



Decision and Reasons for Decision

Citation:	<i>Q89 and Department of Education [2025] QICmr 9 (6 March 2025)</i>
Application Number:	317697
Applicant:	Q89
Respondent:	Department of Education
Decision Date:	6 March 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant seeking documents forwarded internally within the agency - 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)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to certain documents relating to the Department's investigation of a privacy complaint made by him.
2. The Department decided² to give full access to 15 pages and parts of three pages, refuse access to the remainder of the three pages on the ground that disclosure of this information would be contrary to the public interest, refuse to deal with part of the application to the extent it sought documents the applicant had previously applied for, and refuse access to a particular document on the ground it was nonexistent.
3. The applicant applied for an internal review of the Department's decision.³ The Department did not make a decision within the statutory timeframe and was therefore taken to have made a decision affirming the Department's original decision.⁴ The applicant then applied to the Office of the Information Commissioner (**OIC**) for an external review.⁵

¹ On 28 March 2023. Initially, the Department advised the applicant by letter dated 2 June 2023 that it intended to refuse to deal with three access applications received from the applicant (including the decision that is the subject of this review) on the basis that processing the applications would substantially and unreasonably divert the resources of the Department.

² Decision dated 8 September 2023.

³ On 6 October 2023.

⁴ Section 97(2) of the IP Act. The Department advised the applicant of this by letter dated 6 November 2023.

⁵ On 30 November 2023.

4. For the reasons set out below, I vary the Department's decision and find that access to the remaining document raised by the applicant during the external review may be refused on the ground it is nonexistent or unlocatable.⁶

Background

5. In 2018, the applicant's child was suspended from school. The applicant made complaints about some staff members at the school in relation to his child's suspension. Subsequently, the applicant sent an email to the school's Principal on 11 March 2019. He attached two audio recordings⁷ to his email, each of which recorded parts of a meeting the applicant had attended at the school in relation to the child's re-entry following suspension. In his email to the Principal, the applicant requested that the recordings not be shared with anyone other than the staff member who was part of the recorded meeting.
6. As a result of a prior access application made to the Department, the applicant became aware that the Principal had forwarded his email on two occasions – to a Deputy Principal and to another school employee (**School Employee**) (neither of whom had attended the recorded meeting). He was concerned about whether the recordings had also been forwarded to them, and made a privacy complaint to the Department about this in 2022.
7. In support of his privacy complaint, the applicant provided the Department with three documents obtained via the prior access application. These were referred to in the outcome letter (**Outcome Letter**) in which the Department informed the applicant of the outcome of his privacy complaint as follows:⁸

Attached top [sic] your email were three .PDF documents (specifically identified in the attached Appendix A):

Document 1: *entitled '[Deputy Principal's last name] not used.pdf' (1 page) which contained 2 .mp3 icons labelled as you had previously indicated;*

Document 2: *entitled '[Other Employee's first name] Reentry mp3.pdf' which appeared to be a page of an email from [Principal's title and last name] dated 11.07pm 10/3/19 to [Other Employee's first and last names] (another employee at [name of school]) forwarding your email of 11/3/19.⁹ This email is labelled as having two attachments 'Reentry2.mp3, and Reentry3.mp3' I note there is a discrepancy between the dates on the two emails.*

Document 3: *also entitled '[Other Employee's first name] Reentry mp3.pdf' (1 page) which appeared to be a page of an email from [Principal's title and last name] at 11.51 on 11/3/19 to [Deputy Principal's title, first and last name] (Deputy Principal at [name of school]), forwarding your email of 11/3/19. The email is labelled as having two attachments labelled 'Reentry2.mp3', and 'Reentry 3.mp3'. I note there are spaces or gaps present in the 'To' email field which I have further investigated below.*

8. The Outcome Letter also confirmed that the Department's Business Service Management (**BSM**) Unit had provided copies of three documents to the Privacy Officer as follows:¹⁰

⁶ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act allows an agency or Minister to refuse access to a document in the same way and to the same extent as under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

⁷ Titled 'Re-entry 1' and 'Re-entry 2'.

⁸ Letter dated 29 September 2022. Bold is Department's emphasis and the underlining is my emphasis.

