



Decision and Reasons for Decision

Citation:	<i>V45 and Queensland Police Service [2021] QICmr 30 (16 June 2021)</i>
Application Number:	315704
Applicant:	V45
Respondent:	Queensland Police Service
Decision Date:	16 June 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant contends agency did not locate all relevant documents - whether agency has taken all reasonable steps to locate documents but the documents cannot be found or do not exist - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**)¹ under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to:

Correspondence with the Office of the Police Minister relating to the use by State Government of the Police Service Administration Act 1990, or any other mechanism, to discuss with QPS or set the priority that QPS should assign to matters raised with QPS by myself.
2. The timeframe nominated by the applicant was from 23 July 2015 to 18 August 2020.
3. QPS did not make a decision within the prescribed timeframe² and was therefore taken to have made a decision (a deemed decision) refusing access to the requested information.³
4. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of QPS's deemed refusal of access.

¹ Application received by QPS on 18 August 2020.

² Set out in section 22 of the IP Act.

³ Under section 66(1) of the IP Act. QPS wrote to the applicant on 7 October 2020 to advise him that, as the processing period had expired on 2 September 2020, and QPS had not given him a written decision on his application, it was deemed to have made a decision refusing him access to the requested information. QPS advised the applicant of his review rights.

⁴ On 5 November 2020.

5. For the reasons set out below, I vary QPS's deemed refusal of access by finding that access to the requested information may be refused under section 67(1) of the IP Act and section 47(3)(e) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis it is nonexistent or unlocatable.

Reviewable decision

6. The decision under review is QPS's deemed refusal of access.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
8. Significant procedural steps relating to this review are set out in the Appendix.

Application of the Human Rights Act

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

Issue for determination

10. The issue for determination in this review is whether access to the requested information may be refused by QPS on the basis that it is nonexistent or unlocatable.

Submissions and allegations made by the applicant

11. Throughout the course of the review, the applicant raised a series of allegations and complaints about both QPS and OIC concerning the way in which his access application and application for external review had been handled. Many of the issues he raised were of a procedural nature and were irrelevant on external review. However, he accused QPS of acting unlawfully and deceitfully in issuing its deemed refusal of access notice, and accused the Right to Information (**RTI**) Commissioner and the Information Commissioner of engaging in criminal conduct, and breaching '*Federal Law*'.⁹ He also complained about my conduct during the review, submitting that he had not been afforded procedural fairness by OIC and alleging bias.¹⁰ The issues that the applicant raised are discussed below.

Prescribed Written Notice

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).

⁸ **XYZ** at [573].

⁹ See, for example, the applicant's email of 3 June 2021.

¹⁰ See, for example, the applicant's email of 14 April 2021. The large volume of emails received from the applicant during the review and which contain his various questions, complaints and allegations are listed in the Appendix to this decision.

