



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>V39 and Department of Justice [2026] QICmr 61 (23 April 2026)</i></b>
<b>Application Number:</b>	<b>318684</b>
<b>Applicant:</b>	<b>V39</b>
<b>Respondent:</b>	<b>Department of Justice</b>
<b>Decision Date:</b>	<b>23 April 2026</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - personal information and privacy - business information - contrary to public interest - section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - reasonableness of searches - nonexistent or unlocatable documents - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Department of Justice (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>2</sup> for access to the following information:

*All correspondence, including emails, letters, notices, or official communications between the Office of Fair Trading (OFT) and [an entity] from June 2019 to present, specifically regarding [named entity's] failure to hold Annual General Meetings (AGMs) in the mandated timeframe under the Associations Incorporation Act 1981.*

*All documents relating to complaints lodged about [named entity's] financial reporting practices, specifically reporting as a for-profit company limited by shares under the Corporations Act 2001 rather than adhering to the Associations Incorporation Act 1981.*

*All internal communications, memos, investigative notes, findings, rulings, determinations, extensions granted, or actions taken by OFT in response to all complaints made against [named entity] for failure to hold AGMs, improper financial reporting, and other non-compliance issues. All form 10a's and associated AGM documentation including minutes, resolutions and other relevant documentation.*

*Time range: 1 June 2019 to present date*

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<sup>1</sup> Access application dated 21 March 2025.

<sup>2</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. As the access application was made prior to 1 July 2025, references in this decision are to the RTI Act as in force prior to 1 July 2025 in accordance with the transitional provisions in Chapter 7, Part 9 of the RTI Act.

2. The Department located 181 pages and decided<sup>3</sup> to release the majority of those pages in full to the applicant. The Department decided to refuse access to personal information about other individuals<sup>4</sup> and business information of the entity named in the application<sup>5</sup> (**Remaining Information**) under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.<sup>6</sup> The applicant provided submissions to OIC raising concerns about the redaction of personal and business information and questioning the adequacy of the Department's searches.<sup>7</sup>
4. In the circumstances of this review, I agree with the grounds upon which the Department refused access to the Remaining Information, but given the concerns raised by the applicant regarding adequacy of searches and my findings on that issue, it is necessary for me to vary the Department's decision as follows:
  - a. access to the Remaining Information may be refused under section 47(3)(b) of the RTI Act on the basis disclosure would on balance be contrary to the public interest; and
  - b. access to further documents may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.
5. In making this decision, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**) particularly the right to seek and receive information.<sup>8</sup> A decision-maker will be 'respecting' and 'acting compatibly with' this right and others prescribed in the HR Act when applying the law prescribed in the RTI Act.<sup>9</sup> I have acted in this way in making this decision in accordance with section 58(1) of the HR Act.

## Contrary to the public interest

### Relevant law

6. Under the RTI Act, an individual has a right to be given access to documents in the possession or under the control of an agency.<sup>10</sup> The legislation is to be administered with a pro-disclosure bias<sup>11</sup> however, the right of access is subject to certain limitations, including grounds for refusing access.<sup>12</sup>
7. Access to information may be refused where disclosure would, on balance, be contrary to the public interest.<sup>13</sup> In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.<sup>14</sup>

<sup>3</sup> Access decision dated 23 May 2025. This is the *reviewable decision* for the purpose of the external review.

<sup>4</sup> 19 part pages.

<sup>5</sup> 32 full pages.

<sup>6</sup> External review application dated 5 June 2025.

<sup>7</sup> Submissions to OIC dated 27 June 2025 and 16 March 2026.

<sup>8</sup> Section 21(2) of the HR Act.

<sup>9</sup> See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act was endorsed in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

<sup>10</sup> Section 23 of the RTI Act.

<sup>11</sup> Section 44 of the RTI Act.

<sup>12</sup> Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: section 47(2) of the RTI Act.

<sup>13</sup> Section 47(3)(b) of the RTI Act.

<sup>14</sup> Schedule 4 of the RTI Act lists factors that may be relevant in determining where the balance of the public interest lies.

8. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, generally, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.

**Submissions**

9. The applicant submitted<sup>15</sup> as follows in relation to the Remaining Information:

*Second, the financial statements were statutory compliance documents provided to OFT in its regulatory capacity. Under the Associations Incorporation Act 1981 (Qld), financial statements of an incorporated association are required to be prepared, presented at the AGM, lodged with the chief executive, and made available to members on request: sections 59A, 59B, 59BA and 59C. In that context, the public interest in transparency and accountability concerning OFT’s regulatory handling is strong.*

...

