



Decision and Reasons for Decision

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| Citation: | <i>E81 and Queensland Health [2025] QICmr 31 (10 June 2025)</i> |
| Application Number: | 318378 |
| Applicant: | E81 |
| Respondent: | Queensland Health |
| Decision Date: | 10 June 2025 |
| Catchwords: | ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches - whether access to documents may be refused on the basis they are nonexistent - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld) |

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Health² ('QH') under the *Information Privacy Act 2009* (Qld) (**IP Act**) for 'all documents and profile information contained within the *Consumer Integrated Mental Health and Addiction (application)* concerning [himself].³
2. Searches conducted by QH failed to locate any documents responding to the terms of the access application. QH therefore decided⁴ under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the ground that the documents were nonexistent.
3. Under section 123(1)(a) of the IP Act, I affirm QH's decision.
4. In reaching this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁵ I consider a decision-maker will be 'respecting and acting compatibly with' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁷ 'it is perfectly compatible with the scope of that positive right in the Charter

¹ Application dated 11 October 2024.

² The Department of Health.

³ Including metadata.

⁴ Internal review decision dated 16 December 2024 - the decision under review in this matter. The applicant applied to OIC for external review of that decision by application dated 17 December 2024.

⁵ Section 21 of the HR Act.

⁶ *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].

⁷ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.⁸

Relevant law

5. The issue for determination is whether QH was justified in refusing access to requested documents under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act, on the grounds those documents are nonexistent.
6. Under the RTI Act, a document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁹
7. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience, having regard, as circumstances may require, to various factors, including considerations reasonably inferable from information supplied by an applicant.¹⁰
8. If, as here, searches for documents are conducted and relied upon by the agency, it must be shown that all reasonable steps have been taken to locate requested documents.¹¹
9. Accordingly, the key issue to be resolved in this matter is whether all reasonable steps have been taken by QH to locate the documents requested in the applicant's IP access application.

Discussion

10. At the request of the QH RTI and Privacy Unit, searches were initially undertaken by the Mental Health, Alcohol and Other Drugs Branch (**MHAODB**) of the Consumer Integrated Mental Health and Addiction (**CIMHA**) database administered by QH. These searches used the applicant's name (and variations specified by him), and another identifier.¹²
11. Additional searches were undertaken on internal review. These further searches were conducted by the MHAODB and another QH division,¹³ of not only the CIMHA system, but the 'Master Linkage File' (which as the internal review decision explains, '*records all presentations in Queensland Health facilities*'),¹⁴ and the 'integrated Electronic Medical Record' (**iEMR**).
12. None of these searches – which are explained in each of QH's initial and internal review decisions – located any relevant documents.¹⁵
13. The applicant does not agree that QH has conducted all reasonable searches. In his application for internal review,¹⁶ he stated:

⁸ XYZ at [573].

⁹ Section 52(1)(a) of the RTI Act.

¹⁰ See, for example, *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11]-[12] and *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016) (**Gapsa**) at [13]-[14], adopting the Information Commissioner's comments and enumeration of relevant factors in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (**PDE**) at [37].

¹¹ Having regard to the factors stated in *PDE*, as they may arise: *Gapsa* at [14], citing *PDE* at [49]-[53]. See also section 137(2) of the IP Act.

¹² Relevantly, his Medicare number.

¹³ 'Statistical Services Branch, Healthcare Purchasing and System Performance Division': page 2 of the internal review decision under review.

¹⁴ As above.

¹⁵ The internal review decision under review notes that while searches of the iEMR did locate documents relating to the applicant, these were not related to mental health and '*a CIMHA record has therefore not been created*' (page 2). These iEMR documents are therefore not responsive to the access application, and thus not relevant to this review (a matter not contested by the applicant).

¹⁶ Dated 18 November 2024, and on which he relies in this external review.

My response here is that the CIMHA does not only contain inpatient / outpatient records relating to mental health and addiction services. As per the Chief Psychiatrist Policy - Patient Records ...:

“All MHA 2016-related documents (e.g. reports, forms, advance health directives and documents relating to the appointment of a nominated support person, guardian or attorney) must be electronically entered or uploaded to CIMHA”.

