

Decision and Reasons for Decision

Citation:	<i>U64 and Queensland Corrective Services [2025] QICmr 84 (14 November 2025)</i>
Application Number:	318319
Applicant:	U64
Respondent:	Queensland Corrective Services
Decision Date:	14 November 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - where applicant contends missing information - whether agency has taken all reasonable steps to locate relevant documents in response to application - whether access to documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e), 52(1)(a) and 52(1)(b) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Corrective Services (**QCS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**)² for access to information detailing the lunch and dinner meals provided to the applicant while the applicant was incarcerated.³
2. QCS located 40 pages responsive to the application. By decision dated 16 September 2024, QCS released 33 pages to the applicant and refused access to parts of the remaining seven pages.⁴
3. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for review of QCS' decision⁶ as he considered that QCS had not taken all reasonable steps to locate the documents he requested.⁷

¹ By application dated 3 July 2024 (**access application**).

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting significant changes to the *Information Privacy Act 2009 (Qld)* (**IP Act**) and RTI Act. References in this decision to the IP Act/RTI Act, however, are to those Acts **as in force prior to 1 July 2025**. This is in accordance with chapter 8, part 3 of the IP Act and chapter 7, part 9 of the RTI Act, comprising transitional provisions requiring that access or amendment applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted.

³ The application requested documents for a certain part of the applicant's incarceration.

⁴ The **reviewable decision**.

⁵ External review application received on 19 November 2024 (**external review application**).

⁶ Dated 16 September 2024.

⁷ The applicant did not contest QCS' decision to refuse access to information on parts of seven pages, therefore this review did not consider the applicant's entitlement to that refused information. While the application for review was received by OIC outside of the statutory timeframe, a delegate of the Information Commissioner allowed the applicant a longer period of time to apply for review under section 88(1)(d) of the RTI Act.

4. During the review, QCS located and released additional documents to the applicant.⁸ The applicant did not accept disclosure of this information in resolution of the review and contends that further documents exist which have not been located.⁹
5. For the reason set out below, I vary QCS' decision and find that QCS has taken all reasonable steps to locate documents responding to the access application and access to any further documents may be refused as they are nonexistent or unlocatable.¹⁰

Issue for determination

6. The applicant confined the issue in the review to whether QCS has taken all reasonable steps to locate documents regarding a special diet that he received, over a narrower timeframe than the original access application.¹¹ The remaining issue for determination is whether access to any further documents related to this narrowed scope may be refused on the basis they do not exist or cannot be located.¹²

Relevant law

7. Under the RTI Act, access to documents may be refused if there are reasonable grounds to be satisfied that they are nonexistent¹³ or are unlocatable.¹⁴ OIC's functions on external review include investigating and reviewing whether an agency has taken all reasonable steps to locate documents applied for by applicants.¹⁵
8. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience, having regard to various factors, including the agency's structure, practices and procedures (including information management approaches), and considerations reasonably inferable from information supplied by an applicant.¹⁶
9. To determine that a document is unlocatable, the legislation requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and, if so, whether the agency has taken all reasonable steps to find the document.¹⁷ What constitutes '*all reasonable steps*' will vary from case to case¹⁸ and is a different test to all *possible* steps.¹⁹

⁸ By email on 19 June 2025, QCS provided the applicant with four additional pages comprising Prisoner Statewide Menus.

⁹ Telephone call with applicant on 19 June 2025.

¹⁰ Under sections 47(3)(e) and 52(1) of the RTI Act.

¹¹ By email dated 29 June 2025 the applicant agreed to the narrowed date range of 1 January 2019 to 6 December 2021.

¹² Under sections 47(3)(e) and 52(1)(a) and 52(1)(b) of the RTI Act.

¹³ Section 52(1)(a) of the RTI Act.

¹⁴ Section 52(1)(b) of the RTI Act.

¹⁵ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 (*Webb*) at [6] that the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

¹⁶ See *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11]-[12] and *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016) (*Gapsa*) at [13]-[14], adopting the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (*PDE*) at [37].

¹⁷ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [17]-[19] which adopted the Information Commissioner's findings in *PDE*.

¹⁸ *Webb* at [5] per McGill J.