⁹ The underlined text regarding Document 2 suggests that the Principal forwarded the applicant's email to the School Employee on 10 March 2019, yet did not receive the email from the applicant until the day after, on 11 March 2019. For clarity, I note this is due to the forwarding email's reference to Greenwich Mean Time (GMT) rather than Australian Eastern Standard Time (AEST) (GMT plus 10 hours).

¹⁰ Above n 7.

On 29 July 2022^[11] the [BSM] Unit provided me with original copies of the emails from which documents 1-3 were derived and also the two identified .mp3 attachments (sound files).

Document 1 was further identified as an email from yourself dated 11/3/19 to [the Principal] with two .mp3 attachments as identified. (**.mp3 attachments present**)

Document 2 was further identified as an email forwarded to [the School Employee] by [the Principal]. Although indicated attachments were present, no attachments were present on this email. (**.mp3 attachments present**)

Document 3 was further identified as an email from [the Principal] to [the Deputy Principal] with 2 .mp3 attachments as identified. (**no .mp3 attachments present**)

9. As the underlined text in paragraph 8 above illustrates, some comments in the Outcome Letter are unclear regarding whether the recordings were attached to the particular versions of the Principal's emails to the School Employee and Deputy Principal which the Department's BSM Unit provided to the Privacy Officer. The conclusions at the end of the Outcome Letter were that the two recordings were *not* forwarded to the School Employee, and while they were forwarded to the Deputy Principal, he had been unable to open them. On this basis, the Privacy Officer found that the privacy complaint was unsubstantiated. As I understand it, the applicant was dissatisfied with this outcome, and made the access application that is the subject of this review to seek clarity regarding whether the recordings remained attached to the particular versions of the forwarded emails considered by the Privacy Officer.

10. Following negotiations between the applicant and the Department regarding the scope of the access application, the agreed two-part scope was:¹²

1. *Email correspondence, including any attachments and contents of links, sent from the Business Systems Maintenance Unit to Privacy on 29 July 2022,^[13] providing Privacy with the following documents:*

Document 1 – An email from [the applicant] to [the Principal] dated 11/3/19
Document 2 – An email forwarded to [the School Employee] by [the Principal]
Document 3 – An email from [the Principal] to [the Deputy Principal]

2. *The privacy complaint summary document for the complaint lodged by [the applicant] on 27 July 2022 or 29 July 2022, the contents of which include the following:*

- Receipt Details
- Summary of incident
- Location
- Subject Officer
- Primary Complainant
- Parties
- Misconduct Matter Details
- Matter Documents

11. In terms of this agreed scope, it is important to note that Documents 1 to 3, as requested in part 1, are particular versions of the three emails – namely, the exact versions provided

¹¹ The material before me indicates that the A/Manager of the BSM Unit sent the three emails to the Manager of Information Management on 1 August 2022. The Manager of Information Management subsequently onforwarded the three emails to the Privacy Officer on 2 August 2022, not 29 July 2022 as stated in the Outcome Letter. For ease of reference, in this decision I have referred to the information being provided by the BSM Unit to the Privacy Officer, as referred to in the Outcome Letter.

¹² As set out on page 3 of the Department's decision dated 8 September 2023 (bold is my emphasis).

¹³ Ibid. I note in making his access application to the Department, the applicant relied on the Outcome's letter's incorrect reference to 29 July 2022, rather than 2 August 2022.

by the Department's BSM Unit to the Privacy Officer as referred to in the Outcome Letter in paragraph 8 above.

12. In terms of part 2 of the access application, the issue raised by the applicant in his application for external review¹⁴ has been resolved, and will not be addressed in this decision.
13. In terms of part 1 of the access application, the Department accepted OIC's preliminary view that it was not entitled to refuse to deal with part 1 of the application on the basis the applicant had previously applied for the same documents. The applicant has not raised Document 1. He has raised the following issues about Documents 2 and 3:¹⁵
 - He submits that, while a copy of the email sent by the Principal to the School Employee has been released to him, he considers that it is not the copy provided by the BSM Unit to the Privacy Officer and, accordingly, is not Document 2 as requested in part 1 of the agreed scope.
 - He has raised an issue regarding the format of the email sent by the Principal to the Deputy Principal disclosed to him by the Department – that is Document 3 as requested in part 1 of the agreed scope.
14. I will address the issue about Document 3 first, and then provide reasons regarding Document 2.

