



Decision and Reasons for Decision

Citation:	<i>F47 and Department of State Development, Infrastructure and Planning (Office of Industrial Relations) [2025] QICmr 4 (11 February 2025)</i>
Application Number:	317523
Applicant:	F47
Respondent:	Department of State Development, Infrastructure and Planning (Office of Industrial Relations)
Decision Date:	11 February 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - whether certain categories of documents fall within the scope of the application - whether terms of the application can be unilaterally expanded on external review - documents not identified by the terms of the application - section 43 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Office of Industrial Relations (**OIR**)² under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to certain categories of documents held by the Electrical Safety Office (**ESO**) and Workplace Health and Safety Queensland (**WHSQ**) in relation to six businesses and one not for profit organisation that he had been employed by or volunteered for over various date ranges within an 11-year period (**Application**).
2. OIR refused access to the requested documents on the ground that they were nonexistent.³

¹ On 26 July 2023 (OIR reference number 240050).

² At the time the application was made, OIR was part of the Department of Education, however, following machinery of government changes, OIR became part of the Department of State Development and Infrastructure on 18 December 2023, which in turn became the Department of State Development, Infrastructure and Planning on 1 November 2024.

³ Pursuant to section 67(1) of the IP Act and section 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides that information may be refused in the same way and to the same extent that an agency could refuse access to the document under section 47 of the RTI Act.

3. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of OIR's decision. In his submissions to OIC, the applicant stated that '[w]hile it is likely that at least some of the documents I requested do not exist, I believe there are documents in my request that must exist ...'. Subsequently, the applicant submitted that other documents (**Additional Documents**) were covered by his Application and should be located and considered during the review.
4. For the reasons set out below, I vary OIR's decision and find that:
 - the Additional Documents raised by the applicant fall outside the scope of the Application; and
 - access to documents responding to the Application may be refused on the ground that they are nonexistent or unlocatable.⁵

Background

5. Prior to making the Application, the applicant had made an earlier application to OIR (**Previous Application**).⁶ The parties had agreed the scope of the Previous Application to be '[i]nitial notifications made to Compliance and Field Services, Specialised Health and Safety Services and the [ESO] where [the applicant] has been identified as a party in that notification'. The applicant then referred to the same six businesses and one not for profit organisation as referred to at paragraph 1 above.⁷
6. OIR refused access to the documents referred to in the Previous Application on the ground that they were nonexistent.⁸ In making the Application that is the subject of this review, the applicant stated that after receiving OIR's decision regarding his Previous Application:⁹

I have since reviewed various pieces of legislation relating to the functions of the office and it is evident that 'initial notifications' do not exist, and the advice I relied upon for making the original application may have been the cause for refusal. Therefore, I have decided to provide you with the names of specific documents mentioned in the legislation ... who might be responsible for the management of certain records and even a few of the registries in which certain types of information are stated to be contained.
7. During the review, the scope of the Application became an issue, given the applicant's submission that it covered the Additional Documents. This is addressed below.

Reviewable decision

8. The decision under review is OIR's decision dated 22 August 2023.

Evidence considered

9. Significant procedural steps relating to the external review are set out in the Appendix.
10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have

⁴ On 23 August 2023.

⁵ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

⁶ On 5 May 2023 (OIR reference number 230441).

⁷ By letter dated 16 May 2023.

⁸ In a decision dated 13 July 2023.

⁹ Email to OIR dated 11 August 2023.

taken into account the applicant's submissions to the extent they are relevant to the issues for determination in this review.

11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁰ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.¹¹ 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 of Bell J on the interaction between equivalent pieces of Victorian legislation:¹² '*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*'.¹³

Issues for determination

12. The issues for determination in this review are whether:
- the Additional Documents raised by the applicant fall within the scope of the Application; and
 - OIR may refuse access to the requested documents on the ground they do not exist or cannot be located.

Do the Additional Documents fall within the scope of the Application?

Relevant law

13. The IP Act requires that an access application must '*give sufficient information concerning the document to enable a responsible officer of the agency or Minister to identify the document*'.¹⁴
14. The Information Commissioner has previously recognised¹⁵ that the scope of an access application should not be interpreted legalistically or narrowly – however, balanced against this is the need for agencies to be able to restrict their searches for documents with reference to the terms used in the application. There are sound practical reasons for the documents sought being clearly and unambiguously identified. The terms of an application set the direction and parameters of an agency's search efforts¹⁶ and are therefore of primary importance where an applicant contends – as is the case in this review – that the agency has not located all relevant documents. For these reasons the scope of an access application may not be unilaterally widened on external review.¹⁷

¹⁰ Section 21(2) of the HR Act.

