ongoing operating cost. - including recruitment and salaries.	39.1 Phase 1 Financial Acquittal and Final Progress report – Engineering and Science Precinct  Recruitment and salary – information is not contained within a record in the format requested.	39.1 Release  Section 53 and 75
40	Consideration of casuals in the procurement and design in the 2 new buildings on Lismore campus including specific design requests for casual workforce	Design Brief for learning Centre and Engineering Building	40.1 Learning Centre and Engineering Building Brief	Out of Scope – No reference to casual staff within the document requested.
41	Costings relating to the decision to move ahead on Building B on the Gold Coast	Costings for construction of Building B up to practical completion.	41.1 Building B Final Costs	Release
42	Final build cost,	Delete – covered by 41		

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	reasons for overspend and how increased cost was funded			
43	Consideration of Building B lacking basic facilities, for example, sports and cultural amenities, a café and on site parking	Design Brief for Building B.	The document/s requested predate the time frame of the request.	
44	Parking leasing agreement with the Gold Coast Airport and its cost, past, current and future	Lease agreement as it relates to parking.	44.1 Car Park Licence 24 June 2013 44.2 Lease SCU 'E' 44.3 Car Park Licence 28 November 2014 44.4 Lease SCU 'F'	Withhold  Withhold  Out of Scope  Withhold
45	When on site parking will be completed and how it is being funded	Any current contracts for the construction of parking on the Gold Coast Campus	No document/s matching this description were located and provided for assessment.	N/A
46	Funding past present and future for Building C	EIF and SAF Funding Agreement	46.1 Funding Agreement – Structural Adjustment Fund – Deed of Variation – Consolidated Funding Agreement – Partners for the Future Project – EIF Component	Release
47	Consideration of casuals in the procurement and design of Building B, including specific design requests to accommodate workforce	Design Brief for Building B	The document/s requested predate the time frame of the request.	
48	Funding arrangements for the APFI	Funding Agreement	48.1 DEEWR Capital Development Pool – Details and Conditions of Grant August 2011	Release
49	SCU's investment in the project, including reasons and sum	Monetary figure – SCU contribution to APFI	49.1 APFI Final Costings	Release
50	Reasons for non completion,	Deleted as agreed with applicant.		

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	including consideration of reasons and strategy for completion			
51	Renovation/improvement works to the VC's private residence, including cost and justification	Delete 'private'. Application relates to residence at Lismore.	51.1 Ereq 329578 18 April 2012 and 285852 9 November 2009	Release
52	Details of who approved such works, including voting	University Council minutes	No document/s matching this description were located and provided for assessment. Contracts less than \$3.5 million do not require Council approval.	
53	Range of benefits the VC receives, including accommodation, vehicle for private use, allowances, benefits, bonus packages etc	Delete – covered by 54		Decision reserved as agreed.
54	VC's total remuneration package from initial appointment to date, including performance criteria	Provide all relevant details in all documents pertaining to VC's remuneration package		Decision reserved as agreed.
55	VC's performance reviews, including results, individuals involved in the assessment and effect on remuneration	Delete – covered by 54 and 56		Decision reserved as agreed.
56	Consideration by University Council of whether performance criteria were met and the basis for their conclusions	Criteria/KPI's Council Documents. Assessment of whether KPI's were met.		Decision reserved as agreed.
57	Overseas travel budget, including the justification for this expenditure	This relates only to executive members including the VC, not total SCU spend. Delete 'justification for spend.'		Decision reserved as agreed.
58	The same information (51 – 58	<ul style="list-style-type: none"> <li>Remuneration of all current</li> </ul>		Decision reserved as



	) for all executive officers	<p>executives including:</p> <ul style="list-style-type: none"> <li>○ All changes to remuneration since 2009 or when they commence whichever was the earlier;</li> <li>○ Any information used to rely on these changes including KPI's or similar targets.</li> <li>• Any further information relating to the annual reviews over the above period for each member of the executive.</li> </ul>		agreed.
59	<p><b>Policies and Procedures</b></p> <p>In each of the issues in this schedule, the relevant SCU policies engaged and any assessment/monitoring of compliance</p>	Delete as agreed with applicant	N/A	N/A
60	For the avoidance of doubt, for each of the above, all documentation is sought.	Delete as agreed with applicant	N/A	N/A

### Reasons for Decision

15. As indicated by the table of documents, I have decided to withhold certain information. A full explanation of my decision is set out below.

