



## Decision and Reasons for Decision

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Citation:	<i>T75 and Queensland Building and Construction Commission</i> [2025] QICmr 14 (24 March 2025)
Application Number:	317730
Applicant:	T75
Respondent:	Queensland Building and Construction Commission
Decision Date:	24 March 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - application for agency policy documents - applicant contends that further documents should exist - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF ACCESS APPLICATION - whether a certain document the applicant considers to be missing falls outside the scope of the application</p>

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Building and Construction Commission (**QBCC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access a number of QBCC's policy documents.<sup>1</sup>
2. QBCC located seven documents as relevant to the Access Application and decided<sup>2</sup> to refuse access, on the basis other access to them (being administrative access) was available. In the decision, QBCC also confirmed that they had granted the applicant's request for waiver of any processing and access charges associated with the Access Application.<sup>3</sup>

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<sup>1</sup> The access application is dated 1 November 2023 (**Access Application**).

<sup>2</sup> Decision dated 11 December 2023.

<sup>3</sup> As contemplated in section 66(2)(a) of the RTI Act.

3. In accordance with the decision, documents were released administratively to the applicant. Unfortunately, the applicant experienced issues when seeking to view the released documents<sup>4</sup> and QBCC re-issued documents to the applicant.<sup>5</sup>
4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for an external review of QBCC's decision, raising concerns that requested documents were 'still not provided (illegible & not real documents)'.<sup>6</sup>
5. After lodging the External Review Application with OIC, the applicant notified QBCC directly<sup>7</sup> that 'garbled text' continued to appear within five disclosed documents,<sup>8</sup> however, she also confirmed that one of those documents<sup>9</sup> was, at that time, accessible on QBCC's website and she had obtained a copy of it via the website.
6. It appears that the applicant and QBCC then continued to communicate directly, and additional policy documents relevant to the Access Application were, as a result, released to the applicant.
7. During the review, QBCC conducted further searches, located additional documents responsive to the Access Application and disclosed these to the applicant. The applicant maintains that further information should be located and disclosed to her.
8. For the reasons set out below, I vary QBCC's decision and find that:
  - a particular additional document nominated by the applicant falls outside the scope of the Access Application; and
  - access to any further documents relevant to the Access Application may be refused on the basis they do not exist or cannot be located.<sup>10</sup>

## Background

9. There are a number of proceedings currently before the Queensland Civil and Administrative Tribunal (**QCAT**), which generally concern residential building works that were undertaken at a particular property. QBCC is a party to these proceedings and the applicant is party to some of them. On external review, the applicant referenced requests made for Delegation Manual documents in those proceedings.<sup>11</sup> She also referenced prior requests for Delegation Manual documents that had been made to QBCC, including under QBCC's administrative access scheme.<sup>12</sup>
10. The Access Application sought access to the following documents:

*QBCC Delegations Manual v34 (17/12/18) to present version in effect (excluding v50)*  
*RTI Policy & Procedures Manuals - All versions in use from 2020 to present*  
*RTI Policy regarding Financial Hardship refunds of Application Fees as set out by the Office of Information Commissioner.*

<sup>4</sup> The applicant notified QBCC (via email dated 12 December 2023) that 'many of the pages do not display correctly'.

<sup>5</sup> As confirmed in QBCC's email to the applicant dated 18 December 2023.

<sup>6</sup> On 18 December 2023 (**External Review Application**).

<sup>7</sup> By email dated 19 December 2023.

<sup>8</sup> The applicant later clarified (by email dated 4 February 2024) that only certain pages within these documents contained 'garbled text'.

<sup>9</sup> Namely, the 'Right to Information and Privacy Policy, version 2.1'.

<sup>10</sup> Under sections 47(3)(e) and 52 of the RTI Act.

<sup>11</sup> To avoid identifying the applicant, I cannot provide any further details about these proceedings.

<sup>12</sup> On the information before me, the applicant was not the nominated individual making the request under QBCC's administrative access scheme.

11. The date range of the applicant's request was nominated in the Access Application as '2019 to present'.

### Reviewable decision

12. The decision under review is QBCC's decision dated 11 December 2023, refusing access to the requested documents.
13. External review is a merits review process.<sup>13</sup> Accordingly, I have considered afresh the applicant's entitlement to access the requested documents. Notwithstanding this, the applicant argued that, for a number of reasons, she considered that the relevant decision under review is a deemed decision, made under section 46 of the RTI Act, and she is therefore entitled to a refund of the paid application fee, together with interest. The applicant also requested that QBCC issue a formal decision notice confirming the deemed decision and the resulting application fee refund. In this regard, the applicant contended that *'the RTI Act s46 demands compliance by an Agency, and in the face of refusal to comply, the Information Commissioner is required by law and duty to publish a replacement Decision Notice as part of the External Review'*.<sup>14</sup>
14. For the reasons that follow, I do not agree with the applicant's position outlined in the preceding paragraph. I also note that, while my factual findings below are relevant to the issue of the applicant's entitlement to a refund of the application fee, they are of no practical consequence to the reviewable issues in this matter, given the merits review nature of the external review.
15. The standard processing period for an access application is 25 business days from the day the application is received by the agency.<sup>15</sup> Section 24(2) of the RTI Act sets out the requirements for making an access application as follows:

*The application must—*

- (a) be in the approved form and be accompanied by the application fee; and*
- (b) give sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and*
- (c) state an address to which notices under this Act may be sent to the applicant; and*
- (d) state whether access to the document is sought for the benefit of, or use of the document by—*
  - (i) the applicant; or*
  - (ii) another entity; and*

*Example for paragraph (d)(ii)—*

*A journalist makes an access application for a document for use of the document by an electronic or print media organisation.*

- (e) if access to the document is sought for the benefit of, or use of the document by, an entity other than the applicant—the name of the other entity.*

16. The applicant emailed the Access Application, a certified copy of her Drivers Licence and her health care card to QBCC on 1 November 2023. In an email the applicant sent to QBCC on 10 November 2023, she stated:

<sup>13</sup> That is, external review is an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to reach the correct and preferable decision. The Court of Appeal noted in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [12] that section 118 of the *Information Privacy Act 2009* (Qld) (**IP Act**) 'provides for the relevant form of review to be merits review'. Similarly, in *Mokbel v Queensland Police Service* [2023] QCATA 158 (**Mokbel**) at [12] and *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2], Judicial Member DJ McGill SC confirmed that external review under the IP Act is a merits review process. While these decisions concerned access applications made under the IP Act, they are relevant to the external review process under the RTI Act.

<sup>14</sup> Applicant's submission dated 9 May 2025.

<sup>15</sup> Under section 18 of the RTI Act. Pursuant to section 38(1) of the *Acts Interpretation Act 1954* (**AIA**), the processing period is calculated by excluding the day on which an access application was received. This was also confirmed by QCAT in *Stanway v Information Commissioner & Anor* [2019] QCATA 33 at [11].

*As you have confirmed that my Application was paid on 06/11/23 and was therefore properly made on that date I await your written confirmation that the due date for the RTI is 11/12/23.*

17. By letter dated 15 November 2023, QBCC acknowledged payment of the application fee and stated ‘QBCC has 25 business days from the date that it receives a valid application (that is, from 6 November 2023) to decide the Application (this is referred to as the “processing period”)’.
18. Some months after OIC had accepted the External Review Application, the applicant argued<sup>16</sup> that the processing period commenced on 1 November 2023 (when she emailed the Access Application to QBCC) and expired on 6 December 2023.
19. The requirements for making an access application under the IP Act were recently considered by QCAT in *Poyton v Department of Education; Department of Education v Poyton*<sup>17</sup> (**Poyton**). In that matter, QCAT found that, as the applicant did not comply with the legislated requirements for an access application, no access application had been made to the agency.<sup>18</sup> Given the similar (but not identical) nature of the legislated application requirements under the RTI Act, I have taken the findings in *Poyton* into account, together with the applicant’s submission that QBCC’s processes reflect that an application can be compliant prior to the payment of the application fee and she considers the decision in *Poyton* is ‘*fundamentally incorrect*’.<sup>19</sup>
20. While I accept that QBCC received the Access Application on 1 November 2023, it was not, on that date, ‘*accompanied by the application fee*’. In the circumstances of this matter, I find, on a factual basis, that the processing period commenced on 6 November 2023 (when all the requirements of section 24 of the RTI Act had been met) and QBCC’s decision was issued within the standard processing period.<sup>20</sup>
21. The applicant also contended that, as the QBCC decision-maker who issued the decision on 11 December 2023 (**QBCC Officer**) had no delegation to make any decision in respect of the Access Application, there was no lawful decision issued by QBCC.<sup>21</sup> I do not agree. The employment position of the QBCC Officer was delegated to approve access to documents requested under the RTI Act.<sup>22</sup> Therefore, on a factual basis, I find that the decision under review was made by an appropriately delegated QBCC decision-maker.
22. As a result of my findings in paragraphs 20 and 21 above, I am satisfied the circumstances in which a paid application fee is required to be refunded under the RTI Act do not arise in this matter. For completeness, I also note that nothing in the RTI Act requires interest to be paid by an agency when refunding a paid application fee.
23. As to the applicant’s request that QBCC issue a deemed refusal decision to her on external review, this request appears to stem from a misunderstanding of the role of OIC on external review and the manner in which an external review application proceeds.<sup>23</sup>

<sup>16</sup> Applicant’s submission dated 9 May 2024. The applicant made similar submissions on 9 January 2025.

<sup>17</sup> [2024] QCAT 78.

<sup>18</sup> *Poyton* at [22]. QCAT then went on to find at [23] that, as the access application had never become compliant, no deemed decision had been made by the agency under section 66 of the IP Act (which is the equivalent to section 46 of the RTI Act).

<sup>19</sup> Applicant’s submission dated 9 January 2025.

<sup>20</sup> On this basis, I am satisfied that there was no deemed refusal under section 46 of the RTI Act, as contended by the applicant.

<sup>21</sup> External Review Application. The applicant made similar submissions in her submissions dated 6 April 2024.

<sup>22</sup> I also note section 27A(5) of the AIA, which provides that ‘*The delegate may, in the performance of a delegated function or in the exercise of a delegated power, do anything that is incidental to the delegated function or power*’.

<sup>23</sup> On 8 April 2024, I explained to the applicant that, as external review was a merits review process, the RTI Act did not require QBCC to issue any further decision notice regarding the Access Application.