*Fourth, I do not press for disclosure of private mobile numbers, residential addresses, or personal email addresses of third parties. My focus is the missing documents and any OFT records showing how [the entity’s] financial statements were assessed. To the extent names have been redacted, I maintain that names of persons corresponding in an official representative capacity for an incorporated not-for-profit organisation should not automatically be treated in the same manner as private contact information.*

**Findings**

10. The Remaining Information appears within correspondence (including emails) and financial and audit statements as described in the table below:

Remaining Information	Page numbers	Total
Private and identifying information of individuals other than the applicant, including private citizens and non public sector employees ( <b>Third Party Information</b> )	1-5, 54-56, 131-132, 134, 156-159, 170, 173, 175, 177	19
Financial information relating to an entity ( <b>Business Information</b> )	120-130, 135-155	32

11. In making the below findings on the Remaining Information, I have considered the factors in schedule 4 of the RTI Act<sup>16</sup> and not taken any irrelevant factors into account. I have also applied the RTI Act’s pro-disclosure bias<sup>17</sup> and considered Parliament’s intention that grounds for refusing access to information are to be interpreted narrowly.<sup>18</sup>
12. I have independently examined the Third Party Information and am satisfied that it comprises the personal information<sup>19</sup> of other individuals as it comprises their names, identifying information (such as mobile numbers, residential and email addresses) or is otherwise about those individuals. While the disclosure of this information may, to some extent, enhance the Department’s accountability and transparency, thereby raising

<sup>15</sup> Submission to OIC dated 16 March 2026.

<sup>16</sup> Relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning protection of the environment.

<sup>17</sup> Section 44 of the RTI Act.

<sup>18</sup> Section 47(2) of the RTI Act.

<sup>19</sup> As defined in schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld).

factors favouring disclosure,<sup>20</sup> I consider disclosure will more greatly impact the right to privacy of the other individuals and cause a public interest harm by disclosing their private and identifying information.<sup>21</sup>

13. I have also taken into account that the substance of the documents that contain Third Party Information has largely been released to the applicant and the Third Party Information reflects a comparatively small portion of information in those documents. I also note that the applicant submitted that he is not '*pressing*' for '*mobile numbers, residential and email addresses*'.<sup>22</sup> In the circumstances, I afford the nondisclosure privacy factor and personal information harm factor significant weight, and the factors favouring disclosure moderate weight. On balance, I find the public interest favours nondisclosure of the Third Party Information and that access should therefore, be refused to it under section 47(3)(b) of the RTI Act.
14. Turning to the Business Information, I consider the following public interest factors apply in favour of disclosure:
  - promote open discussion of public affairs and enhance the Department's accountability
  - contribute to positive and informed debate on important issues
  - inform the community of the Department's operations; and
  - reveal the reason for a government decision and background or contextual information that informed the decision.<sup>23</sup>
15. On the other hand, there are a number of factors which I consider favour nondisclosure of the Business Information, as listed below:
  - prejudice the business, commercial or financial affairs of an entity
  - prejudice the Department's ability to obtain confidential information
  - cause a public interest harm by disclosing the business, financial or commercial information of an entity; and
  - cause a public interest harm by revealing information communicated in confidence.<sup>24</sup>
16. I am limited in the extent to which I can describe the particular nature of the Business Information<sup>25</sup> as it is claimed to be contrary to public interest information. However, it generally relates to financial and audit statements provided to the Department for compliance purposes. I accept that there is strong community interest in how the Department discharges its compliance and regulatory functions. However, in affording weight to the pro-disclosure factors, I have also taken into account the significant amount of information that the Department has disclosed to the applicant under the RTI Act which I am satisfied, has already served to enhance the Department's accountability and transparency in relation to their regulatory role, and reveal extensive background and contextual information including the substance of communications with other involved parties. Accordingly, I afford the factors favouring disclosure moderate weight.
17. Having independently assessed the Business Information, I consider there is significant weight to afford to the factors favouring nondisclosure listed at paragraph 15 above. The Business Information appears within financial and audit statements, and I am, therefore,

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<sup>20</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>21</sup> Schedule 4, part 3, item 3 and part 4, item 6 of the RTI Act.