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16. Section 9(1) of the GIPA Act provides that a person who makes an access application for government information has a legally enforceable right to be provided with access to the information in accordance with Part 4 (access applications), unless there is an overriding public interest against disclosure of the information.
17. Sections 12 to 15 contain the principles that apply to the determination of the public interest test. To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.
18. I applied the public interest test by:
  - (a) identifying any public interest considerations in favour of disclosure;
  - (b) identifying any relevant public interest considerations against disclosure; and
  - (c) deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- (b) in a way that promotes the objects of the GIPA Act;
  - (c) with regard to any relevant guidelines issued by the Information Commissioner;
  - (d) without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);
  - (e) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant), and
  - (f) with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.
19. **Item 1 – List of Declared Interests**

Prior to 2014 the University did not create or maintain a list of all interests declared in Council meetings for individual matters. Under section 75 of the GIPA Act the University is not required to create documents/lists if it would unreasonably divert resources. For that reason a 'list' of all interests declared since September 2009 has not been created.

Section 54 of the Act relates to consultation with third parties. Under this section, an agency must consult with an individual if the information is personal information or concerns the person's business, commercial, professional or financial interest. All persons listed on the released document were contacted for comment. No objections were received. Therefore, on that basis the public interest considerations in relation to personal information are not outweighed by public interest considerations in favour of release.

20. **Item 2 – University Course Management System**

The University Course Management System (the **UCMS**) was developed by the University of South Australia. The University paid \$300,000.00 to purchase the software. The University did not engage external consultants to complete the project, a Project Manager was recruited to assist in the implementation and customisation of the software.

In addition to the purchase price, you sought information relating to the ongoing budgeted expenditure.

Section 75(2) provides:

*An agency's obligation to provide access to government information in response to an access application does not require the agency to do any of the following:*

- (a) make a new record of information held by the agency,*
- (b) update or verify information held by the agency,*
- (c) create new information, or produce a new record of information, by deduction, inference or calculation from information held by the agency or by any other use or application of information held by the agency.*

I am advised that the information is not available in the format requested. Costs in relation to the UCMS can be attributed and apportioned across a number of business codes and units. Whilst the GIPA Act permits the University to create a new record in response to a request, it is not obliged to do so where creating a record would unreasonably interfere with the operations of the University or require the University to incur additional costs. In relation to Item 2, the University would be required to search a number of records and databases to find information potentially relevant to the request. Further, the University would then be required to apportion costs or draw inferences from the data to create a record. For that reason a record has not been created and provided to me for assessment.

**21. Item 9.1 – ANZ Loan Document**

I have decided to redact information contained in the Loan Document including the interest rate, the term, certain negotiated fees and charges, non standard commercial clauses and personal information of the authorised representatives.

In withholding the redacted information I have taken into consideration the public interest set out in clause 4(d) of the table at section 14, namely;

- (d) prejudice any person's legitimate business, commercial, professional or financial interests,*

I have also considered the public interest in favour of disclosure as set out in section 12 of the GIPA Act including:

- (a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.*

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- (b) *Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.*
- (c) *Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.*

It is a matter of fact that the University and the ANZ Bank operate in a competitive market. The bulk of the document is standard for agreements of this type. However, commercial terms are open to negotiation by the bank and the customer. Releasing specific commercial details of the loan agreement will affect the ability of the University to conduct negotiations with other finance companies or banks. Likewise, the disclosure of specific details will affect the ability of the bank to negotiate with other similar customers. In this case I consider that the public interests in disclosure do not outweigh the public interests against disclosure.

In relation to the name of the authorised representatives, the information contains the full name, date of birth and signatures of the office holders, which is personal information. Clause 3(a) of table 4 in section 14 of the GIPA Act notes the following public interest factor against disclosure:

- 3(a) reveal an individual's personal information,*

I have also considered additional public interest factors against disclosure namely:

- 2(e) endanger the security of, or prejudice the system or procedure for protecting, any place, property or vehicle; and*
- 2(d) prejudice any person's legitimate business, commercial, professional or financial interests,*

In this instance, I have considered whether the release of the details is such that the public interest in disclosure outweighs the public interest in withholding the information.

