



Decision and Reasons for Decision

Citation:	<i>J Ahern and Brisbane City Council [2023] QICmr 32 (29 June 2023)</i>
Application Number:	316567
Applicant:	J Ahern
Respondent:	Brisbane City Council
Decision Date:	29 June 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents can be refused on the ground they are nonexistent or unlocatable under sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Brisbane City Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to the following documents created between 1 October 2021 and 25 November 2021:²
 - *BCC documents recording any new BCC traffic signage plan for [the road on which the applicant lives] anywhere between [Road X] and [Road Y] intersections with [the road on which the applicant lives] ...*
 - *...documents /file/s recording any request/s for supply and installation of a new traffic management sign at [the applicant's address] (see attached photo) being a combined Clearway "C - 7am - 9am Mon - Fri Tow Away " Zone and "No Standing - All Other Times" Zone [(Sign)] erected on site at [the applicant's address] about 1 am 25.11.21.*
 - *BCC document/s records requesting supply and installation of any other traffic management signage including a similar 'clearway and no standing all other times' sign erected or to be erected in [the road on which the applicant lives] anywhere between [Road X] and [Road Y] intersections with [the road on which the applicant lives];*
 - *BCC emails/ communications between [Council Employee R] of BCC and any BCC officers about supply and installation of the new traffic management/ parking sign installed at [the applicant's address] on 25.11.21.*
2. Council located 102 pages of responsive documents and decided³ to disclose 55 full pages and refuse access to third party personal information on 47 part pages, on the ground that disclosure would, on balance, be contrary to the public interest.⁴

¹ On 25 November 2021.

² For ease of reference and understanding I have separated each part of the applicant's request, but otherwise reproduced exactly as set out in the access application.

³ Decision notice dated 20 January 2022. This was made outside the statutory timeframe and therefore, constitutes a deemed decision under section 46 of the RTI Act.

3. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision on the ground that Council had not located documents relevant to the terms of the access application.
4. For the reasons outlined below, I vary Council's deemed decision.⁶ I am satisfied that Council has taken all reasonable steps to locate documents responsive to the terms of the access application, and access to any further documents may be refused on the ground they do not exist.⁷

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision and evidence considered

6. The reviewable decision is Council's deemed decision.
7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ 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.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.*'

Issue for determination

9. The issue for determination is whether Council has taken all reasonable steps to locate the documents applied for by the applicant and if access may be refused on the ground the documents are nonexistent or unlocatable.¹¹

Relevant law

10. Under the RTI Act a person has a right to be given access to documents of an agency.¹² However, this right is subject to provisions of the RTI Act including the

⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁵ On 8 February 2022.

⁶ Section 110(1)(b) of the RTI Act.

⁷ Sections 47(3)(e) and 52(1) of the RTI Act.

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], noting that he saw '*no reason to differ*' from our position.

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

¹¹ Sections 47(3)(e) and 52 of the RTI Act. For completeness, in my correspondence to the applicant on 13 October 2022, I also relayed my view to the applicant about information irrelevant to the scope that Council was entitled to delete, and information that would, on balance, be contrary to the public interest to disclose. The applicant did not contest this view and therefore those issues were not considered further in this external review.

¹² Section 23 of the RTI Act.

grounds on which an agency may refuse access to documents.¹³ Relevantly, access to a document may be refused if the document does not exist or cannot be located.¹⁴

11. To be satisfied that a document does not exist, various key factors will be relevant, including, but not limited to:¹⁵
 - the administrative arrangements of government
 - the structure of the respondent agency
 - the respondent agency's functions and responsibilities
 - the respondent 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 or the agency's submissions including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
12. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds 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.¹⁶
13. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on by an agency 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 enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.¹⁷
14. 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.¹⁸ 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.¹⁹ 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 identify and locate responsive documents. Suspicion and mere assertion will not satisfy this onus.²⁰
15. An additional consideration when assessing whether an agency has taken reasonable steps to identify and locate documents applied for by an applicant is the terms of the access application or its scope. The terms of an access application set the parameters for the documents that an agency is to identify and locate when processing the access application. The general rule is that the terms of an RTI Act access application should not be interpreted narrowly or with the same degree of precision as a piece of

¹³ Including section 47(3) of the RTI Act.

