



Decision and Reasons for Decision

Citation: *D58 and Department of Education [2021] QICmr 22 (26 May 2021)*

Application Number: 315843

Applicant: D58

Respondent: Department of Education

Decision Date: 26 May 2021

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF ACCESS APPLICATION - IRRELEVANT INFORMATION - whether information may be deleted on the basis it is irrelevant to the terms of the application - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - personal information of other individuals - safeguarding personal information and the right to privacy of other individuals - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(b) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - where applicant contends further documents ought to exist - whether agency has taken all reasonable steps to locate responsive documents - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents relating to various aspects of her employment by the Department.

¹ Access application dated 7 August 2020; received by the Department on 7 August 2020; and made compliant on 11 August 2020.

2. The documents requested by the applicant comprised a three page list of numbered items. Given the extensive terms of the application, the Department requested² additional time within which to process it, which the applicant refused.³ The Department was therefore deemed to have refused access to the information. The applicant was provided with notice of the deemed decision on 17 September 2020.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision, and the Department was advised accordingly. The Department applied⁴ for an additional 40 business days to continue dealing with the access application. Given the extensive scope of the access request, OIC granted the Department's application.⁵
4. The Department located 1,127 responsive pages. It decided⁶ to grant partial access to 218 pages, and to give full access to 909 pages. In respect of some pages to which partial access was given, information was deleted by the Department on the grounds that it was irrelevant to the access application. Access to other information was refused on the grounds that its disclosure would, on balance, be contrary to the public interest.
5. The Department also decided to refuse access to certain categories of documents on the grounds that the documents were nonexistent.
6. The applicant applied⁷ to OIC for external review of the Department's decision.
7. For the reasons set out below, I affirm the Department's decision.

Background

8. The applicant is a teacher who is aggrieved about aspects of her employment by the Department. She brought a fair treatment appeal against the Department in the Queensland Industrial Relations Commission (**QIRC**) which was dismissed in late 2019. She has made several applications to the Department under the IP Act seeking access to, or amendment of, documents relating to her employment. She has made three applications to OIC for review of the Department's decisions. This is the third decision given by OIC in response to the applicant's various applications.

Reviewable decision

9. The decision under review is the Department's decision dated 29 December 2020.

Evidence considered

10. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (particularly footnotes and Appendix).

Application of the Human Rights Act

11. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ A decision maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law

² On 16 September 2020.

³ On 16 September 2020.

⁴ Under section 106 of the IP Act.

⁵ On 30 October 2020. This resulted in the finalisation and closure of review 315636.

⁶ Decision dated 29 December 2020.

⁷ On 21 January 2021. This application was allocated review reference number 315843.

⁸ Section 21 of the HR Act.

prescribed in the IP Act and RTI Act.⁹ 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:¹⁰ *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*.¹¹

Information in issue

12. The 218 pages contained in Files A, B and C to which the Department gave the applicant partial access are identified in the schedule to the Department's decision dated 29 December 2020.
13. In her email of 12 April 2021, the applicant purported to list the pages to which she wished to pursue access. However, she has been given full access to the majority of those pages. The grounds on which she seeks review of the Department's access decision in respect of these pages are therefore unclear. To the extent that she seeks access to *'true, correct and authentic'* copies of these pages, I will discuss this submission below.

Issues for determination

14. The issues for determination are whether:
 - the Department was entitled to delete certain information from the documents in issue on the basis that the information is irrelevant to the terms of the access application¹²
 - disclosure of the remaining information in issue would, on balance, be contrary to the public interest;¹³ and
 - access may be refused to additional information sought on the grounds that it is nonexistent or unlocatable.¹⁴

Applicant's submissions generally

15. Some of the issues raised by the applicant in her submissions are irrelevant to the issues for determination in this review, either because they deal with matters in respect of which I have no jurisdiction under the IP Act, or they relate to documents that were in issue in other external reviews involving the applicant. The applicant's submissions often failed to distinguish between the various reviews in which she has been involved,¹⁵ which has caused confusion at times.
16. As in one of her other reviews, the applicant has made repeated requests to be provided with *'true, correct and authentic'* copies of documents, including those to which she has been given full access by the Department. An example of the submissions she has made on this point, and of her submissions more generally, is as follows:¹⁶

Please only disclose all true, correct, authentic corresponding hard copies and electronic documents (which is/are not limited to emails, conversations, notes, fax, telephone

⁹ *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 [11].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ XYZ at [573].