¹⁹ *P52 and Fraser Coast Regional Council* [2024] QICmr 7 (19 February 2024) at [24]; *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23].

10. Where the issue of missing documents is raised on external review, the applicant bears a practical onus of demonstrating that the agency has not discharged the obligation to locate all relevant documents.²⁰ Suspicion and mere assertion will not satisfy this onus.²¹
11. 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.²² I consider that, in observing and applying the law prescribed in the RTI Act, a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act.²³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:²⁴ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.²⁵

Discussion

12. Based on QCS' knowledge of its recordkeeping practices and agency structure, QCS explained²⁶ that information about a prisoner's diet is recorded in:
 - case notes and the Integrated Offender Management System (**IOMS**) database;
 - an individual's hardcopy offender files; and
 - the relevant correctional centre.
13. The applicant does not, as I understand, contest QCS' advice as set out in the preceding paragraph, nor submit that it has not conducted sufficient searches of the first two information repositories listed above. The applicant has made multiple access applications to QCS over the years, which applications have included the entirety of IOMS records relating to him, and his hardcopy offender files – such that any documents concerning his diet held within these records would, given the breadth of those earlier applications, have been identified and dealt with by QCS in processing same.²⁷
14. The applicant's concern is that QCS has not undertaken adequate searches of the relevant correctional centre – specifically, the correctional centre kitchen.²⁸ The applicant maintains that further documents exist for parts of 2019, 2020 and 2021.²⁹

²⁰ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

²¹ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) (**Dubois**) at [36].

²² Section 21(2) of the HR Act.

²³ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by Queensland Civil and Administrative Tribunal Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

²⁴ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

²⁵ *XYZ* at [573].

²⁶ QCS submissions dated 15 September 2025.

²⁷ QCS submits that documents concerning the applicant's diet were, indeed, released to him pursuant to these earlier applications. While the applicant contests this, it is not an issue requiring further consideration in this review – as explained below, the applicant does not contend (and I agree) that reasonable searches in relation to the access application the subject of this review require QCS to again review files and databases searched in the course of processing earlier applications, where earlier applications were sufficiently broad so as to capture any diet-related documents.

²⁸ Applicant's oral submissions by telephone on 19 June 2025 and written submissions by email dated 29 June 2025. In accordance with section 97 of the RTI Act, oral submissions were provided by the applicant in a telephone call on 19 June 2025 and the substance of these submissions confirmed in writing by the applicant on 29 June 2025, then conveyed to QCS on 24 July 2025.

²⁹ Written submissions dated 19 November 2024, 29 June 2025 and 22 October 2025 and oral submissions on 19 June 2025. These submissions were made in response to OIC's letters dated 26 May 2025, and my preliminary view letter dated 13 October 2025 explaining that QCS had discharged its search obligations.

15. To support his submissions, the applicant identified numerous meals he received during this time, which were not recorded in the 40 pages released by QCS in this matter.³⁰
16. QCS provided, however, a submission and search certification reflecting that during the initial processing of the access application, the Food Service Supervisor of the relevant correctional centre searched³¹ the G: Drive Food Service folders using the applicant's name as a search term.³² In these searches, QCS located the 40 pages³³ noted above, containing information about the applicant's special diet plan and meals provided to the applicant (these documents were considered in QCS' decision dated 16 September 2024).³⁴
17. In addition to the searches completed by the Food Services Supervisor, the Correctional Manager Business Services certified³⁵ that based on their knowledge of recordkeeping practices at the relevant correctional centre, searches were completed in all areas where they expect relevant documents may be located.

Findings

18. As noted, the applicant contends that documents about his diet would be held by the correctional centre kitchen. The search information provided by QCS shows, however, that relevant officers of the correctional centre (the Food Services Supervisor and Correctional Manager Business Services) searched this very location – the correctional centre kitchen. Having regard to the searches conducted by QCS at the correctional centre, I consider that QCS has taken all reasonable steps to locate documents and there is no reasonable basis to believe that further documents exist within the correctional centre.³⁶
19. In these circumstances, there falls to the applicant a practical onus of demonstrating that QCS has not discharged its obligation to locate all relevant documents.³⁷ The applicant submits that there are missing entries from the documents provided by QCS about his daily diet – relevantly, a 'running sheet' or log of meals served to him. While there may be omissions in the dates recorded in the log, given the nature of this document,³⁸ I do not consider it points to the existence of further relevant documents which have yet to be located and dealt with by QCS. Rather, it appears to me that any 'gaps', such as the absence of particular dates, are the result of simple oversight or omission:³⁹ record-keeping issues outside of OIC's external review jurisdiction. I do not, as noted, consider this to be an indication that further logs exist that have not been located.