¹⁴ Sections 47(3)(e) and 52(1)(a) and 52(1)(b) of the RTI Act.

¹⁵ *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).

¹⁶ *Pryor* at [20]-[21].

¹⁷ See the findings of His Honour Justice McGill SC in *Webb v Information Commissioner* [2021] QCATA 116 at [5]-[6].

¹⁸ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review.

¹⁹ Section 87(1) of the RTI Act.

²⁰ *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016) at [15]; *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].

legislation.²¹ However an access application must give sufficient information concerning the requested document to enable a responsible officer of the agency to identify the document.²² There are sound practical reasons for requiring the documents sought in an access application to be clearly and unambiguously identified, including that the terms of the access application set the parameters for an agency's response and the direction of an agency's search efforts.²³ The scope of an access application cannot be unilaterally broadened on external review.²⁴ In one of the earliest decisions considering this issue, the Information Commissioner held:²⁵

The terms in which an FOI access application is framed set the parameters for an agency's response under Part 3 of the FOI Act, and in particular set the direction of the agency's search efforts to locate all documents of the agency which fall within the terms of the FOI access request. The search for relevant documents is frequently difficult, and has to be conducted under tight time constraints.

Findings

Applicant's submissions

16. Upon lodging his application for external review the applicant submitted²⁶ that the following documents had not been located in response to his access application:

- signed or dated traffic signage plans which identified the traffic signs on the road on which the applicant resides
- documents evidencing the request for the supply of the Sign or work order provided to the BCC maintenance crew; and
- no BCC traffic signage plan produced showing the location and date of approval of all traffic management signs lawfully erected on the road on which the applicant resides, including the Sign allegedly replaced by Council Officer R.

17. The applicant further stated:²⁷

It seems reasonable that we should be provided with relevant documents, that allow us to determine whether the installation of the 'clear way / no standing all other times' [Sign] ordered by [Council Officer R] at our address has been lawfully requisitioned and erected.

18. During the review the applicant made further submissions²⁸ regarding his concerns noted at paragraph 16 regarding an absence of an approved current traffic signage plan identifying the traffic signs on the road on which he resides and further documents concerning the supply and installation of the Sign. The applicant argued that there did not appear to be a clear documented pathway for the erection of the Sign.

²¹ *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) (**Fennelly**) at [21] and *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (**O80PCE**) at [35].

²² Section 24(2)(b) of the RTI Act.

²³ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] (**Cannon**) considering equivalent provisions in the now repealed *Freedom of Information Act 1992* (Qld); *O80PCE* at [33].

²⁴ See *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]; *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013) at [17] to [21]; *Simpson MP and Department of Transport*

and Main Roads (Unreported, Queensland Information Commissioner, 29 July 2011) at [11] to [22]; *Fennelly* at [15].

²⁵ *Cannon* at [8].

²⁶ On 8 February 2022.

²⁷ *Ibid.*

²⁸ Emails dated 20 October 2022, 17 January 2023; and 24 February 2023.