¹¹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (XYZ) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹² *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹³ XYZ at [573].

¹⁴ Section 43(2)(b) of the IP Act.

¹⁵ *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) (**Fennelly**) at [21].

¹⁶ In this regard, I note the following observations of the Information Commissioner in *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8], when addressing similar considerations under the predecessor to the RTI Act, the *Freedom of Information Act 1992* (Qld) (**FOI Act**): '*The terms in which an FOI access application is framed set the parameters for an agency's response under Part 3 of the FOI Act, and in particular set the direction of the agency's search efforts to locate all documents of the agency which fall within the terms of the FOI access request. The search for relevant documents is frequently difficult, and has to be conducted under tight time constraints. Applicants should assist the process by describing with precision the document or documents to which they seek access*'. These observations were cited with approval in *Rolfe and Banana Shire Council* (Unreported, Queensland Information Commissioner, 9 October 2009) at [109], *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].

¹⁷ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]; *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013) at [21].

Findings

15. As stated at paragraph 1, the Application requests certain categories of documents relating to the applicant's employment history held by ESO and WHSQ in relation to seven entities where the applicant had been employed or volunteered over various date ranges within an 11-year period.
16. Insofar as Application relates to ESO, it refers to the Register of Workers and the Register of Electrical Licences¹⁸ and requests the following four categories of documents:¹⁹
- documents managed by the regulator/ESO
 - documents handled by the Licensing Committee
 - health information; and
 - any matters that '*have ever made their way to a court*'.
17. Insofar as the Application relates to WHSQ, it requests the following ten categories of documents:²⁰
- notifiable incident records/reports/notices
 - infringement notices
 - assessment reports
 - safety assessments
 - workplace health and safety (**WHS**) undertakings
 - documents held in relation to WHS investigations
 - documents held in relation to WHS civil proceedings
 - documents held by the WHS Prosecutor
 - documents managed by the regulator (non-specific); and
 - any of my health information that has been used or collected for the purposes of the Act/Regulation.
18. In terms of one of the categories of documents raised by the applicant with respect to WHSQ – namely documents held by the WHS Prosecutor – although these particular documents were not the subject of particular focus in this review, I confirm that the Office of the Work Health and Safety Prosecutor (**OWHSP**) is a separate agency to OIR, and documents held by it would not prima facie comprise documents of the agency to whom the Application was made (that is, OIR). In these circumstances, I have not addressed such documents in this review – however if I were required to, for the reasons referred to later in this decision, I do not consider that any documents referring prosecutions to OWHSP were created in any event.
19. During the review, the applicant submitted that:²¹

There are many documents and categories of documents in my request which require no incident notification to be created. For example, the [WHS Act] defines what incident notifications are, and they must be reported to the OIR. However, the OIR's jurisdiction over Queensland workplaces is not limited to instances where notifiable incidents are reported. The

¹⁸ The applicant stated '*Although the information and documents located within the registries may overlap with those mentioned in the documents section, there exists situations where they may not (for example, documents held by the regulator that are not stored in the registries); accordingly, they should be treated as separate undertakings.*

¹⁹ In relation to each category of documents the applicant provided the types of information that might be held by OIR with reference to the *Electrical Safety Act 2002* (Qld) (**ES Act**).

²⁰ In relation to each category of documents the applicant also made reference to the *Workplace Health and Safety Act 2011* (Qld) (**WHS Act**) and the *Workplace Health and Safety Regulation 2013* (Qld).

²¹ Letter received on 15 March 2024 (incorrectly dated 23 February 2023).

OIR actively engages employers and industry on a range of issues. Some of the issues include workplace safety, hazard prevention & minimisation, compliance, regulatory practices and policy matters. None of those engagements require incident notifications to occur, yet all those types of engagements have the potential to involve the collection and use of personal information.