12. The applicant argued that the letter that QPS sent to him on 7 October 2020 to advise that it was deemed to have refused access to the requested information was not a valid Prescribed Written Notice (**PWN**) under section 66(2) of the IP Act because it did not comply with the requirements of section 199 of the IP Act. He complained that QPS had not acted '*lawfully*' and submitted that '**Someone is trying to defeat the IP Act** [sic]¹¹ because he considered that the PWN did not contain reasons for the deemed decision nor the name of the decision-maker. He wrote directly to QPS during the review,¹² requesting that it re-issue a '*fully compliant*' PWN, and that it also provide a statement by a QPS officer, '*for accountability*', of any searches for responsive documents that were carried out before QPS issued the PWN. He submitted that this '*is critical information*' in any IP application process. He also complained that, during the external review process, '*QPS cut [him] out of the dialogue and dealt directly with the OIC officer*'. He claimed that this caused him a '*severe problem*' and that it amounted to a denial of procedural fairness.¹³
13. The applicant's submissions in this regard evidence a number of misapprehensions about the operation of the IP Act, the role of OIC on external review, and the manner in which an external review application proceeds.
14. The RTI Commissioner explained¹⁴ to the applicant that, when a valid application for external review is made to OIC, 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. OIC has sole jurisdiction on external review. The parties to the review are subject to OIC's jurisdiction and direction under the IP Act. OIC determines the process 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.
15. I do not accept that the applicant was '*cut out of the dialogue*'. On external review, OIC gathers information and submissions from the parties that are relevant to the issue to be determined. OIC assesses that material, forms a preliminary view, and communicates that view to the party adversely affected, together with the information that OIC has relied upon in forming that view. The adversely affected party is then given an opportunity to respond. In this way, OIC affords the parties to a review procedural fairness.
16. The applicant continued to raise complaints of a procedural and jurisdictional nature. He submitted that if OIC did not direct QPS to re-issue the PWN, it was committing '*a breach of Federal Law – the hearing rule*'. He continued to argue that he was being denied procedural fairness by not being given an opportunity to be heard about QPS's alleged breach of the IP Act before being required to make a submission in support of his case regarding the existence of the requested information. He contended that OIC's failure to require QPS to provide further and better particulars of the reasons for its deemed decision '*may constitute abuse of office, duty failure or fraud*' by either the Information Commissioner, RTI Commissioner or both: '*You may decide to add breach of the Criminal Code to that. I hope otherwise*'.¹⁵
17. The RTI Commissioner again wrote to the applicant to explain OIC's role on external review.¹⁶ In particular, the RTI Commissioner explained that OIC conducts a '*merits review*' of the relevant agency decision:

¹¹ Applicant's email of 11 November 2020.

¹² On 31 May 2021.

¹³ Applicant's email of 3 June 2021.

¹⁴ Letter dated 3 June 2021.

¹⁵ Applicant's email of 7 June 2021 received by OIC at 11:10am.

¹⁶ Letter dated 7 June 2021.

This means that OIC stands in the shoes of the agency and can make any decision that was open to the agency to make. The effect of this is that any procedural issues that may have arisen when the agency was processing the application are irrelevant on external review. OIC's role is to conduct a fresh review of the relevant facts and law, and make a fresh decision. Accordingly, an applicant is not prejudiced by any procedural issues or defects that may have occurred during processing as these are corrected and/or are irrelevant under a merits review process.

As such, your complaints about QPS's Prescribed Written Notice are irrelevant on external review. The only issue for OIC to determine is whether there are reasonable grounds for believing that the documents that you seek exist in the possession or under the control of QPS and, if so, whether the searches that QPS has carried out in an effort to locate such documents have been reasonable in all the circumstances.

...

As regards section 112 of the IP Act, it operates at the discretion of the Information Commissioner. QPS's decision was a deemed refusal of access. It did not process your application within time. OIC does not require further and better particulars of that decision in order to conduct its review.

18. The applicant responded¹⁷ with the same kind of submissions as set out at paragraph 16 above. He continued to allege procedural unfairness as well as bias, and demanded that OIC respond to his query regarding whether QPS had breached section 199 of the IP Act. He asserted that OIC has a duty to ensure that an agency complies with the IP Act because *'the OIC administers the Act'*. He argued that he was unable to provide a submission about the sufficiency of search issue to be determined until his various questions had been answered, and contended that he needed further time to seek legal advice.
19. I consider that the RTI Commissioner has provided a sufficient response to the applicant's various questions and complaints, and has clearly explained OIC's jurisdiction and role on external review. OIC's external review function under the IP Act is limited to the provisions contained in Chapter 3, part 9. As has also been explained to the applicant, OIC has no formal oversight role under the IP Act regarding the way in which agencies process an access application. The applicant has been advised that if he wishes to complain about the way in which QPS processed his application, he may raise that matter with QPS. I would simply note that there is nothing before me to suggest that any officer of QPS has committed a breach of duty or misconduct in administering the IP Act, such to enliven the Information Commissioner's disciplinary reporting duty under section 126 of the IP Act.
20. As regards QPS's PWN, OIC does not require QPS to provide further and better particulars of the reasons for QPS's deemed refusal of access under section 112 of the IP Act. QPS failed to process the application, and issue a considered decision, within the statutory timeframe. It notified the applicant of this; that it was therefore deemed to have refused access to the requested information; and advised the applicant that he could apply to OIC for external review. OIC required no further information from QPS about the deemed decision in order to its exercise its jurisdiction under the IP Act to review the decision.
21. I reject, as without substance, the applicant's allegations that OIC's refusal to require QPS to re-issue the PWN, or to require QPS to provide further and better particulars of its deemed decision, amounts to a denial of procedural fairness, or evidences bias, or constitutes fraud, or amounts to a breach of criminal or federal law. The applicant has