¹² Under section 88 of the IP Act.

¹³ Under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (RTI Act), in conjunction with section 67(1) of the IP Act. Section 67 of the IP Act provides that access to information may be refused on the same grounds as under section 47 of the RTI Act.

¹⁴ Under section 47(3)(e) and section 52(1) of the RTI Act.

¹⁵ See, for example, the applicant's emails of 14 March 2021 and 26 March 2021 where she refers at length to documents and sufficiency of search issues arising in another review.

¹⁶ Email from the applicant on 26 March 2021.

conversations, letters, etc.) between [name deleted] (Senior Human Resources Consultant) and [name deleted] ([name deleted] Supervisor in 2019 and 2020) in their entirety (with sender's and recipient's name, sender's and recipient's email address, time, date, day, titles of the subjects, etc.) regarding the extension of [the applicant's] Health and Physical Education (HPE) contract to the end of 2019 at [name deleted] State School [acronym deleted], HPE permanent position at [acronym deleted] and the recruitment of the HPE teacher/teachers at [acronym deleted] in 2019 and 2020. The DoE (Qld) did not disclose any true, correct and authentic documents and information between [name deleted] and [name deleted] of DoE (Qld) to me in their entirety in the Decision of DoE (Qld) Reference/reference 203179 on 29/12/2020.

Please only disclose the true, authentic and correct documents from DoE(Qld) to me on 29/12/2020 in their entirety with sender's and recipient's name, sender's and recipient's email address, time, date, day, titles of the subject, etc. I had already requested this in my Right to Information and Privacy Access Information Application to DoE (Qld) on 7/8/2020. I will attach this application to DoE (Qld) on 7/8/2020 and the email and forwarded email to OIC (Qld) on 1/2/2021 at 2:36pm and 2:37pm in this email again.

According to the Information Privacy Act 2009 (Qld), Right to Information Act 2009 (Qld), Public Records Act 2002 (Qld), Evidence Act 1977 (Qld), Recording of Evidence Act 1962 (Qld), Criminal Code Act 1899 (Qld), Crime and Corruption Act 2001 (Qld), Public Sector Ethics 1994 (Qld), Public Services and Other Legislation Amendment Act 2020 (Qld), Anti-Discrimination Act 1991 (Qld), Human Rights Act 2019 (Qld), Public Interest Disclosure Act 2010 (Qld) and Public Interest Disclosure Act 2013 (Qld), Code of Conduct - Ministerial Staff Members (18/2/2021), please review the OIC (Qld)'s external review 315843 (OIC (Qld)'s External Review Reference 315636) for DoE (Qld) Reference/reference 203179 and the Application Number 315843 of OIC (Qld) for DoE (Qld) reference/Reference 203179 on its merits and with the requirements of all named legislation in this email (26 March 2021).

Referring to the legislations of Right to Information Act (RTI) 2009 (Qld) and Information Privacy Act 2009 (Qld), it has already listed out all the legislations for access, amendment, decision making, exempt information, factors for deciding the public interest, deliberative process documents, References of questions of law and appeals of Part 11 of RTI Act 2009 Qld, offences (Chapter 5 Part 2 of RTI Act 2009 Qld) and balancing the factors for disclosure of documents. I sincerely request [OIC officers] to make your impartial, professional, accountable and responsible decision/Decision from OIC (Qld) for OIC (Qld) external review Reference/reference 315843 (OIC (Qld)'s External Review Reference 315636) for DoE (Qld) 203179 and the Application Number 315843 from OIC (Qld) for DoE (Qld) Reference/reference 203179.