It is a matter of fact that the names, date of birth and signatures of the authorised officers are required for the purposes of providing notices under the Loan Agreement. If information of this type is generally available to the public, there is a potential for third parties to use the information to issue fraudulent notices. The University has a legitimate business, commercial and financial interest in ensuring that unauthorised notices are not issued which may in turn endanger the University's systems for protecting assets. The deletion of this information does not effect the general public interests in disclosure in section 12 and I have decided that the public interest in disclosure is not outweighed by the interest in withholding the information.

## 22. Item 17 – Student Numbers

The information redacted from documents 17.1, 17.2 and 17.4 to 17.6 is outside the scope of the request. I have decided to release the remainder of the information in these documents.

Part of the redacted information in document 17.3 is also outside the scope of the request. However, I have decided to withhold information under the provisions of the GIPA Act in respect to page 10 of document 17.3 (2015 – 2016 Assumptions).

I have decided to release documents 17.7 and 17.8 in their entirety.

I have decided to withhold information in documents 17.9 to 17.14.

In assessing these documents I have referenced clause 4(a) and 4(d) of the table set out in section 14 of the Act (extracted below):

*4(a) – undermine competitive neutrality in connection with the functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market;*

*4(d) prejudice any person’s legitimate business, commercial, professional or financial interests.*

The University competes internationally and nationally for students. In relation to the withheld information it is a matter of fact that those documents contain specific marketing and student retention details including pricing structures and marketing strategies.

In particular, document 17.3 contains proposed fee and price increases and documents 17.9 to 17.14 contain specific marketing strategies and data.

In a competitive market, the release of such information will provide an unfair advantage to competitors of the University. It is reasonable to suggest that being at a competitive disadvantage will lead to fewer student numbers and hence less revenue. This will in turn affect the University’s commercial and financial interests, which is also a valid public interest consideration under clause 4(d) of the table at section 14 of the Act.

The public interest in transparency and accountability in section 12 of the GIPA Act does not outweigh the public interest in maintaining a financially viable university.

**23. Item 19 – Plans to increase domestic and international students at SCU**

The initial wording for item 19 was:

*“Plans to increase domestic and international students at SCU”*

The NTEU was asked to clarify the scope of this item. A response was provided noting that the request was for:

*“Final plans/proposals/memos of this nature”.*

I have been advised that increasing student numbers is an integral consideration in many documents across all schools and business units. To comply with this request, the University would be required to undertake a University wide search for information. Given that the request period commences in 2009, it is likely that the search would result in thousands of pages of information requiring assessment.

Section 53(5) of the Act provides:

*53 (5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency's resources.*

I am satisfied that collating and assessing all documents held by the University fitting this description since 2009 would substantially divert the resources of the University. Therefore, this portion of the application has not been assessed.

**24. Item 22.1 - SCU EIF Application – Cost Benefit Analysis March 2012**

Item 22.1 is a cost benefit analysis prepared by an external consultant for the University in relation to the value of the Education Infrastructure Funding to SCU.

In assessing whether to release this document I have considered the public interest factors set out in section 12 of the GIPA Act. I have also considered the public interest factors against disclosure, namely:

- 1(d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,*
- 1(e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,*
- 4(a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market;*
- 4(c) diminish the competitive commercial value of any information to any person;*
- 4(d) prejudice any person's legitimate business, commercial, professional or financial interests.*

It is a matter of fact that the cost benefit analysis contains details of projected income and marketing strategies. As noted elsewhere in this notice of decision, the University operates in a competitive environment both nationally and internationally. The release of detailed strategy and future modelling has the real likelihood of lessening SCU's competitiveness.

In addition, the information contains opinions and advice used in the deliberative process surrounding the decision to embark on significant infrastructure projects. If information of this type is released, it will diminish confidence in providing full and frank statistics and predictions in University documentation. To ensure a robust decision making process, it is in the public interest that highly sensitive information be included in documentation but not released to the public.

I am satisfied that the public interest in withholding the specific information in this document outweighs the interests in release. I also note that the public interest in transparency and accountability is fulfilled through the release of the remainder of the document.