³⁰ Applicant's submissions dated 22 October 2025.

³¹ On 30 August 2024 as detailed on the search records from QCS.

³² Including QCS submissions dated 3 January 2025 and 15 September 2025 and signed search certification dated 30 October 2025.

³³ QCS explained that Queensland Health organises food provision for clinical reasons, and it is anticipated that these documents would likely be placed on an applicant's hardcopy offender file. I note the documents released by QCS in response to this access application include some Queensland Health documents.

³⁴ The Food Services Supervisor explained that as the applicant is no longer incarcerated, they were unable to access any information in the IOMS about the applicant. Again, I note that the applicant does not contend QCS should conduct further searches of the IOMS system – and nor do I consider it would be reasonable to require same, given the entirety of his IOMS records have been the subject of searches as a consequence of his earlier access applications.

³⁵ On 30 October 2025.

³⁶ For completeness, the applicant has been released from the correctional centre for a number of years. In these circumstances, I do not consider there is any reasonable basis to require QCS to undertake searches for hardcopy documents held by the kitchen. While not raised by QCS in the review, I am aware that QCS's Retention and Disposal schedule (authorised 7 January 2021) permits the disposal of records relating to managing kitchens within custodial facilities, including offender menus and special dietary requirements, two years after the relevant business action is completed. In the circumstances of this matter, this two year retention period lapsed before the access application was made on 3 July 2024. This further supports the reasonableness of the searches completed by QCS in the correctional centre kitchen.

³⁷ *Gapsa* at [15]; *Dubois* at [36]; *A51 and Office of the Health Ombudsman* [2020] QICmr 17 (24 March 2020) at [15].

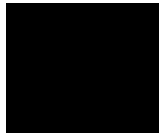
³⁸ Which I have reviewed.

³⁹ Such that relevant information was never brought into existence to begin with.

20. I acknowledge that the applicant is dissatisfied with the documents provided to him and considers that QCS should conduct further searches of the correctional centre kitchen. However, apart from submissions addressed above, the applicant has not explained how QCS' searches steps are deficient or suggested other specific enquiries QCS should undertake within the correctional centre, and I am unable to identify any such searches or enquiries which QCS might reasonably be requested to undertake.
21. As set out at paragraphs 16-18 above, QCS has provided submissions and certifications indicating it has undertaken searches of relevant operational areas using appropriate search terms.⁴⁰ I have no reason to query that advice. Given this, I am satisfied that based on QCS' knowledge of its recordkeeping practices, that QCS has taken all reasonable steps to locate documents that respond to the application. On this basis, any further documents may be refused on the basis they do not exist or are unlocatable within QCS's records.⁴¹
22. Finally, the applicant raised concerns that QCS provided false or misleading information and intentionally withheld information from the OIC.⁴² There is nothing in the material before me to suggest that any officer of QCS is deliberately attempting to withhold relevant documents or provide false or misleading information in this review process.⁴³

DECISION

23. For the reasons set out above, I vary the reviewable decision⁴⁴ and find that QCS may refuse access to any further documents under sections 47(3)(e) and 52(1)(a) and 52(1)(b) of the RTI Act on the basis they are nonexistent or unlocatable.
24. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Brianna Luhrs
Manager, Right to Information

Date: 14 November 2025

⁴⁰ Including, importantly, the area specifically raised by the applicant: the correctional centre kitchen.

⁴¹ Sections 47(3)(e) and 52(1)(a) and 52(1)(b) of the RTI Act, and noting there is nothing in the circumstances of this case I can identify that would require QCS to undertake a backup system search under section 52(2) of the RTI Act.

⁴² Applicant's submissions dated 22 October 2025.

⁴³ Sections 175 and 177 of the RTI Act.

⁴⁴ Under section 110(1)(b) of the RTI Act.