Reviewable decision

15. The decision under review is the internal review decision affirming the Department's original decision deemed to have been made on 3 November 2023.

Evidence considered

16. Significant procedural steps relating to the external review are set out in the Appendix.
17. 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 taken into account the applicant's submissions to the extent they are relevant to the issue for determination in this review.
18. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information, and to privacy and reputation.¹⁶ 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 the RTI Act.¹⁷ 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:¹⁸ '*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*'.¹⁹

¹⁴ Regarding the Department's decision to refuse the document responsive to part 2. on the ground it was nonexistent.

¹⁵ Submissions to OIC received on 21 May 2024 and 1 November 2024.

¹⁶ Sections 21(2) and 25 of the HR Act.

¹⁷ *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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw 'no reason to differ' from OIC's position).

¹⁸ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁹ XYZ at [573].

Preliminary issue regarding Document 3

19. During the review, the applicant submitted that:²⁰

- in a previous external review (regarding his prior access application), the Department disclosed a copy of the 'original' version of the email sent by the Principal to the Deputy Principal which shows the recordings as being attached to the email
- however, in the present matter, the copy disclosed by the Department in response to his request for the version provided by the BSM Unit to the Privacy Officer (that is, Document 3) does *not* show the recordings as being attached to the email.

20. Given this, the applicant submitted that Document 3, as disclosed to him, is a 'manipulated' version from which the '*attachments have been stripped*', not the 'native' file he has requested.²¹ He believes that the Department has provided OIC with misleading information, and that he should be given '*an explanation as to why the Department provided a fraudulent version of Document 3*'.²²

21. The emails disclosed by the Department to the applicant in response to part 1 of his application were provided to him in .PDF.²³ In my experience, conversion or printing to .PDF is the accepted practice for providing access to copies of documents under the RTI and IP Acts, rather than providing copies of files in their 'native' format, due to the universal readability of .PDF files, the difficulties of applying necessary redactions to files in their native formats, and the risk of inadvertent disclosure of information which might be present in, for example, the metadata of the native format.

22. In response to the applicant's concern, I requested²⁴ that Department provide OIC with the original version of the email from the BSM Unit to the Privacy Officer. The Departmental officer who made the original access decision²⁵ provided²⁶ OIC with the .PST file²⁷ of an email which had been located by the Department's Information and Technologies Branch and given to her for the purpose of that decision. The provided file was the Department's electronic Email Journal Store (**EJS**) version²⁸ of the email from the BSM Unit's email to Privacy Officer on 2 August 2022. Attached to it was a .zip folder which, when opened by me, contained three folders. Relevant to the present issue, the second folder contained the .PST version of Document 3 with the two recordings visible as attachments.²⁹

23. I confirmed to the applicant³⁰ that I had sighted the Department's EJS version of the emails, as well as the .PDF versions provided to him, and that the EJS version of Document 3 showed that the recordings *were* attached to this email. In an attempt to resolve the applicant's concern, I advised that OIC had saved a .PDF of the EJS version of Document 3 which *did* show the recordings attached to it, and requested that the

²⁰ Letter dated 14 May 2024, received on 21 May 2024.

²¹ Ibid.

²² Ibid.

²³ .PDF is the acronym for portable document format. It is a format via which documents using various operating environments can be viewed and printed.

²⁴ Email dated 8 August 2024.

²⁵ Decision dated 8 September 2023.

²⁶ On 23 August 2024.

²⁷ .PST is an acronym for personal storage table. It is a file format that holds copies of messages, contacts, calendar events and other items within Microsoft software including Outlook.

²⁸ Email journaling refers to the writing of a copy of all emails received and sent within an organisation's email system to a separate email journal store which cannot be accessed by the organisation's end users, as part of an organisation's email retention strategy.

²⁹ Relevant to my below reasons regarding Document 2, the third folder contained the .PST version of an email from the Principal to the School Employee dated 12 March 2019. For the sake of completeness, I also note that the first folder contained .PST versions of three emails between the Principal and the applicant, including Document 1.