19. In particular, noting the maps administratively released to him by Council (with the documents initially released), the applicant argued that the maps were not a current traffic signage plan showing the plan for the entirety of the road on which he resides and therefore the Sign that was installed outside his address. He provided²⁹ copies of maps he had obtained separately from Council which he states were documents circulated by Council to residents of the road on which he resides who were affected by a transit lane project on that road in about July 2002. The applicant argued that there should be a signage plan or a document in existence that shows why the Sign was erected on the road outside his address on 25 November 2021. Additionally, the applicant analysed the Notification (see paragraph 24) and the additional 12 pages disclosed by Council in the review (see paragraph 29) and pointed to various reference numbers which he contended point to the existence of further documents responsive to those reference numbers.³⁰
20. The applicant particularised the documents he argued should exist based on the Notification and additional 12 pages disclosed by Council, as follows (**Applicant's List**):³¹
- a) *No plan or map identifying missing 'no standing' [Sign] outside [an address] accessed by [Council Employee R] produced.*
 - b) *No Receipt of Notification produced from Main Work Centre ref 11689949*
 - c) *No copy work Order 11280214 produced*
 - d) *No copy call centre reference report 14259352 produced*
 - e) *No guide to functional location details produced*
 - f) *No guide to location data details produced*
 - g) *No guide to description details produced*
 - h) *No details of observation recorded '21/10/2021 @ 08.47' produced*
 - i) *No details of source of information or copy plan referenced by [Council Employee R] that 'there seems to be a no stopping sign missing observation recorded '21/10/2021 @ 08.47' produced*
 - j) *25.10.21 Unidentified BCC officer conducts inspection of Traffic signs located at [the road on which the applicant lives]... No report about missing 'No Standing' sign produced after inspection by BCC officer CC- TH*
 - k) *[Council Employee R] records referral to AUSQLD [Employee W] ... No details or record of transfer of information from [Council Employee R] to [Employee W]*
 - l) *[Council Employee R] records signs ordered week ending 29.10 ... No work order produced dated 29.10.21*
 - m) *Outsource 1 supplies [Sign] for work order no. 11280214 BCC 18BD/1D... No published guide to description details produced No work order produced No copy work order 11280214 produced or copy document number BCC 18BD/1D ... No copy documents produced by [Employee W] or Regional Operations Centre.*
 - n) *No work instructions BCC-18BD/1D For installation of No Standing [Sign] at [applicant's address] Produced*
 - o) *Completion of work order not produced by Regional Operations Centre³²*
- [sic]
21. I have deduced from the applicant's various submissions that, at the core of his submissions is his view that the Sign erected on 25 November 2021 has put in place different parking restrictions to those that applied prior to the erection of the Sign and documents should exist that explain how and why this occurred.

²⁹ By email dated 24 February 2023.

³⁰ By email dated 20 October 2022; 17 January 2023 and 24 February 2023.

³¹ Email received 17 January 2023. I have not included the full table of 5 pages produced by the applicant as his submissions, which the applicant titled *Schedule (005)*. The table created by the applicant in this Schedule included 8 columns, labelled *'Date, Event, Details, Documents, Document producer, Photo / document Ref No., Document produced by BCC?, Comments'* [sic]. I have not included entries in the table where the applicant has added 'Yes' in the column labelled *'Document produced by BCC?'* nor have I included the final entry on the 5th page of the Schedule dated 30.11.21 as it is out of scope by date.

³² For ease of reference and understanding I have itemised the submissions differently than the applicant, but otherwise reproduced exactly as submitted by the applicant.

Council Searches and Submissions

22. Upon commencement of the external review, Council were asked for, and provided, a certification of the searches undertaken to locate documents responsive to the access application when Council processed the access application.³³ That certification showed the areas searched by Council were:
- City Standards
 - Transport Planning Operations (**TPO**)
 - Urban Amenity; and
 - Content Manager (Council's electronic records management system).
23. Council stated³⁴ that City Standards was previously called the Field Services Group and it is the area responsible for undertaking road and other Council asset repairs and replacement of infrastructure.
24. In addition to the above information about its searches, Council provided a copy of the documents it had disclosed to the applicant. Of particular relevance to the applicant's concerns are:
- a 3 page email exchange dated 20 October 2021 and 21 October 2021 between Council Officer R, a Council Permit Assessor, and a private contractor working on behalf of the applicant in relation to obtaining a road closure permit to allow works to occur to the applicant's address, outlining the applicant's complaints about parking in relation to the permit (**Complaint Email**);³⁵ and
 - the document titled 'Notification', which is a maintenance request logged by Council Employee R with Urban Amenity on 23 October 2021 regarding the missing Sign (**Notification**).
25. During the external review I sought, and Council provided, additional information concerning its document creation/systems, further searches and information about Council's searches for documents responsive to the crux of the applicant's concerns. Council's various responses are set out below.
26. Council submitted that there were no individual sign approvals for the Sign,³⁶ however a map of works undertaken in 2002 showed that the traffic lane adjacent to the driveway entrance of the applicant's property has been a transit lane since that time. Additionally, Council provided an aerial photograph showing the transit lane was still in place at the time of the installation of the Sign.
27. In further submissions Council stated, in relation to documents about the installation of traffic management signs, there are two scenarios. In the first scenario, being just a normal residential street in which Council wanted to install a 'no standing' or 'no stopping' sign, there would be further documents because various people would need to sign off on the justification. In the second scenario, where the road in question has established rules and the sign being replaced or installed is just confirmation of the