¹⁷ Email of 7 June 2021 received by OIC at 5:54pm.

made submissions regarding the PWN, and OIC has explained to the applicant why it rejects those submissions.

Procedural complaints and procedural fairness generally

22. Throughout the review, the applicant raised many procedural and administrative queries, and complaints about process. He made a service complaint when he considered that he had not received a timely response to his questions, on one occasion emailing the Information Commissioner directly to express his concern about not having received a response to an email he had sent two days earlier.¹⁸ In that email, the applicant stated:

I see no reason to make this email visible to the Administration team of OIC – this is not about shaming. However it is relevant for the Commissioner to receive it, based on vested powers.

I refer to my email dated 11 Nov 2020 [1] addressed to yourself ...

I had considered that you would've replied by now. Nevertheless I will still accept a holding response which indicates that you do intend to reply almost immediately i.e. within a day.

23. The applicant also contended on numerous occasions that he had been denied procedural fairness in the external review process generally.

24. The RTI Commissioner sent the applicant a detailed response to his various issues and complaints on 5 May 2021. In that letter, the RTI Commissioner stated:

Having reviewed the file, I find that your complaints are unsubstantiated. OIC staff have worked diligently to progress your review and keep you informed of that progress, respond to your enquiries and provide you with information about the review process.

I acknowledge that you consider the review process has not been fair, nor undertaken in the way you think it should be, and that OIC staff should respond to all questions you have asked. I do not agree. At the outset of this review our statutory obligations, including that OIC progress matters as expeditiously and informally as a proper consideration of the matter allows, were explained to you. To efficiently and fairly progress more than 300 reviews involves identifying the issues that can be determined in the review (that is, what is within our jurisdiction in relation to the decision under review) and obtaining and considering relevant evidence concerning those issues. In this case the issue in the review is whether QPS has taken all reasonable steps to search for documents you requested. The processes that ensure fairness—provision of a preliminary view and the opportunity to respond to that—have been explained and afforded to you.

OIC has finite resources and we must ensure all applicants receive a high quality and timely independent review. To achieve this our resources must be directed to considering only those issues that are relevant to the substantive issues in the review and ensuring information necessary to assess the issues is obtained as efficiently as possible. Engaging in continuous back and forth that is not progressing the matter is counterproductive and unfair to other applicants waiting to have their matters progressed.

¹⁸ By email on 13 November 2020 titled 'Failure to provide basic assurance/service'. The applicant's email on 11 November 2020 raised 7 issues to which he requested a response. Throughout the review the applicant continued to express concern that his email correspondence was not responded to immediately. For example, the applicant sent a detailed email, with questions, on Saturday 14 November 2020 concerning an issue that had arisen about his proof of identity and then emailed on Tuesday 17 November 2020 at 10:47am to send further questions and to query why his email of 14 November 2020 had not been responded to on 16 November 2020.