When a valid application for external review is made to OIC,<sup>24</sup> the relevant agency is '*functus officio*' from that point on, and has no jurisdiction to continue to deal with the applicant or their access application.<sup>25</sup> OIC has sole jurisdiction on external review. The external review process is as determined by the Information Commissioner<sup>26</sup> and it is generally not appropriate that the applicant and agency continue to deal with each other directly, unless directed to do so by OIC. For these reasons, and noting my factual findings above, the applicant's request for QBCC to issue a further decision notice during the external review process is misconceived.

### Evidence considered

24. 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). The significant procedural steps taken during the external review are set out in the Appendix to this decision.
25. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>27</sup> 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 RTI Act.<sup>28</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>29</sup>

### Issues for determination

26. As noted in paragraph 10 above, the Access Application sought access to a number of versions of QBCC's Delegations Manual—namely, *QBCC Delegations Manual v34 (17/12/18) to present version in effect (excluding v50)*. During the review, QBCC confirmed that this request encompassed versions 34-49 and 51-62.
27. After QBCC issued the decision under review, a number of Delegation Manual versions were released to the applicant. To avoid any confusion about what documents remained in issue on external review, I asked the applicant to confirm which versions of the Delegation Manual she sought to access on external review.<sup>30</sup> When responding, the applicant contested the validity of certain released documents and queried the absence of Delegation Manual version 63.<sup>31</sup>
28. It is QBCC's position that Delegation Manual version 63 falls outside the scope of the Access Application.

<sup>24</sup> In this matter, OIC confirmed acceptance of the External Review Application in letters sent to both the applicant and QBCC, dated 25 January 2024.

<sup>25</sup> Although the applicant applied to OIC for external review on 18 December 2023 (and OIC's acceptance of the External Review Application was notified to her on 25 January 2024), as noted in paragraphs 5 and 6 above, the applicant and QBCC continued to directly communicate about the documents requested in the Access Application. This is evidenced by the attachment to the applicant's submission dated 9 May 2024 (being an email chain between the applicant and QBCC, which included emails the applicant sent to QBCC on 19 December 2023, 4 February 2024 and 12 February 2024).

<sup>26</sup> As contemplated by section 95 of the RTI Act.

<sup>27</sup> Section 21 of the HR Act.

<sup>28</sup> *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]. This approach, in the context of the IP Act and RTI Act, was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

<sup>29</sup> I note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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.*'

<sup>30</sup> Letter to applicant dated 23 April 2024.

<sup>31</sup> Applicant's submission dated 9 May 2024.

29. Accordingly, the issues for determination are whether:

- access to any further documents relevant to the Access Application may be refused under the RTI Act, on the basis they are nonexistent or unlocatable; and
- Delegation Manual version 63 falls within the scope of the Access Application.

### **General procedural submissions made by the applicant**

30. The submissions made by the applicant that address the issues for determination will be discussed below. However, the applicant has made extensive submissions of a more general nature about her dissatisfaction with the manner in which QBCC dealt with the Access Application and OIC's external review process. I will address those matters here.

31. In the External Review Application, the applicant identified the issues that she wished to be addressed on external review as follows:

1. *Limited work prior to deadline*
2. *QBCC repeated refusal to provide Delegation Manual (DM) under Administrative Access (AA)*
3. *Documents still not provided (illegible & not real documents)*
4. *No Proper RTI Decision Notice & No Disclosure Logs*
5. *No explanation for refusal of AA for DM by [nominated QBCC officer] on 25/09/23*
6. *Failed to Refund Application Fee*
7. *No delegation to make the RTI Decision*
8. *Missing Documents*
9. *Deliberate Misconduct by QBCC RTI Officers.*

32. The applicant subsequently identified<sup>32</sup> eight further issues that she wished to be addressed on external review. These further issues generally concerned calculation of the processing period (and associated matters, such as the applicant's request for refund of the application fee), the validity of the decision under review, the readability of disclosed documents and jurisdictional issues related to the external review.

33. Issues which concern the calculation of the processing period and the validity of the decision under review (which encompasses items 6 and 7 and the first component of item 4 in the External Review Application) have been addressed above in the '*Reviewable decision*' section in these Reasons for Decision.

34. While the applicant is dissatisfied with how QBCC dealt with document requests made prior to the Access Application (including those made by another individual), this is irrelevant to the issues for determination. Here, I am considering the applicant's entitlement under the RTI Act to access the documents requested in the Access Application. Accordingly, I cannot address items 2 and 5 of the External Review Application in these Reasons for Decision.

35. Item 8 of the External Review Application relates to the substantive issue in this review, which is addressed below. The reference to '[d]ocuments still not provided' in item 3 is also addressed there. Insofar as item 3 refers to '*not real documents*', it is my understanding that this relates to QBCC's provision of 'working copy' versions of some Delegations Manuals, when QBCC was unable to locate signed copies—this is also addressed there.

36. While item 3 in the External Review Application refers to illegible documents, the applicant identified, on 9 May 2024, that she considered only four documents released

<sup>32</sup> Applicant's submission dated 9 May 2024.

by QBCC were not readable.<sup>33</sup> QBCC disclosed further copies of those particular documents to the applicant during the review and the applicant did not continue to raise readability issues with them.