³⁰ Letter dated 18 October 2024.

Department send a copy of this to him.³¹ I also noted to the applicant that Outlook and Adobe Acrobat settings can affect whether attachments to emails are visible in a .PDF,³² and I did not consider the fact that the recordings were not visible in the .PDF version provided to the applicant was sufficient to conclude that the .PDF version was 'fraudulent' as submitted by the applicant.

24. When asked why the attached recordings were not visible in the .PDF of Document 3 created by the Department, the Departmental officer who made the original access decision stated:³³

this is simply the result of 'Printing' the file as an Adobe PDF file (entering CTRL+ P on open email message>Select Printer>Adobe PDF>Print) rather than selecting File>'Save as Adobe PDF'.

25. In addition, the Department provided a screen recording showing the Outlook version of Document 3 with the recordings attached, but the recordings not appearing as attached when the email was printed to .PDF. The Department also provided two copies of the email: printed to .PDF (with no attachments visible) and saved to .PDF (with attachments visible). I am satisfied that the Department's response is indicative of and consistent with the software settings issue noted above.
26. I note that, if an attachment is omitted, the omission can usually be identified, because the body of the email to which documents were attached would refer to the attachments; and could then be remedied.³⁴ Here, the situation is slightly different, given the applicant's particular focus on whether the recordings remained attached when the Principal forwarded his email. While enquiries in this review identified the omission in this regard and remedied it, the applicant has maintained³⁵ that the Department had deliberately, dishonestly and fraudulently removed evidence of the attached recordings from Document 3³⁶ and suggested that '*the Department providing documents that omit attachments is commonplace and acceptable to OIC*'. He remains convinced that the Department intentionally used a method of conversion where the attachments were not visible and wants OIC to investigate this.
27. OIC commonly receives information in issue from agencies which includes emails which agencies have converted to .PDF by 'printing to .PDF'. I note that, when 'printing to .PDF', the chosen settings determine whether attachments are automatically converted to .PDF and included in the .PDF document following the email; or need to be manually converted and then inserted. Regardless, it is relevant to note that, in this particular matter, the two attached recordings of interest are .mp3 audio files. Given their nature, they could not be converted into a written document, to appear as pages within the .PDF document.
28. It is my understanding that agencies often prefer 'printing to .PDF' over other conversion methods, and manual (rather than automatic) insertion of attachments, so as to minimise the risk of inadvertent disclosure of information contrary to claimed grounds of refusal, or resulting in a privacy breach. Given the applicant's particular focus on whether his recordings remained attached when the Principal forwarded his email, it may have been preferable for the Department to instead convert the email by another method in this

³¹ The Department disclosed this to the applicant by email on 25 October 2024.

³² See for example OIC's explanatory video 'Outlook and PDF conversion – converting emails and attachments' at <https://www.youtube.com/watch?v=8ReU1ts7jWE>.

³³ Email to OIC dated 18 February 2025.

³⁴ And then deactivating links to attachment if grounds of refusal are considered to apply to any of it.

³⁵ Letter dated 1 November 2024.

³⁶ Later, by letter received on 10 January 2025, he acknowledged that his use of the word 'fraudulent' may have been 'a strong word choice' but maintained that OIC should investigate.

instance – for example, ‘saving to .PDF’, where settings generally ensure that attachments are shown as hyperlinks.