25. In response, the applicant advised that he regarded this response as '*of limited utility*' and '*not a totally fair account of what has occurred*'.¹⁹ He argued that natural justice required OIC to provide him with answers to all questions he asked. He continued to complain that QPS had not maintained communication with him on external review and that if it had, he would have been able to refer his questions to QPS directly. Again, as explained above, this statement evidences a lack of understanding about the external review process and OIC's jurisdiction on external review.
26. I consider that the applicant's various complaints and questions about process and procedure have been responded to in a timely manner throughout the review, and in detail in the RTI Commissioner's letter referenced above. The procedure followed on external review is entirely at the discretion of the Information Commissioner or her delegate, with the process to be conducted with as little formality and technicality, and as much expedition, as the requirements of the Act and a proper consideration of the matters before the commissioner allow.²⁰
27. I am also satisfied that the applicant has been afforded procedural fairness in respect of the sole issue for determination in this review, which is a sufficiency of search issue. I will discuss that issue below. However, it is sufficient to note here, in terms of procedural fairness, that the applicant was advised of the searches and inquiries that QPS had conducted in an effort to locate responsive documents, and the results of those searches. I expressed a preliminary view to the applicant and, in the event that he did not accept my preliminary view and contended that there were other searches and inquiries that QPS should reasonably be expected to undertake, he was provided with several opportunities to lodge a submission in support of his position. I do not accept the applicant's contention that he was unable to provide such a submission until QPS had issued him with a fresh PWN, or until his various procedural questions and issues had been answered to his satisfaction.
28. Accordingly, I am satisfied that the applicant has been afforded procedural fairness; that he has been treated fairly in the conduct of review; that he has been given a reasonable opportunity to provide submissions about the issue for determination; and that the review has progressed in the standard manner when dealing with a sufficiency of search issue.

Allegations of bias

29. Throughout the review, the applicant made various bias allegations against the Information Commissioner, the RTI Commissioner, and myself. As far as the Information Commissioner and RTI Commissioner are concerned, the allegations appear to be based upon the refusal to accede to the applicant's demands that OIC require QPS to re-issue its PWN and/or require QPS to provide further and better particulars of its deemed decision. Those issues have been dealt with above.
30. As the decision-maker in this review, I have considered the applicant's allegation that I have demonstrated bias by not affording him procedural fairness in dealing with the sufficiency of search issue.²¹

¹⁹ Email of 14 May 2021.

²⁰ Section 108(1) of the IP Act. This was explained to the applicant by email on 10 and 13 November 2020, and, as referenced above, again in a letter from the RTI Commissioner on 5 May 2021. OIC also provided the applicant with guidelines from our website and information about the external review process in our correspondence on 13 November 2020. Despite this, the applicant continued to raise questions regarding our process that were addressed by the information provided to him on 13 November 2020.

²¹ Applicant's email of 14 April 2021.

The Assistant Commissioner is attempting to satisfy the agency and help conceal the information that would be revealed if the original search was carried out, OR information that would be revealed if I was allowed to make an informed further submission to the OIC

Which part of that sounds like good work by the OIC ? [sic]

I also note that the OIC is presently the subject of an inquiry with the Legal Affairs & Safety Committee. It will be the Commissioner of the OIC who is held accountable for what the officers of the OIC do, such as in this case. Lawyers must act lawfully.

The judgement of the Assistant Commissioner is that the agency is not required to perform the search that was requested of the agency and he/she believes that it is proper to invoke s.108 of the IP Act to cover that up.

The judgement of the Assistant Commissioner is that procedural fairness (federal law) does not apply in Queensland.

The judgement of the Assistant Commissioner is that I am allowed to make a further submission to the OIC provided that it is an uninformed submission, due to simple information being withheld from me by the Assistant Commissioner. I refer to my very simple questions.

The Assistant Commissioner also appears to believe that the number of times that the OIC impedes the progress of the case, the more this allows the OIC to claim that it has made good efforts to progress the case (reference to 9 emails). How ridiculous. Surely that is simply more evidence of procedural unfairness, breaking the bias rule and the evidence rule.