³³ By email dated 3 March 2022.

³⁴ In its email dated 3 March 2022.

³⁵ Pages 1-3 of 95 of the Council document file titled *GCCS – RTI – 2021_22-229 – Content Manager file 187_70_1210_48 documents.pdf*.

³⁶ Email dated 9 May 2022, attaching advice from TPO together with a map reference CA22 299638 and an aerial photograph of the stretch of the road upon which the applicant resides and where the Sign was erected. Disclosed to the applicant on 19 October 2022.

rules, there would not be further documents. Council submitted the facts of this matter fall within the second scenario.³⁷

28. Council also submitted³⁸ the following summation of events from its TPO division:

- 21/10/2021: Whilst assessing a road closure application, [Council Officer R] noticed there seemed to be a missing [Sign] on [the road on which the applicant resides].
- 21/10/2021: She used the report-it-online functionality to log this for investigation by the right department.
 - This was transformed into an OPTIMISE job, reference 14259352.
- 23/10/2021: The OPTIMISE job was then translated into a SAP notification, reference 11689949 (...this is an automated integration between OPTIMISE and SAP, and the original details are shown in SAP)...
- ...
- Unknown date: Work order, reference 11280214 created to install [Sign]...
- ...
- 25/11/2021: Site attended, and [Sign] installed. Photographs provided by [City Standards]... Before showing blank pole. After showing [Sign] installed with Clearway 7-9am Mon to Fri and No stopping at all other times in both directions.
 - This implies as a result of investigation, [City Standards] determined there was a sign missing, and the end of these restrictions is further along, and this is just another part-way indicator. ...

[sic]

29. Finally, Council undertook a further search related to documents showing the allocation and completion of the work task of installing the Sign and located 12 pages of additional documents³⁹ (**Additional Documents**) and disclosed these to the applicant.⁴⁰ Council submitted no other documents existed or could be located within the scope of the access application stating:

[Regarding the] *documented request/direction for a clearway sign to be installed; - this would be the notification created in SAP and sent to the crews [and] we've already provided that*
[The] *order for the actual [Sign] [has been] attached...*
[Regarding the] *request to the works crew to actually install the [Sign] (or a daily work sheet showing that installation was required at that location.....whatever process is used) ... this would be the notification created in SAP and sent to the crews – so we've already provided that and we don't work off a paper/daily work sheet – it's all managed through Click Mobile in SAP and that's where the crews retrieve their notifications from.*

[sic]

Analysis

30. While the scope of an access application should generally not be interpreted too narrowly, the applicant in this case clearly identified four narrow and precise categories of documents, to which he sought access - with no ambiguity about the documents sought. Consequently, the documents Council was obliged to locate when searching for documents are those that fit within the four narrow and precise categories of documents created between 1 October 2021 and 25 November 2021 as outlined at paragraph 1.

³⁷ By telephone on 1 August 2022.

³⁸ By email on 27 September 2022.

³⁹ Comprised of a downloaded SAP extract which shows the request/order for supply and installation of the Sign, including address/location, costs, and details of the Sign itself, and an invoice from a sign manufacturer.

⁴⁰ On 19 October 2022.