29. Regardless, I consider that the .PST file provided to OIC by the Departmental officer who made the original decision, my abovementioned understanding regarding agencies’ common usage of the ‘print to .PDF’, the Departmental officer’s explanation that she converted the email by ‘printing to .PDF’, her demonstration of the resulting .PDF both when she ‘printed to .PDF’ and ‘saved to .PDF’, and practical difficulties around converting an audio file attachment to .PDF when ‘printing to .PDF’, are sufficient to explain why the .PDF of Document 3 created by the Department did not show the attached recordings. Further, I am satisfied that there is nothing before me to indicate any deliberate, dishonest or fraudulent intent in the Department’s use of ‘print to .PDF’ – or indeed any awareness or consideration of the applicant’s particular focus. Absent any evidence of malign intent, I consider it reasonable to conclude that administrative oversight explains the omission.
30. I recognise the applicant’s strongly held concerns regarding both the matters preceding his privacy complaint and the outcome of that complaint. It is my understanding that he views the circumstances regarding the .PDF of Document 3 as a continuation of conduct that concerns him, or a coverup of that conduct. Insofar as he maintains that OIC should conduct an investigation of his concerns regarding Document 3, it is relevant to note that OIC’s external review function under section 137 and Chapter 3, part 9 of the IP Act is limited to a merits review process³⁷ – that is, an administrative reconsideration of a case which can be described as ‘stepping into the shoes’ of the agency decision-maker to consider the matter afresh and reach the correct and preferable decision. Within this process, I can investigate and review decisions of agencies and whether they have taken reasonable steps to locate the requested documents, as I have done in this review. Beyond this, I have no power under the RTI Act to investigate the conduct of the departmental officer that processed the application.³⁸
31. While the applicant’s concerns about Document 3 raise serious allegations about deliberate dishonesty or fraud, in particular that a Departmental officer deliberately removed and withheld the attachments, the applicant has not provided any evidence, other than his assertions, to corroborate his concerns, such to enliven the IP Act’s offence or disciplinary action provisions.³⁹ The IP Act empowers the Information Commissioner at the completion of an external review to take certain disciplinary action, if there is *evidence* that an agency’s officer has committed a breach of duty or misconduct in the administration of the IP Act.⁴⁰ In the circumstances, there is insufficient evidence for me to support taking such steps.⁴¹

Issue for determination

32. The issue for determination relates to Document 2. As set out at paragraph 10, Document 2 is a particular version of an email forwarded by the Principal to the School Employee, namely the version provided by the BSM Unit to the Privacy Officer. The applicant contends that the Department has not located Document 2. He considers that,

³⁷ *Mokbel v Queensland Police Service* [2023] QCATA 158 at [12]; and *O’Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2] and [7].

³⁸ I am satisfied that the applicant has been provided with the names of the appropriate Government agencies to contact should he wish to pursue this issue. For sake of completeness, I also note that while another OIC function – performance monitoring – reports on agency compliance with aspects of the IP Act and RTI Act, it examines agencies’ performance from a more general or systemic point of view, not in relation to a specific external review or privacy complaint.

³⁹ Sections 126 and 186 of the IP Act.

⁴⁰ Section 126 of the IP Act.

⁴¹ For sake of completeness, there is also insufficient evidence to enliven any reporting obligations under section 38 of the *Crime and Commission Act 2001* (Qld).

while a copy of an email sent by the Principal to the School Employee has been released to him, it is not the copy provided by the BSM Unit to the Privacy Officer and, accordingly, is not Document 2 as requested in the agreed scope.⁴² In this respect, the applicant has:⁴³

- referred to the copies of three documents that he had obtained via his prior access application and provided to the Department in support of his privacy complaint, including the email referenced as Document 2 in the Outcome Letter as noted at paragraph 7 above – that is, an email from the Principal to the Other Employee sent on 11 March 2019 (**11 March Email**)⁴⁴
 - noted that, in the Outcome Letter, the Privacy Officer stated that the BSM Unit had provided him with the original copies of the emails from which the three documents were derived; however
 - observed that the document disclosed by the Department purporting to be Document 2, was in fact an email from the Principal to the Other Employee and copied to the Deputy Principal on 12 March 2019 (**12 March Email**) – not the 11 March Email.
33. As noted at paragraphs 22 and 23 above, I have obtained and considered the EJS version of the of the email providing the Privacy Officer with documents on 2 August 2022. The third folder in the .zip folder attached to this email contained the .PST version of an email from the Principal to the School Employee. Notably, this email was dated 12 March 2019 – not 11 March 2019.
34. In this regard, I explained to the applicant⁴⁵ that, having viewed the Department's electronic EJS versions of emails, as well as the .PDF which had been provided to him, it was evident that:
- the Department's Manager of Information Management emailed the A/Manager of the BSM Unit and requested searches of the Department's EJS to locate three emails, including the 11 March Email
 - in response, the A/Manager of BSM emailed documents to the Manager of Information Management
 - the Manager of Information Management then forwarded these documents to the Privacy Officer
 - the documents received by the Privacy Officer did not, however, include a copy of the 11 March Email
 - rather, they included the 12 March Email instead.
35. On this basis, I expressed my view that, although the copy of the email the applicant had been expecting had not been disclosed to him (that is, the 11 March Email), the Department had in fact disclosed the email that had been provided by the BSM Unit to the Privacy Officer on 2 August 2022, and was therefore responsive to Document 2 as requested in the agreed scope (that is, the 12 March Email).
36. In response, the applicant appeared to accept that the email from the Principal to the School Employee, as provided by the BSM Unit to the Privacy Officer **on 2 August 2022**, was the 12 March Email. However, he maintained that:⁴⁶

