



Decision and Reasons for Decision

Citation: *U85 and Queensland Police Service [2025] QICmr 25 (22 May 2025)*

Application Number: 317694

Applicant: U85

Respondent: Queensland Police Service

Decision Date: 22 May 2025

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - request for information about complaints and investigations - prescribed crime body exemption - section 47(3)(a) and schedule 3, sections 10(4) and 10(6) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - request for information about applicant's employment history - accountability and transparency - personal information and privacy of other individuals - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Background

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a range of information relating to their employment with QPS.

¹ On 27 March 2023.

2. QPS located documents relating to complaints, investigations, recruitment and other employment matters in response to the application.² QPS granted the applicant access to some of the located information³ but decided⁴ to refuse access to most of the information on the basis that it was exempt, or contrary to the public interest to disclose under the RTI Act.⁵ In summary, the documents located by QPS and which were the subject of its decision, include:
 - complaint assessments, witness statements, investigation reports and correspondence pertaining to Ethical Standards Command (**ESC**) investigations (**ESC Documents**)⁶; and
 - documents relating to the applicant's employment, including job applications, recruitment processes and honours and awards information (**Employment Information**).⁷
3. The applicant applied⁸ to the Office of the Information Commissioner (**OIC**) for an external review of QPS's refusal of access decision.⁹ During the review QPS located and released additional documents to the applicant.¹⁰ However, the applicant remains dissatisfied with the amount of information which has been disclosed and has provided submissions to OIC.¹¹ I have examined those submissions for the purpose of reaching my findings as set out in this decision. Certain concerns raised by the applicant however, are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act.¹² Accordingly, in making this decision, I have only considered and addressed the applicant's submissions to the extent they are relevant to the issues for determination on external review.
4. On external review OIC asked QPS to reconsider¹³ its position on disclosure of the Employment Information as it substantially contained the applicant's personal information. QPS agreed¹⁴ to release the Employment Information subject to the redaction of third-party personal information (**CTPI Information**).¹⁵ The applicant did not accept disclosure of this additional information in resolution of the review.
5. Significant procedural steps taken in this external review are set out in the Appendix.¹⁶ Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁷ 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

² 87 pages.

³ 5 full pages and 24 part pages were released.

⁴ 7 September 2023. This is the reviewable decision.

⁵ Access to 24 part pages and 58 full pages was refused.

⁶ Pages 1-65.

⁷ Pages 66-87.

⁸ On 29 November 2023.

⁹ The application was received outside the statutory timeframe, however, the discretion in section 88(1)(d) of the RTI Act to accept the application was exercised by the delegate.

¹⁰ On 25 June 2024, 22 additional pages were released to the applicant.

¹¹ On 2 March 2024, 14 April 2024, 6 July 2024 and 17 November 2024.

¹² For example, the applicant raised concerns about QPS's handling of his complaints. Apart from section 113 of the RTI Act (which empowers the Information Commissioner to give certain notifications to an agency or Minister at the completion of an external review), OIC's external review jurisdiction does not extend to investigating received complaints about an agency's conduct, service delivery, complaint handling, complaint investigation or other internal processes. Therefore, I have not addressed the applicant's concerns in this regard in these reasons for decision. For completeness, I note that, on the information before me, there is no evidence which suggests that the Information Commissioner should issue any notice under section 113 of the RTI Act.

¹³ By way of preliminary view dated 20 May 2024

¹⁴ On 23 May 2024.

¹⁵ Including other individuals' telephone numbers, names and information pertaining to other individuals subject to the honours/awards vetting process, and signatures.

¹⁶ See page 12.

¹⁷ Section 21 of the HR Act.

prescribed in the RTI Act¹⁸ and in doing so, I have acted in accordance with section 58(1) of the HR Act.¹⁹

Issues for determination

6. The information that remains for consideration in this review consists of the undisclosed information within the ESC Documents²⁰, and the CTPI Information.²¹ I must determine whether there are grounds to refuse access to that information under section 47(3) of the RTI Act. Given the applicant's concerns about missing documents, I have also examined the reasonableness of QPS's searches and reached a finding as to the existence of further documents.
7. In summary, for the reasons set out below, I vary QPS's decision and find that:
 - access to the ESC Documents may be refused on the basis the information is exempt under the Prescribed Crime Body Exemption²²
 - access to the CTPI Information may be refused on the basis that disclosure would, on balance, be contrary to the public interest;²³ and
 - access to any further documents may be refused on the basis they do not exist.²⁴