31. The High Court's test for assessing apprehended bias for a decision-maker requires consideration of *'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide'*.²² The High Court has also noted that:

*[t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made.*²³

32. I have dealt above with the applicant's contention that he has not been afforded procedural fairness in dealing with the sufficiency of search issue that is to be determined. I have explained why I am satisfied that he has been afforded procedural fairness. I reject his assertion that I have withheld information from him about the searches and inquiries that QPS conducted in an effort to locate responsive documents. He has been advised of the relevant information that QPS provided to OIC about this issue, and been given several opportunities to respond.
33. For the sake of completeness, I record that I have considered the applicant's allegations alongside the High Court's test. I am unable to identify any 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. I have applied the provisions of the IP Act to the issue for determination, explained my reasoning to the applicant, and given him an opportunity to respond.

Relevant law – sufficiency of search

²² *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

²³ *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Kiefel, Bell, Keane and Nettle JJ.

34. The IP Act provides a right to be given access to documents of an agency.²⁴ However, this right of access is subject to limitations, including the grounds on which access to information may be refused.²⁵ One such ground of refusal is where a document is nonexistent or unlocatable.²⁶
35. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:²⁷
- the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities
 - 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.
36. 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, as the search and inquiry process an agency will be required to undertake will depend on the particular circumstances.
37. To determine whether a document exists, but is unlocatable, the IP 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.²⁸
38. 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.²⁹ 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.³⁰ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to be satisfied that the agency has not discharged its obligation to locate all relevant documents.³¹
39. Relevantly, the decision-maker (on external review, the Information Commissioner or their delegate) must be satisfied that the document is nonexistent or unlocatable. The issue is not determined by whether an applicant or agency is satisfied that the document is nonexistent or unlocatable.

²⁴ Section 40 of the IP Act.

²⁵ The grounds on which an agency may refuse access are set out in section 67(1) of the IP Act and section 47(3) of the RTI Act.

²⁶ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

²⁷ *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).

²⁸ *Pryor* at [21].

²⁹ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review.

³⁰ Section 100(1) of the IP Act.

³¹ *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016) at [15]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *A51 and Office of the Health Ombudsman* [2020] QICmr 17 (24 March 2020) at [15].

Searches conducted by QPS and submissions of the parties

40. In the email³² that the applicant sent to QPS attaching his IP access application, the applicant stated:

The application is complete in respect of the information requested and the places where it may be found. It is my interests to fill in the form correctly.

However, there are some hints below at where the information that I seek is more likely to be found. It is possible that a search will locate an official letter from the Office of Police Minister which advises the Commissioner under the said Act that my disclosure dated March 2019 should be considered low priority for QPS.

41. In his access application, the applicant stated that he thought responsive documents may be located in the Office of the (QPS) Commissioner, and provided three file references.
42. The applicant's request for information was framed as correspondence with the Police Minister. On external review, QPS indicated to OIC that if responsive correspondence had been sent between QPS and the Minister, it would most likely be located in the Minister's Liaison Office.
43. OIC requested that QPS conduct all relevant searches of its records in an effort to locate any responsive information, and advise OIC of the results of those searches.³³
44. QPS's searches did not locate any responsive information. It provided OIC with a search record and certification, listing the (unsuccessful) searches it had conducted of the Correspondence system, G Drive, Emails and Diary Entries held by the Minister's Liaison Office.³⁴
45. On receiving and reviewing these search results, OIC telephoned QPS to confirm what search terms were used by QPS in its searches. QPS responded as follows:³⁵

Following our phone conversation yesterday I reached out to our liaison with the Minister's Office to seek the further information you requested.

They have informed me that in relation to the search terms used, they utilised the initial search term "[applicant surname]", then refined the results to identify any records relating to [applicant's full name].

In relation to the entry under "Location of other office" on page 3 of the search declaration, they stated that "[Liaison officer] conducted a search of Minister Ryan's inbox, email searches weren't listed in the provided list of "search types", so [Liaison officer] entered it here, it should have included that nothing was discovered."

46. On 3 February 2021, I conveyed to the applicant the search information provided by QPS and expressed the preliminary view that, based on that information, I was currently of the view that the requested information did not exist, as QPS had taken all reasonable steps to locate it and it could not be found. I invited the applicant to provide a submission if he did not accept this view.
47. In response,³⁶ the applicant asked to see QPS's response, as well as requesting confirmation of the date range of the search that has been carried out.