⁴² Letter to OIC dated 14 May 2024, received on 21 May 2024.

⁴³ Letter to OIC dated 14 May 2024, received on 21 May 2024 and letter dated 1 November 2024.

⁴⁴ In my letter to the applicant dated 18 October 2024, I referred to the 11 March Email as the 10 March Email, given its email header uses GMT time and states that it was sent at 11:07pm on 10 March 2019.

⁴⁵ Letter dated 18 October 2024.

⁴⁶ Letter dated 1 November 2024. Bold is my emphasis.

- it was clear from the content of the Outcome Letter that the Privacy Officer had received a copy of the 11 March Email
 - '[i]t simply means that there was a **subsequent** email from BSM to Privacy that contained [the 11 March Email]'; and
 - the Department had initially refused to deal with the access application on the basis that processing it would be a substantial and unreasonable diversion of the Department's resources, and at this time had referred to locating 1089 pages and six recordings, which indicates '*there were likely a number of emails sent to Privacy from BSM*'.
37. Noting that the date of 29 July 2022, as specified in the Outcome Letter, led to some confusion around when the BSM Unit provided the Privacy Officer with copies of emails,⁴⁷ and also noting that the Outcome Letter indicated that a copy of the 11 March Email *had* been obtained, I did not consider it reasonable to interpret the applicant's request as relating specifically, and only, to emails provided by the BSM Unit to the Privacy Officer on 2 August 2022. I therefore asked the Department to conduct further searches to ascertain if there was any further correspondence between the A/Manager of BSM, the Manager of Information Management and/or the Privacy Officer **after the email of 2 August 2022**, in particular in relation to the 11 March Email.⁴⁸ No further documents were located.
38. Following the Department's further searches, I wrote to the applicant to confirm that, having considered the information received from the Department about the searches conducted, it was my preliminary view that in the circumstances of this matter, the Department had conducted appropriately targeted and comprehensive searches and on that basis access to any further emails from the A/Manager of BSM, the Manager of Information Management and/or the Privacy Officer may be refused on the basis that they are nonexistent.⁴⁹
39. In response the applicant submitted:⁵⁰
- I agree that it is possible that the requested document is nonexistent. However, due to the Department's actions and the OIC's inaction, I cannot be certain and must disagree with your preliminary view.*
40. He then referred to his concerns regarding Document 3 (which I have addressed above) and stated:
- As you appear to refuse to uphold the integrity of the RTI process, I cannot have faith that there are not other issues that the OIC know about resulting in the subject document not being provided by the Department. Accordingly, I believe there is possibly more that could be done to locate the document but is not being done. Accordingly, I do not accept your preliminary view.*
41. Given this, it is necessary for OIC to publish this decision to finalise the matter.⁵¹

⁴⁷ As noted at footnote 11 above.

⁴⁸ Letter dated 6 November 2024. The Department was asked to conduct searches from 2 August 2022, the date the Privacy Officer received the 12 March Email to 29 September 2022 being the date of the Outcome Letter.

⁴⁹ Letter dated 11 December 2024.

⁵⁰ Letter received on 10 January 2025.

⁵¹ Section 123(1)(b) of the IP Act.