31. Regarding the applicant's various submissions about traffic signage plans set out at paragraphs 16-21, I consider that the applicant's access application restricted the class of documents being sought to 'new' traffic signage plans created between 1 October 2021 and 25 November 2021. The applicant argued that traffic signage plans (for the road on which the applicant resides) should have been provided. However, such documents in the general sense are a wider class of documents than those sought in the access application. As noted at paragraph 15, an applicant cannot unilaterally expand the terms of an access application on external review. Consequently, to the extent that the applicant's submissions at paragraphs 16-20 seek to expand this class of documents, I consider such documents outside the scope of the access application. Therefore, Council was not obliged to undertake searches to locate such documents.
32. I note that signage plans (in the broader sense) were also included in the Applicant's List of documents not located at items a) and i). As noted above, to the extent that the applicant seeks to broaden the class of documents sought in the access application, I consider such documents outside the scope of the access application and Council was not obliged to undertake searches to locate such documents.
33. To the extent that the applicant's concerns regarding missing signage plans are a submission seeking access to new plans that were referenced, or created, by Council Officer R when making the Notification (as per paragraphs 16-20 and items a) and i) of the Applicant's List) I consider that Council's searches have been reasonable and further documents do not exist. The following matters are relevant to this conclusion.
34. The Complaint Email shows that a private contractor working on behalf of the applicant, sent an email to Council Employee R, a Council Permit Assessor, on 20 October 2021 at 3:04pm outlining the applicant's complaints about a permit being sought for a road closure to allow certain works to occur in the context of parking arrangements.⁴¹ According to the documents,⁴² Council Employee R responded to the applicant's contractor by email on 21 October 2021 at 9:39am and relevantly advised:

I note your client has also mentioned parking their car at this location and getting away with it. While I would recommend contacting Brisbane City Council Parking Compliance Team via our 24 hour Contact Centre 07 3403 8888 for any enquiries regarding parking regulations. I acknowledge there seems to be inconsistent regulatory signage in place at this location and I have logged an enquiry to have this further investigated. It should also be noted that the lane in question is a transit lane and further restrictions around stopping in a transit lane can be found in Transport Operations (Road Use Management—Road Rules) Regulation 2009 section 187. As mentioned above, our assessments are based on impact to traffic flow, as such this is for information purposes only.

[emphasis added]

35. The Notification shows the notification 'type' is recorded as an M1 Maintenance Request. The Notification states it was created on 23 October 2021 at 5:49am. It states the customer is Council Employee R, and that the notification request was received on 21 October 2021 at 8:47am – *after* Council Employee R received the email from the applicant's contractor relaying the applicant's complaints about the parking and permit, and *before* Council Employee R replied to the contractor as outlined above.

⁴¹ The Complaint Email states:

... [the applicant] is querying why he was given a permit for night hours for this works when the permit application was applied for day hours.. this is not good enough as he can park his car during the day on [the road on which the applicant resides] and get away with it...

⁴² Pages 1 and 2 of 95, of the Council document file titled GCCS – RTI – 2021_22-229 – Content Manager file 187_70_1210_48 documents.pdf.