### ***Jurisdictional issues relating to applicant's concerns about QBCC's processing of the Access Application***

37. During the review, I explained the limits of OIC's external review jurisdiction to the applicant.<sup>34</sup> The applicant did not accept these explanations and contended that '[e]verything should be verified and confirmed as part of the review and the review is not limited in any way (RTI Act s105 & 113)'.<sup>35</sup> The applicant subsequently provided additional submissions in support of items 1 and 9 of the External Review Application and to explain why she considered the Information Commissioner was empowered to address such matters on external review. On the latter issue, the applicant submitted<sup>36</sup> that '*complaints about anything related to the RTI Act is within the jurisdiction of the Information Commissioner and certainly able to [sic] dealt with as part of an External Review*'.
38. As I have mentioned above, external review is a merits review process. Section 110 of the RTI Act requires the Information Commissioner, after conducting an external review, to make a written decision affirming, varying or setting aside the decision under review. In *Mokbel*, Judicial Member DJ McGill SC relevantly observed that '*it is clear that the legislative focus was on the protection of the right to access information by means of a merits review by an independent specialist Commissioner who was able to examine the relevant material and decide whether or not there was a right to access in accordance with the Act*'.<sup>37</sup> In respect of the provisions relied upon by the applicant, I note that:
- section 105(1) of the RTI Act empowers the Information Commissioner to review any agency decision made in relation to an access application and decide any matter *in relation to the access application* that could, *under the RTI Act*, have been decided by the agency
  - section 105(2) of the RTI Act confirms that the Information Commissioner is not empowered to direct that access be given to exempt or contrary to the public interest information; and
  - section 113 of the RTI Act empowers the Information Commissioner, in certain circumstances, to notify an agency at the completion of an external review about an agency's officer conduct in the administration of the RTI Act.
39. These provisions do not empower, or obligate, the Information Commissioner, in a decision issued pursuant to section 110 of the RTI Act, to address or make findings about alleged conduct deficiencies of agency officers in dealing with an access application. I also note that the RTI Act does not require the Information Commissioner to account to an applicant about any decision made to exercise, or not exercise, the disciplinary power contained in section 113 of the RTI Act. For these reasons, I am satisfied that the Information Commissioner's external review jurisdiction does not extend to addressing the officer conduct concerns that the applicant has raised (including those nominated in items 1 and 9 of the External Review Application) in these Reasons for Decision.<sup>38</sup>

<sup>33</sup> Being Delegations Manual versions 58, 59 and 61 and *Right to Information & Privacy Policy*, version 2.1.

<sup>34</sup> Email to applicant dated 8 April 2024 and letter to applicant dated 23 April 2024.

<sup>35</sup> Applicant's email dated 9 April 2024. The applicant made similar submissions on 9 May 2024. I note that the 9 April 2024 email addressed a number of external review matters (including those where the applicant was not the access applicant).

<sup>36</sup> Applicant's submission dated 9 May 2024.

<sup>37</sup> *Mokbel* at [12].

<sup>38</sup> For completeness, I confirm that the Right to Information Commissioner (as a delegate of the Information Commissioner) has considered the information before OIC in this external review and is satisfied that it does not contain sufficient evidence to give rise to grounds for invoking the disciplinary powers under section 113 of the RTI Act.

### **QBCC's disclosure log**

40. Under the RTI Act, a person affected by a reviewable decision<sup>39</sup> may apply to have the decision reviewed by the Information Commissioner. QBCC's determination about the details included in its disclosure log is not a '*reviewable decision*' under the RTI Act. As such, OIC's jurisdiction in this review does not extend to investigating, making any findings about, or providing any remedy to the applicant regarding her concerns (including those referred to at item 4 of the External Review Application) about omissions in QBCC's disclosure log.<sup>40</sup>

### **External review process**

41. The applicant raised a number of additional concerns about how the external review was conducted. More specifically, the applicant raised concerns about QBCC's delays in providing responses to OIC and submitted that:
- she wished 'all dealings with the OIC to be via telephone to avoid further misunderstandings on the part of the OIC'<sup>41</sup>
  - the Information Commissioner herself is required to conduct reviews under the RTI Act<sup>42</sup>
  - the external review was not being conducted 'efficiently, expeditiously or fairly'<sup>43</sup> or 'in a timely manner'<sup>44</sup>
  - she held an expectation that she would not have any response timeline imposed for the period between November 2024 and March 2025;<sup>45</sup> and
  - another officer should deal with this review.<sup>46</sup>
42. Under the RTI Act:
- the procedures to be followed on external review are, subject to the Act, within the discretion of the Information Commissioner and external review proceedings are required to be conducted with as much expedition as the requirements of the Act and a proper consideration of the matters before the Information Commission allow;<sup>47</sup> and
  - the RTI Act permits the Information Commissioner to delegate all or any of the Commissioner's powers under the Act.<sup>48</sup>
43. I accept that the time taken to complete this review has not met the applicant's expectations. I also acknowledge that there were certain delays in OIC receiving certain information requested from QBCC and in QBCC completing extensive searches and inquiries to locate the documents requested in the Access Application. As some of those delays can be attributed to internal staffing changes at QBCC, OIC was mindful of these circumstances when affording further time for QBCC to respond to OIC. However, the Appendix demonstrates that, although there were periods of time when OIC could not

<sup>39</sup> '*Reviewable decision*' is defined in schedule 5 of the RTI Act.