Relevant law

42. 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.⁵² This right is subject to limitations, including grounds for refusal of access.⁵³
43. The Information Commissioner's external review functions include investigating whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁵⁴ However, access may be refused in circumstances where a document is nonexistent or unlocatable.⁵⁵
44. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.⁵⁶ 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).⁵⁷ 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.
45. 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*'.⁵⁸ 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 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.⁵⁹
46. 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,⁶⁰ 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

⁵² *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'.

⁵³ 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.

⁵⁴ 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.

⁵⁵ Sections 47(3)(e) and 52(1) of the RTI Act.

⁵⁶ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

⁵⁷ *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 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.

⁵⁸ As set out in *PDE* at [49].

⁵⁹ As set out in *PDE* at [38].

⁶⁰ *Pryor* 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].

- the agency has taken all reasonable steps to find the document.⁶¹
47. 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.⁶² 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.⁶³
48. In assessing an agency's searches, the Information Commissioner has confirmed the relevant question is whether the agency has taken *all reasonable steps* to identify and locate documents, as opposed to *all possible steps*.⁶⁴

Findings

49. The sole issue to be determined is whether all reasonable steps have been taken by the Department to locate Document 2 as requested in the agreed scope.
50. In this regard, it is relevant to note that the email from the BSM Unit to the Privacy Officer on 2 August 2022 provided a copy of the **12 March Email**, and the 12 March Email has been released to the applicant. However, the applicant disagrees that the 12 March Email comprises Document 2. He considers it was clear from the content of the Outcome Letter that the Privacy Officer had received a copy of an **11 March Email**, and maintains that '*there was a **subsequent** email from the Business Management Unit that contained [the 11 March Email]*'.⁶⁵
51. Therefore, the sole issue to be determined is whether all reasonable steps have been taken by the Department to locate any emails between the A/Manager of BSM, the Manager of Information Management and/or the Privacy Officer *after* the email of 2 August 2022, in which the Privacy Officer was provided with a copy of the 11 March Email; and thus whether any such email may be refused on the ground that it is nonexistent or unlocatable.⁶⁶
52. In considering the issue for determination, I am required to consider:
- whether there are reasonable grounds for believing that additional responsive documents exist in the Department's power or possession; and if so,
 - whether the searches conducted by the Department, in an effort to locate the additional responsive documents comprise all reasonable steps to find them.
53. Considerations regarding whether the applicant's submissions raise reasonable grounds for believing that there are further emails between the A/Manager of BSM, the Manager of Information Management and/or the Privacy Officer specifically in relation to the 11 March Email were, in my opinion, finely balanced. On the one hand, in the Outcome Letter the Privacy Officer stated that he had received the original copies of the emails

⁶¹ Section 52(1)(b) of the RTI Act.

⁶² Section 100(1) of the IP Act.

⁶³ *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].

⁶⁴ *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].

⁶⁵ Applicant's submissions dated 14 May 2024.

⁶⁶ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

the applicant provided in support of his complaint from BSM. However, there were also alternative explanations, being that the Privacy Officer:

- was mistaken when stating in the Outcome Letter that he was in possession of the 11 March Email from BSM, as he was actually in possession of 12 March Email; and/or
- had come into possession of the 11 March Email from the Department's Legal Services Unit, rather than the BSM Unit, noting that in the Outcome Letter the Privacy Officer stated *'Legal Services provided me with copies of documents 1-3 which were identical to those provided by you'*. On this basis, it would not have been necessary for the Privacy Officer to request the 11 March Email from the BSM Unit.