20. In response to this, I conveyed a preliminary view to the applicant that I did not accept that the scope of the Application could reasonably be interpreted as extending to documents relating to for example hazard prevention or policy matters, as the specific categories of documents referred to by him, as noted at paragraphs 16 to 17 above, are of a licensing, compliance and/or disciplinary nature.
21. While I have considered the applicant's further submissions about the scope of the Application,²² I remain of the opinion expressed to him during the course of the review. I do not accept that the Application seeks access to, for example, information relating to general hazard prevention or policy matters. I also note that the Application was made under the IP Act, which provides an applicant with a right to seek access to documents to the '*extent that they contain the individual's personal information*'.²³ I consider it reasonable to conclude that documents of the nature referred to by the applicant at paragraph 19 above would not fall within any of the categories of documents containing his personal information specified by him. In relation to any hazards identified in a specific workplace, these are noted in OIR's case management system for the specific entity. As discussed below, there do not appear to be any records in OIR's case management system regarding the seven entities identified in the Application relating to the applicant.
22. Later in the review, the applicant submitted that searches should have been conducted by OIR not only using his name as referred to in the Application, but also using an alternative name which had, at times, been used by him.²⁴ I have carefully considered the Application, which makes no reference to the alternative name raised by the applicant. Even if the applicant contended that the Previous Application should also be considered in this regard, I note that it also makes no reference to the alternative name.
23. The applicant further submitted that searches should have been conducted for WorkCover documents.²⁵ However, I note that during the processing of the Application, OIR advised the applicant that OIR's Workers' Compensation Regulatory Services is the regulator for WorkCover and if the applicant had lodged a WorkCover claim, he could approach WorkCover directly to seek access to its records.²⁶ In response, the applicant stated:²⁷
- I have not made a workplace compensation claim, I just wanted to include all business units in my application so as not to miss any information. I am thinking that maybe for the moment, workers compensation services and industrial relations may not be relevant for my purposes.*
24. Given this exchange, I am satisfied that the applicant and OIR proceeded on the basis that the scope of the Application would relate to documents held by ESO and WHSQ only.

²² Letter dated 11 November 2024.

²³ Section 40(1)(a) of the IP Act.

²⁴ Applicant's letter dated 11 November 2024. I note from the applicant's birth certificate that he changed his name to the name he currently uses in May 2008.

²⁵ Email dated 24 December 2024.

²⁶ Email dated 26 May 2023.

²⁷ Email dated 29 May 2023.

25. As noted at paragraph 14, it is well settled that the scope of an application sets the parameters for an agency's searches. I have carefully considered the wording of the Application and I am satisfied that its terms are specific and do not include the any of the abovementioned Additional Documents raised by the applicant (that is, documents relating to general hazard prevention, regulatory practices or policy matters; documents containing the applicant's alternative name rather than his name as referred to in the Application; or WorkCover documents). Given this position, I find that that these Additional Documents do not fall within the scope of the Application. As such, OIR was not required to conduct searches for these documents.

Does the nonexistent/unlocatable ground of refusal apply to the requested documents?

Relevant law

26. Under section 40 of the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁸ This right is subject to limitations, including grounds for refusal of access.²⁹
27. The Information Commissioner's external review functions include investigating whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.³⁰ However, access may be refused in circumstances where a document is nonexistent or unlocatable.³¹
28. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.³² To be satisfied that a document does not exist, the Information Commissioner has previously had regard to various key factors, including an agency's record keeping practices and procedures (including, but not limited to, its information management approaches).³³ By considering relevant factors, the decision maker may conclude that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
29. The Information Commissioner may also take into account the searches and inquiries conducted by an agency in determining whether a document is nonexistent. The key question then is whether those searches and inquiries amount to '*all reasonable steps*'.³⁴ What constitutes reasonable steps will vary from case to case, as the search and inquiry process an agency will be required to undertake will depend on which of the key factors

²⁸ *Personal information* is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

²⁹ Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

³⁰ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP 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 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.

³¹ Sections 47(3)(e) and 52(1) of the RTI Act.

³² Section 52(1)(a) of the RTI Act. For example, a document has never been created.

³³ *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* addresses the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant.