36. Further, noting Council's submission at paragraph 26 that there were no individual sign approvals for this Sign, and that *the plan* (disclosed to the applicant in the form of a map in the initial document release) showed that the traffic lane adjacent to the driveway entrance of the applicant's property had been a transit lane since 2002, it is open to conclude that no new plan was created and that Council Officer R made her assessment regarding the missing sign based on the maps in existence at the date of the Notification.
37. Additionally, taking into account the scope of the access application, the documents located, the information provided by Council about the Notification process at paragraphs 27-29 and Council's searches, I consider that no new traffic management plan was created. Council's searches were appropriately targeted and thorough and Council took all reasonable steps to locate documents responsive to the terms of the applicant's access application.
38. Consequently, as regards the applicant's submissions that further documents should exist regarding new traffic signage plans, I am satisfied, based on Council's searches and submissions and the documents disclosed to the applicant, that no further documents exist and on that basis access to such documents may be refused under section 52(1)(a) of the RTI Act.
39. With regard to the applicant's submissions about an absence of documents evidencing the request for the supply or installation of the Sign (see paragraph 16 - 20) or any of the documents listed at items b), c), d), k), l), m), n) and o) of the Applicant's List, I am satisfied that Council's searches have been reasonable and no further documents exist.
40. Firstly, the applicant's submissions regarding work orders and the like, are in large part seeking access to documents that are not within the scope of the access application. The access application sought access to documents that recorded '**request/s for supply and installation of a new traffic management [Sign] at [the applicant's address]...[and] records requesting supply and installation of any other traffic management signage**'⁴³ (emphasis added) - that is, documents asking for a sign to be supplied or installed. The access application did not seek documents recording any of the subsequent actions of Council - such as information about the subsequent supply or installation of the Sign. I consider that documents instructing how signs are to be installed or recording that works have been completed are not documents recording the *request* for supply and installation. Consequently, to the extent that the applicant's submissions seek to expand the application to cover such documents, I consider them outside the scope of the access application. Therefore, Council was not obliged to undertake searches to locate such documents.
41. Secondly, Council undertook further searches for documents showing the allocation of or request for the supply and installation of the Sign. Those searches located the Additional Documents (see paragraph 29). Pages 2-4 of the Additional Documents were the SAP 'extract' or download which provided the confirmation regarding the *request* for supply and installation of the Sign, including the work order number 11280214.⁴⁴
42. Additionally, I accept Council's submissions (see paragraphs 28 and 29) that the notification created in SAP is sent to the crews and is the request for a traffic

⁴³ See paragraph 1.

⁴⁴ I note that page 5 of the Additional Documents provides a legend which explains the '18BD/1D' code and it is evident it is the code used to inform what the sign must have on it when produced.

management sign to be installed and is Council's work order. I am satisfied that the entries relied on by the applicant as pointing to the existence of further documents (which appear in the Applicant's List) are just coding for database and electronic records management purposes and there are no documents which correspond with the entries.

43. Finally, taking into account the scope of the access application, the information provided by Council about the Notification process at paragraphs 27-29, the various parts of Council responsible for the installation of signs and the role of Council Officer R in that process, the records management systems used and the types of records produced by those systems, I consider that Council's searches were appropriately targeted and thorough and that Council took all reasonable steps to locate documents recording the request for supply or installation of the Sign.
44. Consequently, as regards the applicant's submissions that further documents should exist recording the request for supply or installation of the Sign, I am satisfied, based on Council's searches and submissions and the documents disclosed to the applicant, that no further documents exist and on that basis access to such documents may be refused under section 52(1)(a) of the RTI Act.
45. In relation to the applicant's general assertions that a sign had not previously been placed by Council prior to 25 November 2021 and that installation of a sign such as this in a residential area should result in the creation of consultation documents among others (see also items h) and i) of the Applicant's list), I note Council's submissions that there were no individual sign approvals for the Sign⁴⁵ and there are two scenarios in relation to documents about the installation of traffic management signs. Firstly, in a normal residential street in which Council wanted to install a 'no standing' or 'no stopping' sign, there would be further documents because various people would need to sign off on the justification; whereas, on a road which has established rules and the sign being replaced or installed is just confirmation of the rules, there would not be further documents. Council submitted the facts of this matter fall within the second scenario.⁴⁶
46. Based on the material before me (including the searches conducted by Council, documents disclosed to the applicant and Council's submissions), and taking into account the scope of the access application, I am satisfied that further documents do not exist within the timeframe of the access application regarding the installation of the Sign. Rather the material before me suggests that, in relation to the timeframe of this access application, the road and area in question was subject to established rules from 2002 and that Council instigated placement of the apparently missing sign in response to being alerted to its absence by an email received from the applicant's contractor.⁴⁷ Consequently, I am satisfied that access may be refused to further documents responsive to the applicant's general assertions, on the basis there are reasonable grounds in the circumstances of this matter to be satisfied that no such documents exist within the timeframe of the access application.
47. As to items e), f), g) and parts of m) of the Applicant's List which assert that guides for various information contained in the Notification have not been provided, I am satisfied that such documents are patently outside of the terms of the access application scope, not being documents recording any new traffic signage plan for the road in which the applicant resides; a request for the supply or installation of a new traffic management

⁴⁵ On 9 May 2022.