I have already told DoE (Qld) for the past 20 years and especially from 2018 and 2019, of all my severe pain and suffering because of DoE's unfair treatment, workplace bullying and discrimination towards me.

I have also continuously reminded DoE Qld of their intensive, unacceptable, unprofessional, tremendous painful treatment/actions, pain and suffering especially from DoE (Qld) in the last twelve months as well as OIC (Qld) from 18/6/2020 (I had written and reminded my severe head pain to OIC (Qld) especially from October 2020 to present). Unfortunately, from my own perspectives, both OIC (Qld) and DoE (Qld) continue to ignore my severe head pain and continue to increase my pain and suffering by continuing to delay disclosing my requested, true, correct, authentic documents in their entirety and repeatedly changed the time/content/the year of the documents.

For completeness, I hereby reserve all rights in relation to this Matter no. of [reference deleted] 'Appeal against a Decision pursuant to section 194' of QIRC.

17. To the extent that the applicant has raised a 'sufficiency of search' issue about documents that she contends are missing, I will deal with this issue further below. Otherwise, there is nothing before me to indicate that the documents that have been

released to the applicant are not *'true, correct and authentic'* copies of the documents held by the Department. The applicant has not provided any cogent submissions to establish otherwise, despite a number of requests to do so.¹⁷

File A - irrelevant information

Relevant law

18. The IP Act permits the deletion of information from released documents where it is irrelevant to the terms of an access application.¹⁸ This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
19. In assessing whether documents fall within the scope of an application, it will be generally fairly apparent if a document is outside the relevant date range or relates to subject matter/individual(s) with no connection to the application. In practice, the term 'out of scope' is used to exclude *whole* documents. Where *parts* of a document do not relate to the terms of an application, section 88 of the IP Act operates to allow deletion of the information. In deciding whether information is irrelevant, a decision-maker should consider whether the information has any bearing upon, or is pertinent to, the terms of the application.¹⁹

Finding

20. I am satisfied that the segments of information that the Department deleted on the grounds of irrelevance, namely, on pages 260, 263, 296, 297, 300 and 302 of File A, are properly to be characterised as irrelevant to the terms of the access application. They either concern matters that have no relevance to the applicant, or they concern the applicant but do not fall within the scope of her access application, such as, for example, information concerning the applicant's remuneration.

Files B and C – requesting access to agency processing documents/contrary to the public interest information

Processing documents excluded from the ambit of the IP Act

21. The documents in issue in Files B and C concern the processing by the Department of an earlier IP Act access application made by the applicant.²⁰ As noted, the Department gave the applicant access to the bulk of the information contained in these files, except for brief references to the personal information of others.
22. In *Carmody v Information Commissioner & Ors (No.5)* [2018] QCATA 18 (***Carmody No.5***), while not ultimately required to make a conclusive finding about this issue, His Honour Justice Hoeben of the Queensland Civil and Administrative Tribunal (**QCAT**) indicated his view that an agency's processing documents ought to be treated as excluded from the ambit of the RTI Act and IP Act pursuant to schedule 2, part 2, item 7 of the RTI Act. His Honour expressed the view that, in processing and deciding an IP or RTI application, an agency decision-maker is to be regarded as a person who holds an office connected with OIC (which His Honour regarded as a quasi-judicial entity) and

¹⁷ See my letter to the applicant dated 30 March 2021.

¹⁸ Section 88 of the IP Act.

¹⁹ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

²⁰ Department reference 200008.

who is performing quasi-judicial functions. Such entities and office-holders are excluded from the application of the RTI and IP Acts by virtue of schedule 2, part 2, of the RTI Act.