³⁴ As set out in *PDE* at [49].

are most relevant in the particular circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.³⁵

30. A document is *unlocatable* if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found. In determining whether a document is unlocatable, it is necessary to consider the specific circumstances of each case,³⁶ and in particular, whether:
- there are reasonable grounds to be satisfied that the requested documents have been or should be in the agency's possession; and
 - the agency has taken all reasonable steps to find the document.³⁷
31. The agency that made the decision under review has the onus of establishing that the decision was justified, or the Information Commissioner should give a decision adverse to the applicant.³⁸ However, where an external review involves the issue of missing documents, the applicant bears a practical onus to establish reasonable grounds which demonstrate that the agency has not discharged its obligation to take all reasonable steps to locate the requested documents. Suspicion and mere assertion will not satisfy this onus.³⁹
32. In assessing an agency's searches, the relevant question is whether the agency has taken *all reasonable steps* to identify and locate documents, as opposed to *all possible steps*.⁴⁰

Findings

33. In my decision *A34 and Department of State Development, Infrastructure and Planning (Office of Industrial Relations)*,⁴¹ I set out my understanding of OIR's processes and record keeping practices. For ease of reference, I have included the relevant paragraph below:⁴²
- *OIR's WorkSafe receives notifications via telephone, email and online portals. Concerns about compliance with the [WHS Act] or [ES Act] are received by Assessment Services (AAA), a team within the Licensing and Regulatory Interventions directorate (LARI) which operates as a triage unit. Notifications made by the Queensland Ambulance Service, Queensland Police Service and other safety regulators may be received elsewhere within LARI and then referred to AAA.*
 - *... OIR refers to 'events', which are either 'incidents' or 'complaints'. Anything other than an incident (notifiable or otherwise) is considered to be a complaint. Events assessed by AAA as amounting to notifiable incidents and therefore warranting further consideration are allocated to an inspector or investigator in the relevant region.*

³⁵ As set out in *PDE* at [38].

³⁶ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

³⁷ Section 52(1)(b) of the RTI Act.

³⁸ Section 100(1) of the IP Act.

³⁹ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁴⁰ See *Webb v Office of the Information Commissioner & Anor* [2021] QCATA 116 at [6], where Judicial Member McGill observed that 'even if, at least in theory, further and better searches might possibly disclose additional documents'... '[t]he question in any particular case is whether the tests in s 52 of the Act have been met'. See also *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

⁴¹ [2024] QICmr 61 (18 November 2024) (**A34**).

⁴² [17] (footnote of that paragraph incorporated into this decision's footnotes).

- OIR's current case management database is called **CISr**.⁴³ In CISr, an 'event' number is the primary reference number allocated to every incident and complaint processed by AAA, including matters triaged as requiring no further action.
- In CISr, OIR records information against the relevant entity,⁴⁴ rather than an individual.
- OIR has a limited capacity to conduct a 'person' search using an individual's name in CISr. These searches will capture the individual only if they have been recorded as:
 - a person who submitted an incident notification
 - an injured person; or
 - a person who lodged a complaint.⁴⁵
- OIR may also generate an Employer History Report (**EH Report**) in CISr for entities when [WHSQ's] Compliance and Field Services and/or [ESO] have had contact with the entity through an event and/or assessment notification.
- An EH Report does not contain all information about an event. Rather, it comprises a high level extract of all events linked to an entity including any assessments and investigations completed under an event such as:
 - start and finish date for the event number
 - name of the inspector
 - a summary of the notification⁴⁶ received by AAA via WorkSafe incoming phone lines or online notifications
 - details of the relevant 'supporting documents' received by AAA
 - details of action taken by the region (if applicable)—notations, date, activity (phone call, site visit, correspondence sent or received etc.) and the inspector notes
 - the investigation/inspectorate response; and
 - details of any compliance notices issued.
- In an EH Report, information is presented by event and/or assessment, not in chronological order. Documents—for example, references to letters sent, notices issued, call recordings, notebook notes, etc – are referred to in CISr, but not linked to it. Rather, they are saved to shared files outside CISr.

34. In its decision in relation to the Application, OIR stated:⁴⁷

Under your [Previous Application] searches were conducted for initial notifications made where you were identifiable. No documents responsive to your request were located. When Worksafe or the [ESO] receive an initial notification about a business or employer, they will then proceed to assess the notification. Some matters may be assessed as no further action (for instance, matters outside of our jurisdiction), or they may be referred to investigators or further action.

Depending upon the findings from that initial notification and investigation, some matters may proceed to prosecution, notices issued or investigations. If no notification exists, no further documents will be generated. I have reviewed your [Previous Application], the document search returns and the employer histories and am satisfied that no documents about you with respect to those employers exist.

Searches of the electrical licensing registries were undertaken and there were no documents about you found on the registries. The employer histories did not reveal any licensing applications about you, and therefore I am satisfied that you would have not been subject to any disciplinary hearings.