54. In relation to the applicant's submission that the Department had initially referred to locating 1089 pages and six recordings, I note that when the Department informed the applicant that it intended to refuse to deal with the application, the scope of the access application was much broader than was finally agreed, as the applicant was seeking *'All documents'* pertaining to the privacy complaint that he made to the Department.⁶⁷ In contrast, the present searches relate to specific emails – that is emails between three possible employees⁶⁸ during a relatively confined period of time⁶⁹ and regarding a particular subject matter, namely the 11 March Email. Given this, I do not accept that the number of documents initially located by the Department necessarily supports the applicant's contention that *'there were likely a number of emails sent to Privacy from BSM'*.⁷⁰
55. Despite considering it less than settled that the applicant had raised reasonable grounds for believing that additional emails existed, in the interests of informally resolving this matter,⁷¹ I requested the Department conduct additional searches for any further emails between the A/Manager of BSM, the Manager of Information Management and/or the Privacy Officer after the email of 2 August 2022 and before the issuing of the Outcome Letter on 29 September 2022. No additional responsive documents were located by the Department.
56. Given that I requested the Department to conduct additional searches, the second issue referred to in paragraph 52, being whether the searches conducted by the Department, in an effort to locate any additional responsive documents have been reasonable in all of the circumstances, can be addressed.
57. The Department relies on searches conducted by its officers to justify its position that all reasonable steps have been taken to locate any further documents. The Department's search information demonstrates that searches were conducted by the A/Manager of the BSM Unit, the Manager of Information Management and the Privacy Officer that addressed the applicant's privacy complaint and those searches were of:
 - an archive account
 - personal Outlook accounts; and
 - the generic Privacy team Outlook account.
58. In the circumstances of this matter, I am satisfied that the Department conducted suitably targeted searches in the record-keeping systems where it would be reasonable to expect that any further communications would be found if they had occurred – that is, the email

⁶⁷ Letter from the Department to the applicant dated 2 June 2023.

⁶⁸ That is, the A/Manager of BSM, the Manager of Information Management and/or the Privacy Officer.

⁶⁹ That is, after the email of 2 August 2022 to 29 September 2022 being the date of the Outcome Letter.

⁷⁰ Applicant's submission received on 1 November 2024.

⁷¹ Section 103(1) of the IP Act requires the Information Commissioner to identify opportunities for early resolution of the external review application and promote settlement of the application.

accounts of the relevant officers. I am also satisfied that the information provided by the Department shows that the searches were conducted by the relevant officers that could be expected to be in possession of that information, using appropriate search terms, specifically, the names of relevant officers and the applicant, and the term “*EJS search*”. I therefore conclude that the Department has conducted all reasonable searches.

59. Given the above, I consider there are reasonable grounds for me to be satisfied that any further documents are nonexistent or unlocatable. Access to them may therefore be refused on this ground.

DECISION

60. For the reasons set out above, I vary⁷² the decision under review by finding that access to any further documents may be refused on the ground they do not exist or are unlocatable under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.
61. 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: 6 March 2025

⁷² Section 123(1)(b) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
30 November 2023	OIC received the application for external review from the applicant. OIC requested preliminary documents from the Department.
7 December 2023	OIC received the preliminary documents from the Department.
16 January 2024	OIC advised the applicant that the application for external review had been accepted and received confirmation from the applicant that OIC had understood the issues to be addressed. OIC requested information from the Department.
28 February 2024	OIC received further information from the Department.
5 April 2024	OIC conveyed a preliminary view to the Department in relation to part one of the access application and requested further information in relation to part two of the application.
18 April 2024	OIC received confirmation from the Department that it accepted OIC's preliminary view.
26 April 2024.	OIC received further information from the Department in relation to part two of the application.
7 May 2024	OIC requested the Department release information to the applicant in relation to parts one and two of the access application and provided an update to the applicant.
14 May 2024	OIC received confirmation from the Department that it had released the further information to the applicant.
21 May 2024	OIC received a submission from the applicant.
8 August 2024	OIC requested further information from the Department about Documents 2 and 3.
19 August 2024 and 17 September 2024	OIC received submissions from the Department and a request for additional time to provide a further response.
2 September 2024 and 19 September 2024	OIC contacted the Department in relation to its extension request.
18 October 2024	OIC provided an update to the applicant and asked the Department to release a PDF version of Document 3 to the applicant with the audio recordings attached.
25 October 2024	OIC received confirmation from the Department that it had disclosed a further copy of Document 3 to the applicant.
1 November 2024	OIC received a submission from the applicant.
6 November 2024	OIC requested the Department conduct further searches.
6 December 2024	OIC received a submission from the Department.
11 December 2024	OIC conveyed a preliminary view to the applicant.
10 January 2024	OIC received a submission from the applicant.

Date	Event
7 February 2025	OIC requested further information from the Department.
18 February 2025	OIC received a submission from the Department.