<sup>40</sup> This was explained to the applicant in OIC's letters dated 23 April 2024 and 27 November 2024.

<sup>41</sup> Applicant's email dated 9 April 2024. I note that this email addressed a number of external review matters (including those where the applicant was not the access applicant).

<sup>42</sup> Applicant's email dated 17 April 2024.

<sup>43</sup> Applicant's email dated 17 April 2024.

<sup>44</sup> Applicant's email dated 17 April 2024.

<sup>45</sup> Applicant's email dated 12 November 2024. I again note that this email addressed a number of external review matters (including those where the applicant was not the access applicant) and the only statement which specifically concerned this external review was as follows '*Lodged 18/12/23 and still no provision of any of the documents despite almost 12 months with the OIC*'.

<sup>46</sup> In the applicant's email dated 17 April 2024, she requested that I leave the review to another officer.

<sup>47</sup> Section 95(1)(a) of the RTI Act.

<sup>48</sup> Section 145 of the RTI Act.



progress the review due to outstanding responses from QBCC, reasonable steps were taken, in a timely manner, to progress the review and address the various issues raised by the applicant during the review.

44. Under OIC's external review procedures, applicants may be contacted by either telephone or in writing during an external review.<sup>49</sup> The applicant is aware of this as a result of her involvement in other external review matters. During this review, the applicant has spoken with two OIC staff members.<sup>50</sup> A written preliminary view about the reviewable issues has also been conveyed to the applicant<sup>51</sup> and the applicant was invited to provide a submission if she wished to contest that view.<sup>52</sup> In these circumstances, and notwithstanding the applicant reiterated that her preferred method of communication was via telephone, I am satisfied that the review process has been procedurally fair (as it enabled the applicant to provide any information to OIC that she considered to be relevant) and that the applicant has been afforded due process in this review.
45. To the extent that the applicant has submitted another decision-maker should deal with this review, I have noted above that the external review procedure is determined by the Information Commissioner. The Right to Information Commissioner has written to the applicant addressing her concerns about the external review process and confirmed that I am the appropriately delegated decision-maker in this review.<sup>53</sup> I can identify no actual, perceived or potential conflict of interest that should preclude me acting as the decision-maker in this matter.<sup>54</sup>
46. I will now turn to consideration of the substantive issues to be determined in this review.

## Relevant law

47. The RTI Act gives a right of access to documents of government agencies.<sup>55</sup> This access right is subject to some limitations, including the grounds on which access to information may be refused.<sup>56</sup> One ground of refusal is where a document is nonexistent or unlocatable.<sup>57</sup>
48. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.<sup>58</sup> To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:<sup>59</sup>
  - the administrative arrangements of government

<sup>49</sup> This was confirmed in the attachment to OIC's letter to the applicant on 25 January 2024.

<sup>50</sup> Being an Assistant Information Commissioner and a Review Officer.

<sup>51</sup> As set out in the Appendix.

<sup>52</sup> It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

<sup>53</sup> In accordance with my delegation, the Right to Information Commissioner was consulted on this decision before it was issued.

<sup>54</sup> To the extent the applicant's concerns about the external review process could be interpreted as raising an issue of apprehended bias, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias-refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

<sup>55</sup> Section 23(1)(a) of the RTI Act.

<sup>56</sup> The grounds on which access can be refused are set out in section 47 of the RTI Act.

<sup>57</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>58</sup> Section 52(1)(a) of the RTI Act.

<sup>59</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (*PDE*). These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) (*Van Veenendaal*) at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

- the agency's structure
  - the agency's functions and responsibilities<sup>60</sup>
  - the agency's practices and procedures (including but not exclusive to its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
49. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.<sup>61</sup> However, searches may be relied on to satisfy the decision-maker that a document does not exist—if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.<sup>62</sup> What constitutes reasonable steps will vary from case to case.<sup>63</sup>
50. 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 the document but it cannot be found.<sup>64</sup> To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.<sup>65</sup>
51. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>66</sup> However, where an external review involves the issue of missing documents, as is the case here, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.<sup>67</sup>
52. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.<sup>68</sup> QCAT has confirmed that this provision '*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.<sup>69</sup>

<sup>60</sup> Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

<sup>61</sup> For example, where a particular document was not created because 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.

<sup>62</sup> As set out in *PDE* at [49].

<sup>63</sup> As the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

<sup>64</sup> Section 52(1)(b) of the RTI Act.

<sup>65</sup> *Pryor* at [21].

<sup>66</sup> Section 87(1) of the RTI Act.

<sup>67</sup> *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].

<sup>68</sup> 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.

<sup>69</sup> *Webb v Information Commissioner* [2021] QCATA 116 at [6].