Prescribed Crime Body Exemption

Relevant law

8. A person has a right, under the RTI Act, to be given access to documents of an agency²⁵ subject to certain limitations, including grounds for refusing access.²⁶ It is Parliament's intention that the RTI Act is to be administered with a pro-disclosure bias²⁷ and that the grounds for refusing access are to be interpreted narrowly.²⁸
9. Access may be refused to exempt information.²⁹ Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is always contrary to the public interest.³⁰ One category of exempt information is set out in schedule 3, section 10(4) of the RTI Act (**Prescribed Crime Body Exemption**). Information will be subject to this exemption if:
 - it was *obtained, used or prepared* for an investigation
 - the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; **and**
 - the exception in schedule 3, section 10(6) of the RTI Act does not apply.
10. The terms 'obtained, used or prepared' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in

¹⁸ *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].

¹⁹ *XYZ* at [573]. OIC's approach to the HR Act set out in this paragraph has been 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 our position).

²⁰ Pages 1-65 (parts of pp. 1, 17, 19, 24, 40, 48, 49, 59 and 60 and all of pp. 2-16, 18, 20-23, 25-39, 41-47, 50-58 and 61-65).

²¹ Pages 66, 67, 69-71, 74-77, 79-83, 85-87

²² Under sections 47(3)(a) and 48 and schedule 3, section (10)(4) of the RTI Act.

²³ Under sections 47(3)(b) and 49 of the RTI Act.

²⁴ Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

²⁵ Section 23 of the RTI Act.

²⁶ Section 47(3) of the RTI Act.

²⁷ Section 44 of the RTI Act.

²⁸ Section 47(2)(a) of the RTI Act.

²⁹ Section 47(3)(a) of the RTI Act.

³⁰ Section 48(2) of the RTI Act.

accordance with the principles of statutory interpretation.³¹ The term ‘*investigation*’ as used in the Prescribed Crime Body Exemption has been defined expansively.³²

11. The ambit of the Prescribed Crime Body Exemption is well-settled.³³ The Information Commissioner has held that the CCC misconduct function is triggered by its receipt and consideration of a complaint, notification and/or relevant material, and not determined retrospectively by the outcome of an assessment or investigation³⁴ either by the CCC or other agency;³⁵ and ‘dealing with’ or ‘assessing’ a complaint, notification or other material falls within the broad meaning of ‘investigation’ by the CCC or other agency.³⁶
12. The exception to the Prescribed Crime Body Exemption in schedule 3, section 10(6) of the RTI Act has consistently been found to apply to information ‘*about*’ the subject officer in the investigation, as distinguished from information pertaining to a complainant.³⁷ The Information Commissioner has previously recognised that the purpose of the exception is to allow individuals who are the subject of an investigation to obtain access to information regarding the finalised investigation, to the extent that information is ‘*about*’ them³⁸ including for example, ‘*allegations made against them ... and conclusions made about them in a report*’.³⁹
13. The exemptions in schedule 3 to the RTI Act—including the Prescribed Crime Body Exemption—do not require nor allow consideration of public interest factors. This is because Parliament has already determined that disclosure of these categories of information would be contrary to the public interest.⁴⁰ Accordingly, if information falls within one of the categories of exempt information prescribed in schedule 3, a conclusive presumption exists that its disclosure would be contrary to the public interest, and no further consideration of public interest factors is required.⁴¹

Submissions

14. The applicant submits that QPS was not entitled to rely on the Prescribed Crime Body Exemption when refusing access to the ESC Documents⁴². In this regard the applicant submitted as follows:

I never asked (or authorized) for a CCC/OIC investigation of my cases to be initiated on my behalf. I only asked for assistance in obtaining, among other things, the 56 documents I was refused access to ... The only reason I brought my cases out was because RTI asked for some

³¹ In *Springborg, MP and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**) the Information Commissioner noted at [27] that the term ‘prepared’ was defined as ‘compose and write out, draw up (a text or document) ... produce or form ... manufacture, make’.

³² *Springborg* at [55]-[59] contains a detailed analysis of the concept of an ‘investigation’ as used in the equivalent exemption provision of the repealed *Freedom of Information Act 1992* (Qld); the Information Commissioner found the term can encompass the process of examining, considering, ‘dealing with’ and ‘assessing’ a complaint. Also, schedule 2 of the CC Act provides a non-exhaustive definition of ‘investigate’ as including ‘examine and consider’ – see *Frecklington MP and Premier and Minister for Trade* [2020] QICmr 15 (18 March 2020) at [47].