**25. Item 24.1 – Internationalisation Green Paper and 24.3 Domestic Marketing Strategies**

The documents at Items 24.1 and 24.3 contain data on SCU's international commercial arrangements and domestic marketing strategies. The redacted information contains tables of SCU's partners, data relating to student numbers as well as data on mobility of students by region and nationality. In addition, the document provides recommendations in relation to future marketing and strategic tactics.

In assessing whether it is in the public interest to release this information I considered the matters set out in section 12 of the GIPA Act. I have also considered the following factors against disclosure:

- 4(a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market;*
- 4(c) diminish the competitive commercial value of any information to any person;*
- 4(d) prejudice any person's legitimate business, commercial, professional or financial interests.*

As noted elsewhere in this notice of decision, the University operates in a competitive market, especially as it relates to international students. According to the Australian Bureau of Statistics, revenue from international students exceeds \$3 billion each year. A significant amount of SCU's income is derived from international student enrolments.

The release of the redacted information will reveal a number of market signals to SCU's competitors. If known, the information can be used to target markets which SCU has an existing market share in, or plans to expand into. Any loss of market share impacts on SCU's income and the financial viability of the University. While the public interest in disclosure is noted, in this case it does not outweigh the public interest in ensuring the University can maintain its competitiveness within the tertiary education market.

**26. Item 27 – Contract for Sale of Land with Tweed Shire Council**

I have decided to withhold the redacted information in the contract for sale of land with Tweed Shire Council at item 27.1. The redacted information falls into two categories:

- (a) Special conditions negotiated in relation to the contract for sale; and
- (b) prices paid for maintenance services on the property.

I consulted with Tweed Shire Council as required under section 54 of the GIPA Act. The Tweed Shire Council requested that the special conditions not be disclosed as it relates to their business interests, and further, that the matters remain confidential.

It is a matter of fact that the special conditions contain a confidentiality clause, further the information within the special conditions relates to particular negotiations which remain confidential. I have considered the public interest matters listed in section 14 of the Act, in particular 1(g) and 4(b) of the Table which states:

*1(g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,*

*4(b) reveal commercial – in confidence provisions of a government contract.*

I have also considered whether this public interest consideration overrides the general public interest in disclosure. In this case I am satisfied that the release of the information would be a breach of confidentiality. The public interest in confidentiality is important in the context of contractual negotiations. It is essential that parties can enter into commercial arrangements with the University in confidence. By not complying with contractual condition (such as conditions of confidentiality), the University erodes that confidence, which in turn hinders the University's ability to negotiate future transactions.

In relation to the prices paid for maintenance services on the property, I have considered the additional public interest set out in clause 4(a) and 4(d) of the Table at section 14, namely:

*4(a) – undermine competitive neutrality in connection with the functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market;*

*4(d) – prejudice any person's legitimate business, commercial, professional or financial interests.*

By disclosing pricing structures the University lessens its ability to negotiate price with service providers in future contracts. Further, the public interest in releasing the prices is not served by this application. The application is mainly concerned with the contract for sale and not the documents ancillary to that sale.

**27. Item 29 and Item 30 – Corporate recruitment**

Section 53(2) states:

*An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency's searches must be conducted using the most efficient means reasonably available to the agency.*

However, section 75(2) provides:

*An agency's obligation to provide access to government information in response to an access application does not require the agency to do any of the following:*

*(a) make a new record of information held by the agency,*

*(b) update or verify information held by the agency,*

*(c) create new information, or produce a new record of information, by deduction, inference or calculation from information held by the agency or by any other use or application of information held by the agency.*

Whilst the Act permits the University to create a new record in response to a request, it is not obliged to do so where creating a record would unreasonably interfere with the



operations of the University, or require the University to incur additional costs. In relation to Items 29 and 30, the University would be required to search a number of records and databases to find information potentially relevant to the request. Further, if relevant information is located, the University would then be required to apportion costs or draw inferences from the data to create a record. For that reason a record has not been created and provided to me for assessment.

**28. Item 33 and 34 – Three Session Teaching Calendar**

The date range of the request commences September 2009. I have been advised that the three session teaching calendar commenced at the beginning of 2009. Therefore, any papers informing the decision to introduce the 3 session teaching calendar pre date the application timeframe and are outside the scope of this request.