⁴³ CISr is an abbreviation for Compliance Investigation System. In A34, OIR informed OIC that it expected to implement use of a new database on 11 November 2024.

⁴⁴ Which it refers to as a PCBU – that is, a person conducting a business or undertaking.

⁴⁵ The complainant or notifier of an incident would receive an acknowledgement of the notification if they supplied a valid email address.

⁴⁶ Including the name of the notifier and their contact details, notified date and details of the injured person.

⁴⁷ At page 4.

35. On external review, OIR provided details of the searches and inquiries it had conducted in relation to both the Previous Application and the Application. In summary, the received information confirms that:
- OIR conducted a 'person' search of CISr using the applicant's first and last name and this returned no results.
 - OIR also generated EH Reports in CISr for some entities identified in the Application.
 - OIR was unable to generate EH Reports for some entities because there were no entries in CISr about them. The absence of entries indicates that OIR had not at any point been contacted about these entities.
36. In addition, although the applicant's name did not appear in the EH Reports, the information provided by OIR demonstrates that searches were conducted by AAA, ESO, Compliance and Field Services and Statewide Investigations, using the applicant's name and the names of the entities provided by the applicant as search terms in:
- CISr
 - 'event notification spreadsheets'⁴⁸ used by different units (for example Statewide Investigations and regional units).⁴⁹
 - ESO's Register of Workers and Register of Electrical Licences
 - past record systems of OIR;⁵⁰ and
 - ESO's licensing processing inbox.
37. Having reviewed the information provided by OIR, OIC conveyed a preliminary view to the applicant that the documents that he is seeking access to do not exist as they had not been created.⁵¹ In particular, OIC noted that:
- OIR had undertaken the abovementioned searches and inquiries, and no documents were located as a result of them; and
 - OIC had reviewed the EH Reports for the entities referred to by the applicant and confirmed that the applicant's name did not appear in any of the entries in the EH Reports, nor did the information in the EH Reports relate to the applicant.
38. The applicant did not accept the preliminary view and made a number of submissions during the review.⁵² He confirmed that he has never made a complaint or reported an incident to OIR, nor has he ever spoken to OIR, and accordingly acknowledged that his name or personal information would not appear in the EH Reports. In this respect the applicant submitted:⁵³
- the EH reports only serve to indicate that an event or incident took place
 - in effect they provide a '*snapshot of the incident*'
 - further information associated with the event would be held in other locations (such as investigative files or another detailed folder within CISr); and
 - accordingly, the EH Reports should guide OIR's search efforts, not dictate the outcome.

⁴⁸ By email dated 15 November 2024, OIR stated that these are used as an administrative tool to track matters by the particular region or business unit, however CISr contains a more detailed record of information.

⁴⁹ Forming part of Compliance and Field Services.

⁵⁰ EL-OLD and ALCHEMY.

⁵¹ Letter dated 19 October 2023.

⁵² Received on 9 November 2023, 15 March 2024, 10 July 2024, 11 November 2024 and 24 December 2024.

⁵³ Letter received on 15 March 2024 (incorrectly dated 23 February 2023).

39. During the review, OIR acknowledged that, although the applicant's name does not appear in the EH Reports, there is a possibility that the applicant's name may have been referred to obliquely or in passing by an individual who spoke to OIR, and accordingly his name may possibly appear in files that are located outside of CISr.
40. The applicant's main contention, as I understand it, is that until OIR has conducted searches of *all* of the records that are located outside of CISr, in relation to each of the entries that appear in the EH Reports, a decision cannot be reached that OIR has undertaken *all reasonable steps* to locate documents that contain his personal information. As noted at paragraph 32, however, the question as to whether OIR has taken *all reasonable steps* to locate documents that contain the applicant's personal information is not the same as whether OIR has taken *all possible steps* to locate information.
41. During the review, OIC explained to the applicant that there is a practical onus on an applicant to reasonably demonstrate that the agency has not discharged its obligation to take all reasonable steps to find requested documents. In this respect, OIC explained that, given the EH Reports do not contain any information that relates in any way to the applicant, without further information from the applicant about any incidents or events that might have been raised with OIR that he is aware of, it was not reasonable to request OIR to search all of its records outside of CISr in relation to each entry referred to in the EH Reports.⁵⁴
42. In response, the applicant made two types of submissions, neither of which satisfy me that searches of all records outside CISr were required.
43. Firstly, the applicant submitted:⁵⁵

The documents/categories of documents I have requested are broad but encompass those that are either explicitly or implicitly referenced in the [ES Act] or [WHS Act] ... The OIR claims that the existence of all documents in my request can be determined by information retrieved from the incident reports, however as I have continually explained, this simply is not the case.