³³ *Springborg* analysed provisions that are the material equivalents of those contained in the *Crime and Corruption Act 2001* (Qld) (**CC Act**) and this reasoning has since been applied consistently by the Information Commissioner. See for example, *Cronin and Crime and Corruption Commission* [2017] QICmr at [12]-[26], *P55 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development* [2024] QICmr 59 (12 November 2024) at [25]-[33], and *E92 and Crime and Corruption Commission* [2024] QICmr 73 (19 December 2024) at [32]-[39].

³⁴ *Springborg* at [44].

³⁵ Schedule 3, section 10(4) of the RTI Act.

³⁶ *Springborg* at [55]-[59].

³⁷ *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [25]-[33]; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) at [18]-[22] and *W52 and Crime and Corruption Commission* [2021] QICmr 57 (28 October 2021) at [44]-[48].

³⁸ *G8KPL2* at [28]-[30].

³⁹ *Ibid.* at [28]-[33].

⁴⁰ Section 48(2) of the RTI Act.

⁴¹ *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17]

⁴² Submission received on 17 November 2024.

context to show why I am requesting access. Moreover, I was never given feedback of the CCC investigation. I was never allowed the opportunity to review the documents that were submitted to the CCC, nor to contribute any additional documents/evidence to the investigation.

Findings

15. The ESC Documents include complaint assessments, witness statements, investigation reports and investigation related correspondence with relevant parties (including the subject officer/s). It also includes the identities of the subject officer in each investigation. I am satisfied that the entirety of the ESC Documents comprises information that was obtained, used and prepared for the investigations by the ESC into allegations against the relevant officers who were the subjects of the applicant's complaints.
16. Having examined the located documents, I am satisfied that:
 - at the time the allegations were made by the applicant, they were assessed by QPS as falling into the category of corrupt conduct⁴³
 - the allegations were referred to the CCC
 - any subsequent investigations were devolved⁴⁴ to QPS by the CCC
 - the CCC did not require outcome advice however the investigations were subject to CCC's monitoring role and potential future CCC audit⁴⁵; and
 - in assessing the complaints and undertaking the investigations, the QPS, through its ESC was performing a prescribed function of the CCC, ie. the corruption function.⁴⁶
17. As set out by the Information Commissioner in *Springborg*, a prescribed crime body (or agency such as QPS ESC) can be performing prescribed crime body functions following receipt of the information about the allegations, and in the course of assessing whether corrupt conduct has occurred.⁴⁷ I am satisfied that at the time the allegations were made, they were raised/classified under the category of corrupt conduct and in investigating those allegations, the ESC was performing the corruption functions of the CCC. I acknowledge the applicant is not satisfied with the way his complaints were handled and investigated by the QPS, however I am satisfied that this is not relevant in determining the application of the Prescribed Crime Body Exemption.
18. Based on my analysis set out in the preceding paragraphs, I find that the QPS, through its ESC, was performing the corruption function of the CCC in investigating the allegations against the relevant subject officers. Accordingly, I find that schedule 3, section 10(4) of the RTI Act applies to all refused information in the ESC Documents.
19. Notwithstanding that I have found the requisite elements of the Prescribed Crime Body exemption are met, the RTI Act requires me to also consider whether the exception in schedule 3, section 10(6) of the RTI Act applies to the ESC Documents. The exception is a two-limbed test. The first requirement is satisfied as QPS has confirmed the investigations are finalised. The second question is whether the information is 'about' the applicant.

⁴³ More specifically, staff member misconduct and/or police misconduct.

⁴⁴ The principle of devolution is set out in section 34(c) of the CC Act and, in practice, occurs under section 45(2) of the CC Act.

⁴⁵ Sections 45 and 46 of the CC Act set out the responsibility of the CCC to monitor how the commissioner of QPS deals with police misconduct, and how the CCC deals with complaints, including by way of devolution

⁴⁶ Section 33 to 35 of the CC Act set out how the corruption functions are performed. Corruption is defined in schedule 2 of the CC Act to mean 'corrupt conduct or police misconduct'

⁴⁷ *Springborg* at [44].