53. In assessing an agency's searches, the Information Commissioner has also more recently confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.<sup>70</sup>

**QBCC Policy 'regarding Financial Hardship refunds of Application Fees as set out by the Office of the Information Commissioner'**

54. As noted above, an access application made under the RTI Act must be accompanied by the application fee and section 24(4) of the RTI Act specifically confirms that the applicant fee cannot be waived.<sup>71</sup>
55. The RTI Act does not require a paid application fee to be refunded by an agency on financial hardship grounds—instead, sections 34(3) and 46(1) of the RTI Act identify the only circumstances in which a paid application fee is required to be refunded to an applicant under the RTI Act.
56. While there is no legislative requirement for a paid application fee to be refunded on financial hardship grounds, the guidelines issued by OIC note that:<sup>72</sup>

*If agencies wish to refund the application fee in any other circumstances they will have to rely on their own financial delegations or policies.*

**Findings**

57. Prior to issuing the decision under review, QBCC notified the applicant that it did not have a policy dealing with financial hardship refunds of RTI access application fees.<sup>73</sup> In response,<sup>74</sup> the applicant confirmed her request for this component of the Access Application and stated:

*If the QBCC does not have the required RTI Policies regarding refunds of RTI Application Fees and the associated Financial Delegations then can you please confirm this in the RTI Decision Notice in response to the existing current scope.*

58. While the decision under review did not confirm that a policy document responsive to this component of the Access Application was nonexistent,<sup>75</sup> it remains QBCC's position on external review that access to such a document may be refused on that basis.<sup>76</sup>
59. The applicant's external review submissions do not directly contest QBCC's position. Instead, the applicant requested that this decision confirm QBCC has no such policy.

<sup>70</sup> 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].

<sup>71</sup> OIC's Guideline titled 'Fees and Charges' also relevantly states 'Even if the applicant is eligible for a waiver of the processing and access charges on the grounds of financial hardship, there are no provisions in the RTI Act which allow for the application fee to be waived in any circumstances'. This guideline is available at <<https://www.oic.qld.gov.au/guidelines-for-government/access-and-amendment/processing-applications/fees-and-charges>>.

<sup>72</sup> OIC's Guideline titled 'Fees and Charges'. When referencing this particular OIC Guideline in her correspondence with QBCC on 8 November 2023, the applicant asked QBCC to look at the Guideline, particularly 3 identified sections, the third of which she identified as 'The Note in the refund section regarding an agency's ability to refund in other circumstances and the required policy/financial delegations to do so'.

<sup>73</sup> QBCC's emails to the applicant dated 8 and 10 November 2023.

<sup>74</sup> Applicant's email to QBCC dated 8 November 2023.

<sup>75</sup> In QBCC's submission dated 8 March 2024, QBCC stated that this confirmation was inadvertently overlooked during the finalisation of the decision under review.

<sup>76</sup> QBCC's submission dated 30 October 2024.

60. On the information before me, I am satisfied that the requested QBCC policy concerning refunds of application fees for financial hardship reasons does not exist and access to it may be refused on that basis.<sup>77</sup>

### QBCC Delegations Manual

61. This component of the Access Application requested '*QBCC Delegations Manual v34 (17/12/18) to present version in effect (excluding v50)*'.
62. As noted in paragraphs 26-28 above:
- QBCC confirmed that this component of the Access Application encompassed Delegations Manual versions 34-49 and 51-62; and
  - while the applicant queried the absence of Delegation Manual version 63 in the disclosed documents, it is QBCC's position that Delegation Manual version 63 falls outside the scope of the Access Application.
63. Where QBCC located signed Delegations Manuals in response to this component of the Access Application, copies of those located documents have been disclosed to the applicant. The applicant has raised no issues with these disclosures.<sup>78</sup>
64. However, where QBCC did not locate signed Delegation Manuals, the retained 'working copy' documents have been disclosed to the applicant (**Working Copy Documents**).<sup>79</sup> The applicant generally submitted that disclosure of the Working Copy Documents does not meet the requirements of her request. More specifically, the applicant submitted that '*it is disappointing that QBCC cannot maintain a proper system of executed delegations manuals in accordance with the law (which is a requirement under the Public Records Act)*'<sup>80</sup> and has nominated actions she considers that OIC should take in this regard.<sup>81</sup>
65. QBCC relied on searches conducted by its officers to justify its position that reasonable steps have been taken to locate the requested Delegations Manuals.

### Findings – Delegations Manual version 63

66. The terms of an access application set the parameters for an agency's search efforts and therefore are of primary importance where an applicant contends, as is the case in this review, that the agency has not located all relevant documents.<sup>82</sup>

<sup>77</sup> Section 47(3)(e) and section 52(1)(a) of the RTI Act.

<sup>78</sup> Being Delegations Manual versions 35, 38, 47, 55, 56, 58, 59, 60, 61 and 62.

<sup>79</sup> Working Copy Documents of Delegations Manual versions 34, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 51, 52, 53, 54 and 57 were disclosed to the applicant.

<sup>80</sup> Applicant's submission dated 6 January 2025.

<sup>81</sup> In the applicant's submission dated 6 January 2025, she contends OIC should refer the matter to the Queensland Ombudsman '*and/or any other relevant authority for investigation*'. In this regard, I have already noted the limits of OIC's external review jurisdiction.