³² 18 August 2020.

³³ Letter dated 24 November 2020.

³⁴ On 28 January 2021.

³⁵ Email of 2 February 2021.

³⁶ Email of 5 February 2021.

48. I advised the applicant that OIC's usual practice on external review is to summarise submissions from each party and provide it to the other party where necessary in order to provide procedural fairness. I also confirmed that QPS had advised that it had searched for responsive documents between 23 July 2015 and 18 August 2020 (inclusive).³⁷
49. The applicant objected to not being provided with QPS's correspondence. He also contended that the Office of the Commissioner should be searched, and set out what he considered were reasonable identifying terms that QPS should use to search for responsive documents, including variations on his name and initials, relevant case reference numbers, and his address.³⁸
50. After considering the applicant's submission, I wrote to QPS³⁹ and requested that it clarify its search request terms and, in particular, explain why the three file reference numbers provided by the applicant in his access application had not been searched. In response, QPS advised that the search officer had been contacted and provided the following information:⁴⁰

They have advised that searches were conducted of the Minister's emails and office records as detailed in the search declaration. As the documents sought are communications and records of communication with the Office of the Police Minister, searches of these areas utilising the applicant's name should have identified any relevant documents. They further advise that the three reference numbers provided in the application and tracer request were not utilised in the searches as they are not Minister's Office document numbers, and that all external documents are received by their office in hard copy format, scanned and given a document number under their filing system.

For completeness further searches of the Minister's emails and records have now been conducted utilising the three reference numbers, however no relevant documents were identified.

It is QPS' submission that all reasonable steps have been taken to identify any documents relevant to the application, through consultation with representatives of the Minister's Office and searches of relevant areas using all relevant and available search terms. In the circumstances no documents have been identified, and it is our submission on the basis of searches and enquiries to date that the documents sought by the applicant most likely do not exist.

51. The applicant continued to complain about various procedural issues and about not being provided with a copy of QPS's search records. On 26 May 2021, in order to assist the applicant to make a submission about sufficiency of search if he wished to do so, I wrote to the applicant to again set out the searches and inquiries conducted by QPS in an effort to locate any responsive information. I reiterated my preliminary view, based on an assessment of this information, that QPS had taken all reasonable steps to identify and locate responsive documents:

*The question for me to determine in this review is whether QPS has taken all **reasonable** steps to locate this information in its records. An applicant raising sufficiency of search concerns, such as you are doing in this case, bears a practical onus of demonstrating that the respondent agency or Minister has not discharged its search obligations. Suspicion and mere assertion will not discharge this onus. In a recent email to the Information Commissioner you stated:*

³⁷ On 11 February 2021.

³⁸ Email of 17 February 2021.

³⁹ Email of 5 March 2021.

⁴⁰ Email of 8 April 2021.

In the case of the document that I seek, there is little chance that it would be on general view. It might not have formally passed through that office. It's sensitive, what more can I say?

This does not suggest any further specific searches that could reasonably be undertaken to locate the information you are seeking. You have not provided any information to OIC that would suggest any further, reasonable and targeted searches that QPS can conduct and I do not consider that any broader searches are reasonable in these circumstances.

52. I provided the applicant with a final opportunity to lodge a submission in support of his case if he considered that there were other searches or inquiries that QPS should reasonably be asked to undertake. While he has continued to contend that records of the Office of the Commissioner should be searched, he has otherwise taken the position that he cannot provide a complete submission about sufficiency of search until his various questions about procedural issues are answered to his satisfaction.
53. QPS has advised OIC that responsive documents, if they existed, would be identified and located through the searches it has conducted of the records of the Minister's Liaison Officer. Given the terms of the applicant's request, and relying upon QPS's knowledge and advice about its own record-keeping practices, I consider it is reasonable to believe that the locations searched, and the search terms used, would have captured any responsive information if it existed. My findings in this regard are informed by the scope of the applicant's request being correspondence to the Police Minister, rather than records generally held by the Police Commissioner.
54. In summary, based on the evidence available to me, I am satisfied that QPS has undertaken searches of the locations where it would be reasonable to expect that the requested information would be kept. I am also satisfied that the search terms used by QPS would reasonably be expected to capture any responsive information, and that the searches were conducted by QPS staff familiar with applicable recordkeeping practices for such a document.