23. This issue was raised with the Department during the external review. The Department indicated that, while it was aware of the comments made by Justice Hoeben in *Carmody No.5* regarding access to processing documents, it had decided to exercise its discretion to deal with the documents requested by the applicant, and to make a decision regarding access.
24. In my letter to the applicant dated 15 March 2021, I explained the issue. I expressed the view that, given the indication by QCAT in *Carmody No.5* regarding its view about requests to access agency processing documents, it was arguable that the correct position was that the applicant was not lawfully entitled to obtain access to the documents in Files B and C under the IP Act, and that the Department therefore ought to be regarded as having exercised its discretion to give the applicant administrative access to these documents, outside the scope of the IP Act. As such, there was no right of external review under the IP Act in respect of these documents.
25. However, in the absence of a conclusive finding by QCAT about this issue, I advised the applicant that I had reviewed the information in issue in Files B and C, and formed the preliminary view that access to this information should be refused in any event because its disclosure would, on balance, be contrary to the public interest, for the reasons explained below.²¹

Contrary to the public interest - relevant law

26. Under the IP Act, access to information may be refused to the extent that disclosure of the information would, on balance, be contrary to the public interest.²² 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. This means that, in general, a public interest consideration is one which is common to all members, or a substantial segment, of the community, as distinct from matters that concern purely private or personal interests.²³
27. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁴
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Irrelevant factors

28. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

²¹ Letter dated 15 March 2021.

²² Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

²³ 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.

²⁴ Section 49(3) of the RTI Act.

Factors favouring nondisclosure

29. I am satisfied that the information in issue in Files B and C²⁵ is the personal information²⁶ of persons other than the applicant. It comprises information such as: the mobile phone numbers of Department officers; information about the employment status and leave arrangements for another teacher and that person's interactions with the Department; and information about other teachers' employment arrangements, their availability for teaching positions, and their personal circumstances.
30. I do not consider that this information is in the nature of routine personal work information.²⁷ Routine personal work information is information that is solely and wholly related to the routine day-to-day work duties and responsibilities of a public sector employee, such as the fact of authorship of a work document or a work responsibility. I do not consider that the information in issue can be characterised as such.
31. Where disclosure of information would disclose the personal information of another person, a public interest harm automatically arises. Schedule 4, part 4, section 6 of the RTI Act provides that disclosure of information could reasonably be expected to cause a public interest harm (**harm factor**) if disclosure would disclose personal information of a person, whether living or dead.
32. In addition, schedule 4, part 3, item 3 of the RTI Act recognises an associated factor that favours nondisclosure of personal information of others – where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy (**nondisclosure factor**).
33. Given the nature of the information in issue, as described at paragraph 29 above, I would afford significant weight to both the harm factor and the nondisclosure factor in recognition of the public interest in protecting the personal information and right to privacy of others regarding their interactions with the Department. I note that the information has no direct relevance to the applicant's grievances with the Department.

Factors favouring disclosure

34. The applicant was invited on several occasions²⁸ to provide submissions in support of her case that the balance of the public interest weighed in favour of disclosure to her of the personal information of others.
35. The applicant responded²⁹ by listing every public interest factor favouring disclosure contained in schedule 4, part 2 of the RTI Act. The applicant did not explain how she specifically contended that any of those factors applied to the information in issue, other than to submit:

...

Besides, according to the administration justice [sic] for a person/administration of justice generally including procedural fairness for any decision-making/the requirement to amend the information if it was incorrect, out of date, misleading, gratuitous, unfairly, subjective/the requirement in accordance with the law in dealing with agencies and government

²⁵ As identified in the schedule to the Department's decision dated 29 December 2020.

²⁶ Personal information comprises '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': section 12 of the IP Act.

²⁷ Generally, it is not considered to be contrary to the public interest to disclose routine personal work information.

²⁸ In letters dated 15 March 2021 and 30 March 2021 in which OIC expressed a preliminary view about the information in issue.