**29. Item 36.2 - Council Paper, Item D8 “Bachelor of Engineering (Civil) Business Case” - Council Meeting February 2013**

I have decided to withhold redacted portions of the Bachelor of Engineering (Civil) Business Case and Attachments A and B. The redacted information falls into two categories:

- (a) Information specifically relating to strategies for the recruitment of staff for the Bachelor of Engineering; and
- (b) Strategic marketing information.

In the case of withholding staff recruitment information I have referred to the following public interest considerations contained in section 14 of the Act:

- 1(f) prejudice the effective exercise by an agency of the agency’s functions;*
- 4(a) – undermine competitive neutrality in connection with the functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market;*  
*and*
- 4(d) prejudice any person’s legitimate business, commercial, professional or financial interests.*

It is a matter of fact that the redacted information contains strategic recruitment advice. The release of such information has the potential to prejudice the University’s recruitment functions. The information makes it clear that recruiting quality staff within the engineering field is highly competitive. The information then outlines ways in which the University could attract staff ahead of competitors. I consider that the release of such information may adversely impact on the ability of the University to effectively seek and recruit staff, which would in turn prejudice the teaching functions of the University.

The marketing information relates to matters including market share, and how the University may position itself to gain access to that market share. Making such information public will enable competitors to counter the University’s marketing strategy. I have

therefore decided not to release the information as it may prejudice the University's commercial and financial interests.

In coming to this conclusion I have considered the general public interest in releasing the information asset out in section 12 of the GIPA Act, however, I do not consider that the public interest in releasing such information outweighs the public interest in withholding it.

**30. Item 39 – Cost to establish and implement BEng**

In relation to item 39, the acquittal and final progress report has been provided. However, in addition to the build costs you requested information described as 'ongoing costs – including recruitment and salaries'. I have been advised that the information is not contained in a readily accessible document, and would require extensive searches and inferences to be drawn about how costs are apportioned to the Bachelor of Engineering. As noted in the reasons for decision in relation to items 29 and 30, the University is not required to create new documents in response to a request. It is for this reason that a record has not been created for assessment.

**31. Item 44 – Lease agreements relating to car parking on the Gold Coast**

I have decided to withhold all information contained in items 44.1, 44.2 and 44.4. Item 44.3 is outside the date range of this request and is therefore out of scope.

It is a matter of fact that the requested information contains prices paid per car park or per square metre. Details of the leases can be found on the University's GIPAA register at <http://scu.edu.au/legal/index.php/13>. Financial information relating to the leases has not been provided on the register pursuant to section 32 of the Act (confidential information not required to be entered into the register).

In relation to this application I have considered the public interest in releasing the information, however, I have decided there is an overriding public interest in non disclosure as making the price structures public would reveal commercial in confidence provisions of a government contract, section 14 Table 4(b). By releasing the costings the University's ability to negotiate prices for parking in and around the Gold Coast Campus will be affected. Confidentiality of pricing allows the University to negotiate without reference to prices paid elsewhere. Restricting the ability of the University by making prices public will prejudice the University's financial interests which is a valid public interest consideration under section 14 Table 4(d).

## Access

32 All documents marked for release have been provided with this notice.

## Processing charges

- 33 As noted in paragraphs 8 and 9 of this decision, as the decision is a 'late decision', processing charges cannot be applied.

## Disclosure log

- 34 If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

In the letter acknowledging receipt of your valid application, you were told about the disclosure log. You were also advised of your right to object to the inclusion of details about your access application in the disclosure log, in certain circumstances (for example, if you seek access to your own personal information).

You did not object to details about your application being included in the disclosure log.

## Review rights

- 35 If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. Before you do so, I encourage you to contact me to discuss your concerns. My contact details are set out below.

You have three review options:

- internal review by another officer of this agency, who is no less senior than me
- external review by the Information Commissioner, or
- external review by the Administrative Decisions Tribunal (ADT).


You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).

You can also contact the IPC on freecall 1800 IPC NSW (1800 472 679).

## Further information

If you have any questions about this notice or would like any further information, please contact Mark Dixon, on (02) 6620 3465.

A handwritten signature in black ink, appearing to read 'Mark Dixon', written over a horizontal dotted line.

Mark Dixon