44. In terms of this submission:
- I note that, when making the Application to OIR, the applicant stated '*I have decided to provide you with the names of the specific documents mentioned in the legislation*'.⁵⁶ I consider that the categories of documents nominated by the applicant can generally be described as being of a disciplinary or compliance nature. I am satisfied that, if OIR held documents within these categories in relation to the entities referred to by the applicant, while *all* of the relevant documents would not be held in CISr, the existence of *some* of them could reasonably be expected to be recorded in CISr, thus identifying other relevant avenues of search and inquiry for OIR to pursue.
 - Having carefully considered the EH Reports, there are no entries which suggest that any such actions were initiated against any of the entities referred to by the applicant in his Application. Given this, there is no evidence before me to indicate or suggest that OIR created any documents falling within the categories of documents raised by the applicant with reference to the ES Act and WHS Act, and I therefore consider it is reasonable to conclude that OIR did not create any such documents, as it was not necessary for OIR to do so. It follows that it was also not necessary for OIR to conduct searches outside CISr for these categories of documents.

⁵⁴ Letter dated 27 February 2024.

⁵⁵ Letter received on 15 March 2024 (incorrectly dated 23 February 2023).

⁵⁶ Email dated 11 August 2023.

45. Secondly, in response to OIC's view that, without further information from the applicant about any incidents or events that might have been raised with OIR that he is aware of, it was not reasonable to request OIR to search outside of CISr in relation to each entry referred to in the EH Reports, the applicant provided information relating to six circumstances regarding which he considered that OIR might have obtained his personal information as follows:⁵⁷

- i. The applicant provided the name of a former employer, a brief explanation about a comment that was made to him which led him to believe that his employer was required to provide an undertaking to OIR for faulty electrical work that he had undertaken, and a two-year timeframe in which this would have occurred.
- ii. The applicant provided the name of a former employer and the approximate time when an incident occurred. The only other detail provided by the applicant was that the incident did not relate to electrical work but was more of a '*confrontation*' between the applicant and his former employer. The applicant accepted that given the nature of the incident it '*may not have been reported*' but that '*this is something [he] would like the OIR to conduct searches for specifically*'.
- iii. The applicant provided the name of a former employer and the month and year in which he believed an incident occurred. The applicant did not provide any further details other than to say that the '*ramifications of it would have required my former employer to interact with the OIR*' and that this '*is another example of documents that wouldn't have been created in connection with a notifiable incident*' as the applicant understood that '*some kind of communication, consultation or engagement occurred between my former employer and the OIR*'.
- iv. The applicant only referred to an '*Electrical*' incident and provided a general location of where the incident occurred, the year and the name of his employer at the time.
- v. Again, the applicant only referred to an '*Electrical*' incident and provided a general location of where the incident occurred, the year and the name of his employer at the time.
- vi. The applicant referred to '*allegations of behaviour constituting (a) psychosocial event/s*', the name of his former employer and a two-year timeframe within which these incident/s may have occurred.

46. In terms of these submissions:

- I carefully considered the six circumstances as described by the applicant. Noting OIR's process and record-keeping practices as referred to at paragraph 33 above, it appears possible to me that the circumstances outlined by the applicant at i. may have led to information being recorded by OIR – however, I also note that the applicant's awareness of these circumstances stemmed from his understanding of a particular comment made to him, and this comment may have been unclear and/or misconstrued. In terms of the remaining circumstances at ii. to vi., based on the information provided by the applicant, it is difficult to understand the nature of the circumstances, and at least some of them appear unlikely to prompt or oblige contact with OIR. As such, I cannot form a reasonable expectation that OIR was contacted regarding any of the six circumstances.

⁵⁷ Letter received on 15 March 2024 (incorrectly dated 23 February 2023) and letter dated 11 November 2024.