²⁹ See the applicant's email of 12 April 2021.

organisations/promotion of open discussions of public affairs and enhancement of Government's accountability/the need to inquire or investigate about the deficiencies in conduct/misconduct/negligence/unlawful conduct and administration of an agency or official under public interest test, the pursuit of legal remedy for [the applicant] for the Matter No. of [reference deleted] of Queensland Industrial Relations Commission (QIRC) and the procedures for legal court actions for the Office of Information Commissioner (OIC), Queensland (Qld) External Review Reference 315636 (OIC, Qld's external review Reference/reference 315843 for Department of Education (DoE), Queensland (QLD) 203179, the other 2 OIC (Qld)'s External Review Reference [reference deleted] (DoE, Qld's reference/Reference [deleted]) and OIC, Qld's External Review Reference [reference deleted] for DoE, Qld's Reference/reference [reference deleted] on 30/4/2020 and the Matter No. of PSA [reference deleted], please disclose all the named documents in this email. The named documents are required in accordance with the law.

According to the Information Privacy Act 2009 (Qld), Right to Information Act 2009 (Qld), Public Records Act 2002 (Qld), Evidence Act 1977 (Qld), Recording of Evidence Act 1962 (Qld), Criminal Code Act 1899 (Qld), Crime and Corruption Act 2001 (Qld), Public Sector Ethics 1994 (Qld), Public Services and Other Legislation Amendment Act 2020 (Qld), Anti-Discrimination Act 1991 (Qld), Human Rights Act 2019 (Qld), Public Interest Disclosure Act 2010 (Qld) and Public Interest Disclosure Act 2013 (Qld), Code of Conduct- Ministerial Staff Members (18/2/2021), please review the OIC (Qld)'s External Review Reference 315462 for DoE (Qld) Reference/reference 200008 on its merits and with the requirements of all named legislations/Acts in this email (12/4/2021).

...

Please disclose the following named documents in their entirety, authenticity with correct, true information of the sender and recipient's email addresses, days/dates/months/years of the emails/documents (including attachments), subject of the documents (I have already requested in my 'Application' to the DoE (Qld) on 7/8/2020): ...the DoE (Qld) and OIC (Qld) could not/cannot keep on using 'contrary to public interest' as 'excuses' for not disclosing these important documents because I need to take legal court actions and claim legal remedy for the Matter No. of [reference deleted] of QIRC and DoE (Qld) [reference numbers deleted].

... please continue to disclose all these documents with correct and true information in their entirety and authenticity according to all listed reasons for disclosure and legislations.

...

36. I have considered the application to the information in issue in Files B and C of all public interest factors favouring disclosure that are listed in schedule 4, part 2 of the RTI Act. Some are clearly irrelevant to the information in issue and to the applicant's apparent concerns. In addition, while the applicant has raised the application of this factor in general terms, there is nothing before me to indicate that the information in issue is incorrect, out-of-date, misleading, gratuitous, unfairly subjective or irrelevant.³⁰
37. In terms of those factors that might perhaps be judged to be of potential relevance to the information in issue, and the applicant's concerns, I have given consideration to whether disclosure of the information in issue could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability³¹
 - contribute to positive and informed debate on important issues or matters of serious interest³²

³⁰ Schedule 4, part 2, item 12 of the RTI Act.

³¹ Schedule 4, part 2, item 1 of the RTI Act.

³² Schedule 4, part 2, item 2 of the RTI Act.

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official³³
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct³⁴
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁵
 - reveal the reason for a government decision and any background or contextual information that informed the decision;³⁶ and
 - contribute to the administration of justice either generally or for a person.³⁷
38. I acknowledge that the applicant appears particularly concerned to access all information in issue in order to consider its relevance to the QIRC proceedings. As I noted above, I understand that the applicant's fair treatment appeal was dismissed by the QIRC in 2019. However, it would appear that she seeks access to information in order to consider appealing that decision, and in the interests of justice generally. In any event, given the nature of the information in issue, I am not satisfied that its disclosure could reasonably be expected to contribute to the administration of justice either generally, or specifically for the applicant, in the context of those proceedings. Nor am I satisfied that it would advance the fair treatment of the applicant in accordance with the law in her dealings with the Department. The reasons why the applicant's temporary teaching contract was not extended were explained to her by the Department, and were the subject of an internal review. Further, they were the subject of the QIRC's consideration in the fair treatment appeal. I do not consider that disclosure of the information in issue would advance either the applicant's understanding of the relevant circumstances, nor her fair treatment by the Department generally.
39. Nor am I satisfied that disclosure of the information in issue could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of the Department or officer of the Department, or reveal or substantiate that the Department or an officer of the Department has engaged in misconduct or negligent, improper or unlawful conduct.
40. I acknowledge a general public interest in the accountability of the Department for the discharge of its functions, including human resource functions concerning the recruitment and management of staff, and for the decisions it makes regarding those functions. However, given the nature of the information in issue, I would afford these factors only low weight in the public interest balancing test.