<sup>22</sup> As confirmed in his submission dated 16 March 2026.

<sup>23</sup> Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

<sup>24</sup> Schedule 4, part 3, items 2 and 16 and part 4, items 7 and 8 of the RTI Act.

<sup>25</sup> Section 108 of the RTI Act.

satisfied that the information concerns the commercial, business and/or financial affairs of the entity and it was communicated confidentially to the Department. I consider the entity's affairs would suffer prejudice, and the future supply of such information would also be prejudiced, if the Business Information was disclosed. On balance, I am satisfied that the public interest favours nondisclosure of the Business Information and that access should, therefore, be refused to it under section 47(3)(b) of the RTI Act.

## Nonexistent and unlocatable documents

### Relevant law

18. Access to a document may also be refused if it is nonexistent or unlocatable.<sup>26</sup> A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>27</sup> A document will be unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.<sup>28</sup>
19. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, including the agency's structure, recordkeeping practices and procedures and the nature and age of requested documents.<sup>29</sup> An agency may be able to account for the nonexistence of documents by providing an adequate explanation. However, searches may also be relied on to justify a decision that the documents do not exist, and if so, all *reasonable* steps must be taken to locate the documents. What constitutes reasonable steps will vary in each case, but it does not extend to '*all possible steps*'.<sup>30</sup>
20. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of 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; and whether the agency has taken all reasonable steps to find the document.<sup>31</sup> What constitutes reasonable steps will, as noted above, vary case by case as the search inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the circumstances.<sup>32</sup>
21. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.<sup>33</sup> The Information Commissioner has the power to require additional searches to be conducted. However, the Queensland Civil and Administrative Tribunal has confirmed<sup>34</sup> that the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner depends on the agency's officers to do the actual searching for relevant documents.
22. On an external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information

<sup>26</sup> Sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>27</sup> Section 52(1)(a) of the RTI Act.

<sup>28</sup> Section 52(1)(b) of the RTI Act.

<sup>29</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15].

<sup>30</sup> *Webb v Information Commissioner* [2021] QCATA 116 at [6] (*Webb*).

<sup>31</sup> In answering these questions, regard should be had to the circumstances of the case and the relevant key factors (*Pryor* at [21]).

<sup>32</sup> Such steps may include inquiries and searches of relevant locations identified after consideration of relevant key factors.

<sup>33</sup> Section 130(2) of the RTI Act.

<sup>34</sup> In *Webb* at [6].

Commissioner should give a decision adverse to the applicant.<sup>35</sup> However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.<sup>36</sup> Suspicion and mere assertion will not satisfy this onus.<sup>37</sup>

### **Submissions**

23. The scope of the application is set out in paragraph 1 of these reasons. Specifically, the application sought information held by the Office of Fair Trading (**OFT**), a business unit of the Department.

24. The Department located 181 pages in response to the above scope, comprising the following types of documents:

- Correspondence between OFT and third parties
- Correspondence between the applicant and OFT, and correspondence between the applicant and other government agencies, including attachments
- OFT publications
- Internal OFT complaint and investigation records; and
- Financial and Audit statements of the entity named in the application.

25. The Department confirmed<sup>38</sup> officers undertook approximately 2.5 hours of searches comprising the following:

- *Review edocs to confirm location and recall physical files held offsite*
- *Review and download all records and documents against [relevant reference numbers]*
- *Print case summaries for [relevant reference numbers]*
- *Review and download all records and documents linked to [relevant reference numbers]*

26. The Department also undertook searches of the following locations and systems:

- *Edocs*
- *MACS 3*
- *Physical files*
- *MACS Classic*
- *CALMS*
- *Outlook – shared inbox Registration.Services*
- *G Drive*

27. The applicant submitted<sup>39</sup> as follows in support of his concerns that all relevant documents have not been located:

*My application expressly sought internal OFT communications, investigative notes, findings, rulings, determinations, and actions taken in response to complaints about [an entity's] financial reporting and compliance issues.*

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<sup>35</sup> Section 87(1) of the RTI Act.

<sup>36</sup> See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

<sup>37</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23].

<sup>38</sup> Submission to OIC dated 2 July 2025.

<sup>39</sup> Submission to OIC dated 16 March 2025.