- I also examined the EH Reports of the entities referred to by the applicant, to identify any information which could be taken to relate to any of the six circumstances. While there were some entries in relation to the timeframes the applicant referred to in the Application, there was no information in any of the EH Reports that bore any resemblance to any of the six circumstances. In addition, in relation to the circumstances at iii., while CISr records incidents or complaints that have been made about an individual business, they also record advisory activities conducted by OIR with that business, and there were no such entries for the particular entity referred to by the applicant.
47. The applicant maintained that further searches should be conducted by various units within OIR, based on his view that his name may appear in the records outside of CISr.⁵⁸ However, given there is no information in the EH Reports which points to the existence of categories of documents raised by the applicant with reference to the ES Act and WHS Act, or resembles any of the six circumstances raised by the applicant, I continue to view the applicant's position that his name may appear in records outside CISr as speculative. It would, in my opinion, be unreasonable to require OIR to spend further time and resources to locate and search each document referenced in every event associated with each of the generated EH Reports, to check if the applicant is mentioned in any of those documents. I cannot see how this could be viewed as reasonable, based on merely the applicant's assertions that there is a possibility that his name may appear in documents outside of the CISr system.
48. The applicant also contended that further searches should be conducted for archived documents that may have been transferred to Queensland State Archives (QSA).⁵⁹ However, there is nothing before OIC to indicate that OIR located anything in its records to suggest that relevant documents ever existed. It follows that there can be no reasonable basis for expecting that relevant records were transferred to QSA. This is mere speculation by the applicant and does not demonstrate any need for searches of QSA in order for OIR to have taken all reasonable steps. I also note that, even if it were accepted that such records existed, their relatively young age and their likely status as documents that would not be designated for permanent retention⁶⁰ count against QSA holding any relevant records. In any event, QSA⁶¹ is subject to the IP Act and a separate access application can be made by the applicant if he wishes to do so.
49. For these reasons, having carefully considered the applicant's submissions along with OIR's explanations regarding its record keeping practices, its processes, the searches that have occurred and the information contained in the EH Reports, I do not consider that the applicant has satisfied the onus on him to show that OIR has failed to fulfil its search obligations. I cannot identify any cause to request OIR to conduct further searches for the documents referred to in the applicant's Application.
50. In conclusion, I am satisfied that OIR has undertaken *all reasonable steps* to identify and locate the requested documents. Accordingly, I find that the requested documents may be refused on the ground they are nonexistent or cannot be located within OIR.

⁵⁸ Applicant's letter dated 11 November 2024 – including by the ESO, Compliance and Field Services, Assessment Services, Specialised Health and Safety Services and Operations/Investigations.

⁵⁹ Applicant's email to OIC of 10 July 2024.

⁶⁰ See the Queensland Government website *Industrial Relations Regulation Retention and Disposal Schedule* at <https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping/disposal-of-records/search-for-a-retention-and-disposal-schedule/industrial-relations-regulation-retention-and-disposal-schedule> (accessed on 13 November 2024).

⁶¹ Following machinery of government changes on 1 November 2024, QSA is now part of the Department of Justice.

DECISION

51. For the reasons set out above, I vary OIR's decision and find that:

- the Additional Documents raised by the applicant during this review fall outside the scope of the Application; and
- access to documents responding to the Application may be refused on the ground that they are nonexistent or unlocatable under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

52. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 11 February 2025

APPENDIX

Significant procedural steps

Date	Event
23 August 2023	OIC received the application for external review from the applicant.
24 August 2023	OIC requested preliminary documents from OIR.
31 August 2023	OIC received the preliminary documents from OIR.
20 October 2023	OIC advised the applicant and OIR that the application for external review had been accepted and conveyed a preliminary view to the applicant.
9 November 2023	OIC received a submission from the applicant.
13 November 2023	OIC requested further information from OIR about its searches.
13 December 2023	OIC received a submission from OIR.
27 February 2024	OIC conveyed a preliminary view to the applicant.
15 March 2024	OIC received a submission from the applicant.
13 May 2024	OIC requested further information from OIR about the searches it had conducted.
31 May 2024	OIC received a submission from OIR.
11 June 2024	OIC requested further information from OIR about the searches it had conducted.
10 July 2024	OIC received a submission from the applicant.
15 July 2024	OIC received further information from OIR about the searches that it conducted.
18 July 2024	OIC requested information from OIR about its Retention and Disposal Schedule.
19 July 2024	OIC received a submission from OIR.
21 August 2024	OIC requested further information from OIR about its searches and received a response from OIR.
28 October 2024	OIC conveyed a preliminary view to the applicant.
11 November 2024	OIC received a submission from the applicant.
15 November 2024	OIC received further information from OIR about its searches.
24 December 2024	OIC received a submission from the applicant.