<sup>82</sup> *Usher and Department of Natural Resources and Mines* [2014] QICmr 51 (19 December 2014) at [15]. See also *Lonsdale and James Cook University* [2015] QICmr 34 (15 December 2015) at [9] and *Van Veenendaal* at [15]. In this regard, I also note the following observations of the Information Commissioner in *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 (**Cannon**) at [8], when addressing similar considerations under the predecessor to the RTI Act, the repealed *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 the 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. Indeed the FOI Act itself makes provision in this regard with s.25(2) not only requiring that an FOI access application must be in writing, but that it must provide such information concerning the document to which access is sought as is reasonably necessary to enable a responsible officer of the agency to identify the document*'. These observations were also cited with approval in *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (**O80PCE**) at [33] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].

67. QBCC submitted that, as Delegations Manual version 63 was not *'in effect'* in November 2023 (when the Access Application was received), that document falls outside the scope of the Access Application.<sup>83</sup>
68. During the review, I notified the applicant of QBCC's position concerning Delegations Manual version 63.<sup>84</sup> The applicant did not contest QBCC's position, and it is unclear whether the applicant continues to seek a copy of Delegations Manual version 63 in this external review.
69. Having considered the parties' submissions and assessed the scope of the Access Application, objectively and without undue technicality,<sup>85</sup> I find that Delegations Manual version 63 falls outside the scope of the Access Application. As a result of my finding, it is unnecessary for me to consider whether QBCC has taken reasonable steps to locate Delegations Manual version 63.

### **Findings – signed Delegations Manuals**

70. The remaining question I must consider in respect of this component of the Access Application is whether QBCC has taken all reasonable steps to locate signed Delegations Manuals regarding each version for which Working Copy Documents only have been disclosed (as noted at paragraph 64 above). This entails consideration of whether QBCC has required appropriate staff to conduct sufficient searches of all locations where the requested Delegations Manuals could reasonably be expected to be found.
71. In the decision under review, QBCC noted that it had conducted searches for the requested documents in its Electronic Content Management system (**ECM**). During the review, QBCC undertook additional searches. The information QBCC provided to OIC about those additional searches confirmed:<sup>86</sup>
  - ECM, QBCC's Sharepoint system,<sup>87</sup> *'DocuSign'*<sup>88</sup> and relevant physical files were searched for responsive Delegations Manuals
  - those searches were conducted by multiple QBCC officers; and
  - QBCC's digital archivist also assisted these additional searches.
72. As noted above, the searches conducted by QBCC did locate some signed versions of the requested Delegations Manuals. In these circumstances, it is reasonable to conclude that the locations which have been searched by QBCC are the locations where it is reasonable to expect that any further signed versions of the requested Delegations Manuals would be located.
73. I asked QBCC to explain why it was unable to locate signed copies of the Working Copy Documents. In response, QBCC submitted that:<sup>89</sup>
  - each version of QBCC's Delegations Manual has been saved as a 'working version' in QBCC's record keeping systems
  - the Working Copy Documents reflect the final approved documents

<sup>83</sup> QBCC's submissions dated 8 March 2024 and 30 October 2024.

<sup>84</sup> Letter dated 27 November 2024.

<sup>85</sup> *Cannon* at [10] and *O80PCE* at [35].

<sup>86</sup> For example, in QBCC's submission dated 7 May 2024.

<sup>87</sup> Which QBCC explained was a shared departmental document repository.

<sup>88</sup> *'DocuSign'* is a software system used for electronic signatures and the uploading of documents.

<sup>89</sup> Submissions dated 4 June 2024 and 30 October 2024.

- it appears that, due to an historical administrative oversight, some final 'DocuSign' copies of the Delegations Manuals were not saved in QBCC's record keeping systems
  - additionally, for Delegation Manual documents that were signed using the 'DocuSign' system and were saved in QBCC's record keeping systems, difficulties were encountered in extracting signed documents where the relevant signatory is no longer employed by QBCC.<sup>90</sup>
74. There is nothing before me which calls into question either the efficacy of QBCC's searches or the accuracy of the explanation provided by QBCC (as summarised above). I therefore accept QBCC's evidence in relation to its search efforts and inquiries.
75. After reviewing the information provided by QBCC, there was nothing before me to suggest that there were any additional searches QBCC could undertake to locate the further documents sought by the applicant, namely, signed copies of the Working Copy Documents. Accordingly, I conveyed a preliminary view<sup>91</sup> to the applicant that QBCC had conducted appropriately targeted searches of the locations where it was reasonable to expect that the requested Delegations Manuals would be stored and access to any further, relevant documents may be refused on the basis they were unlocatable. The applicant did not accept the preliminary view.<sup>92</sup>
76. Having considered all of the information before me (including details of QBCC's searches, the located documents and the parties' submissions), I consider that QBCC has conducted extensive and appropriately targeted searches of its record-keeping systems where it would be reasonable to expect the requested Delegations Manuals would be found. I also consider that those searches were conducted by appropriately qualified staff and that relevant inquiries were also undertaken in an effort to locate all responsive documents within the QBCC's record keeping systems.
77. Accordingly, I am satisfied that:
- QBCC has taken all reasonable steps to locate documents relevant to this component of the Access Application; and
  - access to any further Delegations Manual documents relevant to the Access Application may be refused,<sup>93</sup> on the basis they cannot be located.