20. Whether information is 'about' a given applicant is a question of fact, to be resolved by reference to the information itself.⁴⁸ The word 'about' in this provision has previously been referred to as 'a non-technical term defined according to its natural and ordinary meaning'.⁴⁹
21. I am satisfied the ESC Documents, resulting from complaints made by the applicant, are substantially about other individuals, primarily the individuals who were the subject of the complaints but they also contain information about witnesses. As you would expect, the ESC Documents also contain information about the investigative actions and processes, and I acknowledge incidental references to the applicant (as the complainant) also appear. However, in accordance with the well-settled interpretation of the exception, I find that the information in the ESC Documents is not 'about' the applicant and therefore, the exception does not apply in this case.

Conclusion

22. For the reasons set out in paragraphs 15 to 21 above, I am satisfied the ESC Documents comprise information that was obtained, used or prepared for investigations by QPS in the performance of the corruption function of the CCC, a prescribed crime body, and the exception to the Prescribed Crime Body Exemption does not apply because the ESC Documents are not 'about' the applicant.
23. As I have found that the requirements for the exemption in schedule 3, section 10(4) of the RTI Act are satisfied, it follows that access to the ESC Documents may be refused under section 47(3)(a) of the RTI Act.⁵⁰

Contrary to the Public Interest

Relevant law

24. Access to information may also be refused under the RTI Act where it would, on balance, be contrary to the public interest to disclose.⁵¹ The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. Generally, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.⁵²
25. The RTI Act requires decision makers to undertake certain steps in determining where the balance of the public interest lies.⁵³ Schedule 4 of the RTI Act non-exhaustively lists factors that may be relevant in determining where the balance of the public interest lies in a particular case.

⁴⁸ *Cronin and Crime and Corruption Commission* [2017] QICmr 13 (6 April 2017) at [21].

⁴⁹ *Darlington v Office of The Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52] per His Honour Carmody J. The Macquarie Dictionary defines 'about' as 'of; concerning; in regard to ... connected with'.

⁵⁰ Due to the operation of section 48(2) of the RTI Act as outlined in paragraph 13 above, I am unable to take into account public interest considerations. Therefore, I have not considered the applicant's submissions in this regard.

⁵¹ Sections 47(3)(b) and 49 of the RTI Act.

⁵² However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

⁵³ Section 49(3) of the RTI Act. The steps include: identify and disregard any irrelevant factors, identify any factors favouring disclosure, identify any factors favouring nondisclosure; and decide whether, on balance, disclosure of the information would be contrary to the public interest.

Findings

Factors favouring disclosure

26. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability;⁵⁴
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁵⁵ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁶
27. QPS has disclosed the majority of the Employment Information except for the CTPI Information. I consider this disclosure has largely discharged the above factors as they relate to enhancing the accountability and transparency of QPS in terms of how it manages employment, recruitment and performance processes. While disclosure of the redacted material would provide the applicant with a more complete version of the relevant records, given the substance of information that has been disclosed, including the names and titles of officers involved in the decision making processes, I afford these factors very low weight.
28. The CTPI Information also includes names, identifying information and other personal details (including records of minor historical offences) of other individuals subject to the vetting process in connection with QPS's honours and awards system. I consider disclosing information of this nature could reasonably be expected to enhance the transparency of QPS in relation to the vetting process. However, given the applicant has been provided with his vetting assessment, this has provided transparency to the extent that it reveals the considerations that were taken into account in making vetting decisions. Accordingly, I afford these factors low weight.
29. Under the RTI Act, the public interest will also favour disclosure of information which could reasonably be expected to:
 - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁵⁷ and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁵⁸
30. As noted above, some of the CTPI information contains the personal information of other officers who were subject to the vetting process (including alleged conduct, relevant sanctions and recommendations). I acknowledge that disclosure of this information may assist the applicant to inquire into the vetting process and any perceived deficiencies in how QPS undertakes that process. I note, however, vetting information as it relates to the applicant has been released as part of the Employment Information which already provides the applicant with a level of information about the process. In view of this, I have only afforded this factor low weight.

⁵⁴ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁵ Schedule 4, part 2, item 3 of the RTI Act.

⁵⁶ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁷ Schedule 4, part 2, item 5 of the RTI Act.

⁵⁸ Schedule 4, part 2, item 6 of the RTI Act.