Balancing the public interest

41. I afford significant weight to the public interest in protecting the personal information of others that is in issue, as well as their right to privacy. I afford low weight to the public interest in the accountability of the Department for the discharge of its human resource and related decision-making functions.

Finding

42. For the reasons explained, I find that the balance of the public interest weighs in favour of nondisclosure of the information in issue in Files B and C, such that its disclosure would, on balance, be contrary to the public interest.

³³ Schedule 4, part 2, item 5 of the RTI Act.

³⁴ Schedule 4, part 2, item 6 of the RTI Act.

³⁵ Schedule 4, part 2, item 10 of the RTI Act.

³⁶ Schedule 4, part 2, item 11 of the RTI Act.

³⁷ Schedule 4, part 2, items 16 and 17 of the RTI Act.

Sufficiency of search

Relevant law

43. Another ground for refusing access is if the document is nonexistent or unlocatable.³⁸
44. A document is *nonexistent*³⁹ if reasonable grounds that the document does not exist are satisfied. In making this determination, regard should be had to a number of key factors including:⁴⁰
- the administrative arrangements of government;
 - the agency structure;
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it);
 - 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 the request relates to.
45. When proper consideration is given to relevant factors, it may be unnecessary for searches to be conducted to establish that a document does not exist. However, if an agency or Minister relies on searches to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the requested documents.⁴¹
46. A document is *unlocatable*⁴² if reasonable grounds are satisfied that the requested document has been or should be in the agency's possession; and the agency has taken all reasonable steps to find the document and it cannot be located. In making this determination, regard should again be had to the circumstances of the case and the key factors.⁴³

Applicant's submissions

47. Leaving aside the applicant's repeated submissions about requiring access to 'true, correct and authentic' copies of documents to which she has already been granted access by the Department, and which I have discussed above, the applicant contends that she has not been given access to all documents evidencing communications between officers employed in the Department's Metropolitan Region Human Resources (HR) division:

... Please continue to disclose any and all documents/conversations between [name deleted] and [name deleted] about my HPE employment issue and extension of my HPE contract at [name of school deleted] in 2019. The DoE (Qld) did not disclose any documents/conversations regarding my HPE employment issue and extension of my HPE contract at [name of school deleted] in 2019 in the Decision for DoE (Qld) Reference/reference 203179 on 29/12/2020 in their emails (8) and attachments to me. According to Chapter 3 Division 5 Part 9 section 102 (1) and (2), please disclose any and all hard copy and electronic

³⁸ Sections 47(3)(e) and 52(1) of the RTI Act.

³⁹ Section 52(1)(a) of the RTI Act.

⁴⁰ *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of which are replicated in section 52 of the RTI Act. See also *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19].

⁴¹ *PDE* at [38].

⁴² Section 52(1)(b) of the RTI Act.

⁴³ *Pryor* at [20] to [21].