## RTI Policy and Procedures Manuals

78. The applicant sought access to '*RTI Policy & Procedures Manuals - All versions in use from 2020 to present*'.
79. QBCC disclosed the following documents to the applicant in response to this component of the Access Application:
- (a) Right to Information and Privacy Policy, version 2
  - (b) Right to Information and Privacy Policy, version 2.1
  - (c) Right to Information and Information Privacy Procedure 2021, Version 3.
80. While the applicant raised no issue concerning document (c), she submitted that:<sup>94</sup>

<sup>90</sup> QBCC referenced seeking assistance from its external vendor, DocuSign, in an effort to address this particular issue.

<sup>91</sup> On 27 November 2024.

<sup>92</sup> Applicant's submission dated 6 January 2025.

<sup>93</sup> Under section 47(3)(e) of the RTI Act.

<sup>94</sup> Applicant's submission dated 9 May 2024.

- document (b) was unreadable, however, she had located a copy of it on QBCC's website; and
  - document (a) was not properly signed.
81. As a result of the additional searches referenced in paragraph 71 above, QBCC located a signed copy of document (b) and disclosed this to the applicant. However, QBCC did not locate a signed copy of document (a).
82. QBCC submitted that the disclosed document (a) is the retained 'working copy' and that, for the reasons outlined in paragraph 73 above, it was unable to locate a signed copy of this document.
83. In the circumstances of this matter, I consider it is reasonable to conclude that the locations which have been searched by QBCC are the locations where it is reasonable to expect that any further '*RTI Policy & Procedures Manuals*' relevant to the Access Application would be located. Accordingly, I am satisfied that:
- QBCC has taken all reasonable steps to locate documents relevant to this component of the Access Application; and
  - access to any further '*RTI Policy & Procedures Manuals*' relevant to the Access Application may be refused,<sup>95</sup> on the basis they cannot be located.

## DECISION

84. For the reasons set out above, as a delegate of the Information Commissioner under section 145 of the RTI Act, I vary QBCC's decision and find that:
- the applicant is not entitled to access Delegation Manual version 63, as it falls outside the scope of the Access Application; and
  - access to any further documents relevant to the Access Application may be refused on the basis they are nonexistent or unlocatable.<sup>96</sup>

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**T Lake**  
**Principal Review Officer**

**Date: 24 March 2025**

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<sup>95</sup> Under section 47(3)(e) of the RTI Act.

<sup>96</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
18 December 2023	OIC received the External Review Application.
25 January 2024	OIC notified the applicant and QBCC that External review Application had been accepted and requested information from QBCC.
12 February 2024	OIC received the requested information from QBCC.
23 February 2024	OIC requested additional information from QBCC.
8 March 2024	OIC received the requested information from QBCC.
6 April 2024	OIC received the applicant's submission and her request for an update.
8 April 2024	OIC provided the requested update to the applicant, confirmed the merits review nature of the external review and explained the limits of OIC's external review jurisdiction.
9 April 2024	OIC received the applicant's email, outlining her disagreement with the provided jurisdictional explanation.
15 April 2024	OIC provided a further explanation of the external review process to the applicant.
17 April 2024	OIC received the applicant's email which raised concerns about the external review process.
18 April 2024	OIC asked QBCC to provide further search information.
23 April 2024	OIC wrote to the applicant seeking to clarify the documents which the applicant sought to access on external review.
7 May 2024	OIC received QBCC's search submission.
9 May 2024	OIC received the applicant's submission, which identified (i) the documents that had not been disclosed by QBCC and (ii) the disclosed documents she considered were unreadable or not properly signed.
21 May 2024	OIC asked QBCC to provide a submission addressing the documents which the applicant had identified as being undisclosed, unreadable or not properly signed.
4 June 2024	OIC received QBCC's submission.
4 and 19 July 2024	OIC asked QBCC to provide copies of additional documents.
3 September 2024	OIC re-iterated the request for copies of additional documents. OIC provided an update to the applicant.
13 September 2024	OIC received documents from QBCC.
3 October 2024	OIC asked QBCC to provide additional documents.
23 October 2024	OIC asked QBCC to provide the requested additional documents by 28 October 2024.



Date	Event
28 October 2024	OIC granted QBCC an extension of time (to 1 November 2024) for provision of the additional documents, after receiving notification of QBCC staffing changes.
30 October 2024	OIC received QBCC's submission.
12 November 2024	OIC provided an update to the applicant.
22 November 2024	OIC asked QBCC to confirm its disclosure position.
26 November 2024	OIC received QBCC's submission.
27 November 2024	OIC notified the applicant of the additional documents which QBCC had agreed to disclose, conveyed a preliminary view to the applicant and invited the applicant to provide a submission if she did not accept the preliminary view. OIC asked QBCC to send a copy of the additional documents it had agreed to disclose to the applicant.
5 December 2024	OIC received QBCC's confirmation that additional documents had been disclosed to the applicant.
6 January 2025	OIC received the applicant's submission, including the applicant's identification of documents which had not been disclosed.
9 January 2025	OIC asked QBCC to respond about the documents the applicant identified as not disclosed. OIC received the applicant's further submission and her request that a formal decision be issued.
20 January 2025	OIC received QBCC's clarification about the undisclosed documents and confirmation of their disclosure on 20 January 2025. OIC wrote to the applicant to confirm that a formal decision would be issued to finalise the review.