31. The applicant submits that he has information which he believes will reveal misconduct or corrupt conduct by an agency or officer. Apart from the applicant's assertions, the applicant has not enunciated how he considers the disclosure of CTPI Information would assist in revealing or substantiating such alleged misconduct or corrupt conduct. Having carefully reviewed the CTPI Information, I am satisfied that there is nothing within the CTPI Information which gives rise to any expectation that its disclosure would reveal or substantiate misconduct. On this basis, I find this factor does not apply.
32. Factors favouring disclosure will also arise where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals⁵⁹
 - contribute to the administration of justice generally⁶⁰ or for a person⁶¹
 - reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;⁶² and
 - contribute to enforcement of the criminal law.⁶³
33. Given the applicant's submissions in support of his case, I have considered whether the above four factors apply to the CTPI Information. I acknowledge that the applicant has concerns about how he was treated during his employment. However, due to the particularly limited nature of the CTPI Information, I do not consider there is any basis to find that the above factors apply to that information so as to favour disclosure. I have also considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, I cannot identify any other public interest considerations favouring disclosure of the CTPI Information.

Factors favouring nondisclosure

34. The RTI Act recognises that disclosing an individual's personal information⁶⁴ can reasonably be expected to cause a public interest harm⁶⁵ and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁶⁶ The concept of '*privacy*' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁶⁷
35. The CTPI Information includes the contact details of public sector officers (including phone numbers and non-public facing email addresses), middle initials, references to leave arrangements, and the names and details of other public sector officers who were subject to the honours/awards vetting process. The CTPI Information almost entirely comprises information which identifies, or is about, individuals other than the applicant. I am therefore satisfied the CTPI Information substantially comprises the personal information of individuals other than the applicant.
36. Generally, where information relates to a public service officer undertaking their day to day duties, such information is considered to be their routine personal work information

⁵⁹ Schedule 4, part 2, item 10 of the RTI Act.

⁶⁰ Schedule 4, part 2, item 16 of the RTI Act.

⁶¹ Schedule 4, part 2, item 17 of the RTI Act.

⁶² Schedule 4, part 2, item 12 of the RTI Act.

⁶³ Schedule 4, part 2, item 18 of the RTI Act.

⁶⁴ '*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*'.

⁶⁵ Schedule 4, part 4, section 6 of the RTI Act.

⁶⁶ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁷ Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

and, as such, does not generally attract a high privacy interest and the public interest harm arising from disclosure is generally considered to be low.⁶⁸ As noted above, the names and titles of the officers to whom the contact details relate have been disclosed. However, the contact details in my view, are less routine in nature and attract higher personal information and privacy interest as they allow public service officers to be contacted directly. I consider these nondisclosure factors carry moderate weight.

37. As noted above, the CTPI Information also comprises some more sensitive information about other individuals (middle initials and leave details), and the names and personal details of other public sector officers subject to the vetting process. Given the sensitive and inherently personal nature of this information, I am satisfied that its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to these factors which favour nondisclosure of the CTPI Information.
38. I acknowledge that as the CTPI Information appears within the applicant's Employment Information that he may be aware of some of the CTPI Information. However, I do not consider this negates the right to privacy or the personal information harm which disclosure of the CTPI Information could reasonably be expected to cause. In reaching this conclusion, I have taken into account that there can be no restriction on the use, dissemination or republication of information disclosed under the RTI Act).⁶⁹

Conclusion

39. On balance, I am satisfied that the public interest factors favouring nondisclosure of the CTPI Information carry higher weight than those in favour of disclosure. Accordingly, I find that disclosure of the CTPI Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁷⁰

Nonexistent or unlocatable documents

Relevant law

40. 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.⁷¹ However, where a document is nonexistent or unlocatable, access to it may be refused.⁷² A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁷³ 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.⁷⁴
41. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's

⁶⁸ Routine personal work information can include, for example, a work email address, a work phone number, or an opinion given in a professional capacity.

⁶⁹ *FLK v Information Commissioner* [2021] QCATA 46 at [17].

⁷⁰ Sections 47(3)(b) and 49 of the RTI Act.

⁷¹ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 115 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 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.

⁷² Sections 47(3)(e) and 52 of the RTI Act.

⁷³ Section 52(1)(a) of the RTI Act.