The reason I know there are CIMHA documents is because of the missing person's report I received from the Queensland Police Service noting that I suffer from a number of mental conditions and have been subject of (a) mental health order/s. Obviously, I cannot accept the outcome of the application.

14. I addressed the above submissions in my letter to the applicant dated 20 May 2025, conveying my preliminary view that QH had discharged its search obligations (footnotes omitted):

...whether an agency has discharged its search obligations is a relatively straightforward question of fact. You applied for access to documents about you held in what I understand to be a discrete database – the CIMHA system. Using appropriate search terms (and, on internal review, with knowledge of the above submission [ie, the submission quoted in the preceding paragraph]) QH has interrogated that database.

QH's interrogation yielded no documents relating to you.

I have no reason to question QH's account of its search efforts and the results of those efforts, which I accept as accurate. Given the above, my preliminary view is that QH has taken all reasonable steps to locate requested documents.

Access to those documents may therefore be refused, on the basis relevant documents are nonexistent or unlocatable within the meaning of section 52(1) of the RTI Act.

15. The applicant contests my preliminary view, lodging submissions in reply received on 2 June 2025. In summary terms, the applicant:
- takes issue with QH's referral of his access application to the MHAODB unit for it to undertake searches of the CIMHA system
 - repeats matters canvassed in the submission quoted in paragraph 13 - ie, that based on his understanding of certain QH policies, and his interactions with QH, requested documents should exist in the CIMHA system; and
 - details what additional steps he considers QH should undertake, in order that he may be satisfied as to the adequacy of its search efforts.
16. While I have given the above submissions careful consideration, they contain nothing to dissuade me from the preliminary view I conveyed to the applicant on 20 May 2025, as extracted above.
17. The referral by the QH RTI unit of the applicant's access application to the MHAODB unit for the latter to search CIMHA was a matter for the former, taking into account that unit's particular knowledge of, and experience with, QH's record keeping systems and practices.¹⁷ That referral appears to have been logical and appropriate – having completed a round of unsuccessful searches, MHAODB advised the RTI unit that MHAODB has 'statewide access' to the CIMHA system, such that if responsive

¹⁷ And thus consistently with the principles summarised in paragraph 7.

documents did exist, MHAODB could identify same.¹⁸ In any event, these were not, as canvassed above, the only steps taken by QH in an effort to locate relevant documents.

18. That the applicant believes that QH policies and his own interactions with QH *should* have resulted in the creation of requested records is, as I pointed out in my 20 May 2025 letter,¹⁹ a matter distinct from the question as to whether they *do* exist, and are capable of being located following reasonable search efforts. OIC is empowered to consider only the latter issue. As set out in these reasons, my view is QH's search efforts in this case were reasonable, and no relevant documents exist.²⁰
19. Finally, whether an applicant is satisfied as to the adequacy or otherwise of an agency's search efforts in a given case is not the relevant measure; the question is whether the Information Commissioner (or delegate), as the independent merits reviewer, is so satisfied. As should be apparent, I am satisfied QH's searches have been sufficient.
20. Ultimately, the key line of enquiry standing to be undertaken by QH was interrogation of the CIMHA database, using search terms capable of returning requested records in the event any existed. The material before me makes clear that this was done, by appropriate personnel, and which material I have no reason to question. Despite this, and the additional search efforts undertaken by QH on internal review, no documents were located.
21. QH may refuse access to requested documents on the basis they are nonexistent.

DECISION

22. I affirm the decision²¹ under review by finding that access to the requested documents may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the ground that they are nonexistent.
23. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Jim Forbes
Assistant Information Commissioner

Date: 10 June 2025

¹⁸ Email MHAODB to QH RTI Unit dated 6 November 2025, supplied to OIC by QH – noting that OIC reliance on agency search material of this type is the correct approach in cases of this kind: *Webb v Information Commissioner* [2021] QCATA 116 per McGill J at [6].

¹⁹ At footnote 11 of that letter.

²⁰ Noting, as I did in my 20 May 2025 letter to the applicant, that in making the observations recorded in this paragraph, I am not suggesting requested documents should exist – this not a matter I am placed, let alone empowered, to assess.

²¹ Under section 123(1)(a) of the IP Act.