Finding

55. Having regard to all of the matters discussed above, I am satisfied that QPS has undertaken all reasonable steps to locate the requested information and that access to the information may be refused on the basis it is nonexistent or unlocatable.⁴¹

DECISION

56. I vary QPS's deemed decision to refuse access to the requested information by finding that access may be refused under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act, on the basis that it is nonexistent or unlocatable, in accordance with section 52(1) of the RTI Act.
57. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Shiv Martin
Assistant Information Commissioner

Date: 16 June 2021

⁴¹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
5 November 2020	OIC received the applicant's external review application. OIC confirmed the application and provided the applicant with the application reference number. OIC received three further emails from the applicant. OIC requested preliminary documents from QPS.
6 November 2020	OIC received an email from the applicant. OIC provided an update to the applicant.
7 November 2020	OIC received an email from the applicant.
10 November 2020	OIC provided an update to the applicant.
11 November 2020	OIC received an email from the applicant.
13 November 2020	OIC received an email from the applicant. OIC received preliminary documents from QPS. OIC accepted the applicant's external review application and requested current identifying information from the applicant to make the external review compliant.
14 November 2020	OIC received an email from the applicant.
17 November 2020	OIC received two emails from the applicant. OIC issued correspondence to the applicant.
18 November 2020	OIC issued correspondence to the applicant.
20 November 2020	OIC received an email and certified identification from the applicant, making his external review compliant.
24 November 2020	OIC issued correspondence to QPS requesting searches, copies of responsive documents if located, and search records. OIC provided an update to the applicant.
9, 16, 17 and 18 December 2020	OIC contacted QPS about its overdue response.
18 December 2020	OIC provided an update to the applicant.
11, 18, 20 January 2021	OIC contacted QPS about the progress of its overdue response.
28 January 2021	OIC received a response from QPS regarding its searches.
29 January 2021	OIC provided an update to the applicant. OIC received an email from the applicant.
1 February 2021	OIC requested further information from QPS about its searches.
2 February 2021	OIC received further information from QPS about its searches.
3 February 2021	OIC issued a preliminary view to the applicant.
5 February 2021	OIC received an email from the applicant.

Date	Event
11 February 2021	OIC provided further information to the applicant.
17 February 2021	OIC received an email from the applicant.
5 March 2021	OIC requested further information from QPS about its searches.
25 March 2021	OIC contacted QPS about its overdue response.
8 April 2021	OIC received further information from QPS about its searches. OIC updated the applicant, confirming the next step was a formal decision to finalise the review.
9 April 2021	OIC received an email from the applicant.
14 April 2021	OIC provided further information to the applicant and confirmed the final date for lodging a submission was 21 April 2021. The applicant made a further submission to OIC.
16 April 2021	OIC provided further information to the applicant.
27 April 2021	OIC received an email from the applicant.
5 May 2021	OIC provided a response to the applicant's complaint correspondence.
14 May 2021	The applicant made a further submission to OIC.
21 May 2021	OIC provided a response to the applicant.
24 May 2021	OIC received an email from the applicant.
26 May 2021	OIC provided a response to the applicant. OIC received an email from the applicant. OIC sent a letter to the applicant summarising its preliminary view.
27 May 2021	OIC received an email from the applicant.
31 May 2021	The applicant sent an email to QPS requesting that it provide further information.
3 June 2021	OIC received an email from the applicant. OIC sent a letter to the applicant.
7 June 2021	OIC received an email from the applicant. OIC sent a letter to the applicant. OIC received two emails from the applicant.