*documents/conversations/audio recording/video recording/meeting records/meeting conversations/CCTV/Photos/Plans/maps/metadata/note(s)/Paper/electronic device(s) in entirety and authenticity between [name deleted] and [name deleted] regarding the extension of my HPE contract at [name of school deleted] from 26/6/2019 and the permanent HPE position/employment at [name of school deleted] in 2019.*⁴⁴

48. The applicant contended that she had spoken on the telephone with each of these HR officers about the extension of her temporary teaching contract. One officer was the other's supervisor and he apparently spoke with the applicant when his colleague was on leave for two days. The applicant considers it is reasonable to expect that the supervising officer would have discussed the issue with his colleague upon her return from leave, and that records of these discussions/conversations would have been made. She also contends that she left a voicemail message in June 2019 on one of the officer's mobile phones, presumably requesting that her call be returned, and that there should be a record of this.

Searches conducted by the Department

49. The Department provided copies of all search requests that had been issued to its various units, and the results of those searches. These indicated that searches had been conducted of the records held by the Department's Metropolitan Region HR unit, including a specific request made of the two HR officers named by the applicant to conduct searches for any documents in their possession that fell within the terms of the access application. Responsive documents were located by one of the officers and provided to the Department's RTI unit for processing.

Finding

50. I am not satisfied that there are reasonable grounds for expecting that records of discussions between the two HR officers named by the applicant should exist in the possession or under the control of the Department. In my view, it is not unreasonable to expect that any discussion between the two officers when one returned from a brief period of leave may have occurred verbally, given that each was already aware of the issues of concern to the applicant.
51. In any event, given the searches that the Department undertook in an effort to locate any responsive HR documents held by its Metropolitan Region office, including requests for searches being specifically directed to these officers, I am unable to identify any further searches or inquiries that I consider it would be reasonable to ask the Department to undertake.
52. As regards the recording of a voicemail message left on an officer's mobile phone by the applicant, given the nature of such a record (a transitory/ephemeral record not required for ongoing business),⁴⁵ it is not unreasonable to expect that such a recording would not have been retained.⁴⁶ In any event, I note again that the officer in question was asked to conduct searches for any responsive documents and did not locate any voicemail recordings.

⁴⁴ Applicant's email of 12 April 2021. See also paragraph 4 of the applicant's email of 26 March 2021 (much of the remainder of this email does not concern review 315843).

⁴⁵ <https://www.forgov.qld.gov.au/transitory-and-short-term-records> (accessed on 18 May 2021).

⁴⁶ Such transitory records are only required to be retained 'until business action completed' pursuant to the General Retention and Disposal Schedule: <https://www.forgov.qld.gov.au/schedules/general-retention-and-disposal-schedule-grds> (accessed on 18 May 2021).

53. In summary, having reviewed:

- the details and results of the searches conducted by the Department in an effort to locate any responsive documents; and
- the applicant's submissions,

I am not satisfied that there are reasonable grounds for believing that the Department holds in its possession or under its control any additional documents that respond to the terms of the access application.

DECISION

54. I affirm the Department's decision under review. I am satisfied that:

- the Department was entitled to delete information from responsive pages on the grounds that it is irrelevant to the access application; and
- access to the remaining information in issue may be refused on the grounds that its disclosure would, on balance, be contrary to the public interest.

55. In addition, I find that there are no reasonable grounds for believing that the Department holds any additional documents that fall within the terms of the applicant's access application.

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

Louisa Lynch
Right to Information Commissioner

Date: 26 May 2021

APPENDIX**Significant procedural steps**

| Date | Event |
|------------------|---|
| 21 January 2021 | OIC received the external review application. |
| 22 January 2021 | OIC asked the Department to provide preliminary documentation. The Department provided preliminary documentation. |
| 31 January 2021 | OIC received correspondence from the applicant. |
| 1 February 2021 | OIC notified the applicant and the Department that the external review application had been accepted and requested copies of the responsive documents and record of searches from the Department. |
| 1 February 2021 | OIC received correspondence from the applicant. |
| 22 February 2021 | OIC received copies of the documents in issue and search request information from the Department. |
| 15 March 2021 | OIC expressed a preliminary view to the applicant. |
| 26 March 2021 | OIC received correspondence from the applicant. |
| 30 March 2021 | OIC issued directions to the applicant. |
| 12 April 2021 | OIC received correspondence from the applicant. |