⁷⁴ Section 52(1)(b) of the RTI Act.

structure, its recordkeeping practices and procedures and the nature and age of requested documents.⁷⁵

42. By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency.⁷⁶ 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. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
43. On external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁷⁷ However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.⁷⁸ Suspicion and mere assertion will not satisfy this onus.⁷⁹

Findings

44. The applicant submits that a complaint or complaints have been made about him and that associated documents have not been located as part of QPS's searches.
45. QPS relies on the searches and enquiries conducted by its officers⁸⁰ as set out below:
 - searches were conducted in the following business units: QPS Ethical Standards Command, Human Resources Division (HRD), the Honours and Awards Unit and Protective Services Group
 - the following systems were searched: Police Integrity and Professional Standards (PIPS) system, the email correspondence system, HRD EOI portal and the Honours and Awards Information Management System (HAIMS); and
 - searches were conducted using the applicant's name.
46. The applicant submitted in his access application that he had been accused of certain conduct in the workplace. As noted above, QPS provided evidence that it searched PIPS which is the relevant system for recording complaints made about employees. A search of this system located complaints made *by* the applicant but not *about* him. I am satisfied that if any complaints were made *about* the applicant, it would be reasonable to conclude the complaints would be located in the PIPS system and they would have been located through searches using his name.
47. The applicant also submitted that, in relation to the alleged complaints made against him, he has never received *'any information regarding the potential case outcome or*

⁷⁵ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].

⁷⁶ However, if searches are relied on to justify a decision that documents do not exist, all reasonable steps must be undertaken.

⁷⁷ Section 87(1) of the RTI Act.

⁷⁸ *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

⁷⁹ *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].

⁸⁰ QPS email dated 31 July 2024 attaching search records and a completed search certification.

feedback'. The fact that the applicant has never received any correspondence from ESC regarding any alleged complaint made *against* him is, in my view, consistent with ESC not having received a complaint about the applicant.⁸¹

48. While I acknowledge the applicant is genuinely of the view that 'official' complaints have been made against him, there is no evidence before me to support that view, other than the applicant's assertions. Hypothetically, had a complaint been made about the applicant, it may be possible that it was not made in writing or did not progress to be investigated.⁸² However, it is not necessary for me to determine this point; my role is to determine whether QPS has taken all reasonable steps to locate documents responding to the terms of the application.
49. Having considered all the information before me (including details of QPS's searches, the documents located by QPS and submissions from the applicant), I consider that QPS has conducted suitably targeted searches of the record-keeping systems where it would be reasonable to expect the requested information would be found. I also consider that those searches were conducted by appropriately qualified staff and that appropriate enquiries were undertaken to locate all responsive documents within QPS.
50. Accordingly, I am satisfied that QPS has taken reasonable steps to locate documents relevant to the access application and that therefore, access to any further documents may be refused on the basis they do not exist.⁸³

DECISION

51. For the reasons set out above, I vary QPS's decision and find that:
 - access to information in the ESC Documents may be refused under section 47(3)(a) of the RTI Act on the basis it is exempt under the Prescribed Crime Body Exemption, and in the circumstances of this case, the exception in schedule 3, section 10(6) of the RTI Act does not apply
 - access may be refused to the CTPI Information under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest; and
 - access to any further documents may be refused under section 47(3)(e) of the RTI Act on the basis they do not exist in accordance with section 52(1)(a) of the RTI Act.
52. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 22 May 2025

⁸¹ I note however, the applicant did receive outcome advice regarding complaints he made about other individuals. These were also located by QPS and released to him through this application.

⁸² I propose this as a hypothesis only and have no evidence to indicate QPS has not kept appropriate records.

⁸³ Under section 47(3)(e) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
29 November 2023	OIC received the application 38 business days after QPS' decision, which was 18 business days outside the timeframe allowed in the RTI Act.
21 December 2023	OIC requested a submission from the applicant and requested further information from QPS.
20 February 2024	OIC advised QPS that it was inclined to accept the external review application and offered QPS an opportunity to respond.
27 February 2024	OIC received a response from QPS confirming they had no objections to OIC accepting the application.
1 March 2024	OIC accepted the application for external review and requested a submission from the applicant.
2 March 2024	OIC received a submission from the applicant.
14 April 2024	OIC received a further submission from the applicant.
20 May 2024	OIC conveyed a preliminary view to QPS.
23 May 2024	OIC received a submission from QPS accepting the preliminary view.
7 June 2024	OIC conveyed a preliminary view on the issues to the applicant and requested QPS provide additionally located documents to the applicant.
25 June 2024	QPS released the additionally located documents to the applicant
28 June 2024	OIC provided the applicant with clarification to the preliminary view.
9 July 2024	OIC received a submission (dated 6 July 2024) and extension request from applicant.
18 July 2024	OIC requested search records and a submission from QPS.
31 July 2024	OIC received search records and a submission from QPS.
14 October 2024	OIC conveyed a further preliminary view on the issues to the applicant.
17 November 2024	OIC received a submission from applicant objecting to the preliminary view.