*Third, I do not accept that the Department took all reasonable steps to locate responsive documents. The RTI Act only permits refusal on the basis that documents do not exist or cannot be found after all reasonable steps have been taken: sections 47(3)(e) and 52. I hold copies of pre-25 March 2025 complaint and complaint-related emails sent to, or copied to, OFT / Registration Services which do not appear in the released material. These include complaint correspondence from [other individuals], and pre-25 March 2025 complaint correspondence sent by me and copied to OFT / Registration Services. The existence of those documents indicates that searches conducted by reference to complaint or investigation numbers may have been too narrow.*

28. The applicant also submitted<sup>40</sup> as follows in relation to his concerns about missing documents:

*In response to your request, I have compiled the attached document, "Missing OFT Correspondence", which sets out multiple complaints and relevant correspondence that fall squarely within the defined scope of my RTI application. These items were not included in the RTI decision documents and appear to have been missed despite being addressed to or copied to the Office of Fair Trading and relating directly to governance and compliance issues involving [an entity].*

*Importantly, I have now also received and included a copy of a complaint lodged by [a third party], which aligns with the scope of my RTI and further illustrates the extent of missing responsive material.*

*Collectively, these omissions raise significant concerns under section 52 of the RTI Act, as they suggest that the Department did not take all reasonable steps to locate relevant documents.*

## **Findings**

29. Having reviewed the located information, and the Department's submissions on its searches, I am satisfied that the searches conducted by the Department were appropriately informed by the scope and details provided by the applicant in the access application.
30. I acknowledge that the applicant has significant concerns around OFT's complaint handling and their compliance and regulatory actions. I also acknowledge the extent of documentation located in response to his access application has not met his expectations. Based on the information available to me, I am satisfied that the Department directed its searches to appropriate areas having regard to its recordkeeping practices and undertook comprehensive searches of relevant OFT systems. I am satisfied those searches resulted in the location of a significant number of documents responding to the terms of the application, the majority of which were released to the applicant. In particular, I note that OFT communications revealing its compliance activity, and OFT complaint/investigation records, were released to the applicant with minimal redaction.<sup>41</sup> I consider the location of those documents is relevant to establishing reasonableness of the Department's searches.
31. I have considered the evidence provided by the applicant,<sup>42</sup> which he says demonstrates 'missing OFT documentation', as well as the documents located by the Department in their searches. As previously outlined, where the issue of missing documents is raised, the applicant bears the practical onus of establishing reasonable grounds to be satisfied that the agency has not discharged its obligation to locate all relevant documents and that further searches and inquiries should be undertaken.

<sup>40</sup> Submission dated 27 June 2025.

<sup>41</sup> For example, pages 4-5, 54-56 and 165-169.

<sup>42</sup> In his submission dated 27 June 2025.

32. The evidence provided by the applicant is in the form of copies of correspondence which he asserts was emailed to the Department by other individuals—the applicant has not however, provided any communications *authored by* the Department to confirm the Department received, considered or engaged with the subject communications. Having examined the evidence relied on by the applicant, I do not consider it establishes reasonable grounds to believe further documents exist as the correspondence does not on its face confirm the Department received such correspondence. Also given the documents located by the Department did capture OFT email correspondence in connection with the making of complaints, I consider that serves to demonstrate searches were directed to the relevant areas so as to identify relevant correspondence.
33. Given the terms of the access application, the nature and extent of searches that have been undertaken by the Department, the documents located to date (including those to which access was refused) and the Department's relevant recordkeeping systems, practices and business unit operations of OFT, I am satisfied that further documents responding to the application do not exist. Accordingly, access to further documents may be refused on the basis they do not exist, in accordance with section 47(3)(e) and 52(1)(a) of the RTI Act.<sup>43</sup>

## DECISION

34. For the reasons set out above, I have decided under section 110(1)(b) of the RTI Act to vary the reviewable decision of the Department. I find that:
- a. The Remaining Information would on balance be contrary to the public interest to disclose under section 49 of the RTI Act and therefore, access to it may be refused under section 47(3)(b) of the RTI Act; and
  - b. The Department has taken reasonable steps to locate documents responding to the scope of the application and access to further documents may be refused on the basis they do not exist under sections 47(3)(e) and 52(1)(a) of the RTI Act.
35. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**Katie Shepherd**  
**Assistant Information Commissioner**

**Date: 23 April 2026**

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<sup>43</sup> Based on the information available to me, I do not consider the requirement for the Department to conduct back up searches under section 52(2) of the RTI Act is enlivened.