⁴⁶ By telephone on 1 August 2022.

⁴⁷ See paragraphs 26 and 34.

Sign or any future traffic management sign or similar sign to that installed on 25 November 2021; nor emails or communications between particular Council officers about supply or installation of the traffic management Sign installed on 25 November 2021. Consequently, Council is not required to locate such documents.

48. In relation to item j) of the Applicant's List seeking documents concerning an inspection by an unidentified Council Officer of Traffic signs located at the applicant's address on 25 October 2021, or a report about a missing 'No Standing' sign produced after said inspection, such documents may be outside the scope of the access application because the access application sought access to documents recording a request for supply or installation of a new traffic management Sign in the context of the installation of the Sign on 25 November 2021 not documents recording an inspection of signage by a Council Officer. However, I make no finding regarding whether such documents are within scope of the access application and find, based on Council's submissions about the parts of Council responsible for the supply and installation of signs and the records management systems used and the types of records produced by those systems, and also Council's submissions about the places searched, that Council's searches were appropriately targeted and thorough and that Council's searches would have located documents responsive to item j) if they existed. Consequently, access to documents responsive to item j) may be refused pursuant to section 52(1)(a) of the RTI Act on the basis they are nonexistent.
49. In conclusion, I find that Council has taken all reasonable steps to locate documents responsive to the terms of the access application and access to any further documents may be refused on the basis that they are nonexistent under sections 47(3)(e) and 52(1)(a) of the RTI Act.

DECISION

50. For the reasons set out above I vary Council's deemed decision and find that access may be refused to further documents under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they are nonexistent.
51. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 29 June 2023

APPENDIX

Significant procedural steps

Date	Event
8 February 2022	<p>OIC received the application for external review.</p> <p>OIC received a further email from the applicant.</p>
9 February 2022	<p>OIC requested preliminary documents from Council.</p> <p>OIC confirmed to the applicant that the application for external review had been received.</p>
14 February 2022	<p>OIC received the preliminary documents from Council.</p>
3 March 2022	<p>OIC notified the applicant and Council that the application for external review had been accepted.</p> <p>OIC requested information from Council regarding its searches and a copy of the located documents.</p> <p>OIC received significant information from Council in response, including confirmation that requests for further searches had been forwarded to several Council areas, but Council advised responses from those areas may be delayed while resources were targeted towards significant flood recovery.</p>
8 March 2022	<p>OIC returned the applicant's call. OIC requested an authority from the applicant if they wanted to authorise another party to deal with their review on an ongoing basis.</p>
31 March 2022	<p>OIC received a return call from Council and an update on the status of the searches.</p>
8 2022	<p>OIC emailed Council about the overdue searches.</p>
26 April 2022	<p>OIC emailed Council about the overdue searches.</p> <p>OIC emailed an update to the applicant.</p>
5 May 2022	<p>OIC received a call from the applicant's partner. During the call the applicant provided verbal authority for OIC to speak with his partner. OIC requested an authority from the applicant if he wished to provide his partner with ongoing authority to deal with his review.</p>
9 May 2022	<p>OIC received further submissions and search information from Council.</p>
25 May 2022	<p>OIC returned the applicant's call. During the call the applicant provided verbal authority for OIC to speak with his partner. OIC requested an authority from the applicant if he wished to provide his partner with ongoing authority to deal with his review.</p>
13 June 2022	<p>OIC returned the applicant's call. During the call the applicant provided verbal authority for OIC to speak with his partner. OIC requested an authority from the applicant if he wished to provide his partner with ongoing authority to deal with his review.</p>
19 June 2022	<p>OIC received an email from the applicant seeking an update.</p>

Date	Event
21 June 2022	OIC emailed the applicant with a written update, confirmed the discussions with the applicant on 5 May, 25 May and 13 June, and provided a blank Authority for the applicant to sign and return to OIC if he wished to grant another party ongoing authority to deal with his review.
25 July 2022	OIC received a call from the applicant's partner. We obtained the applicant's verbal authority to speak to his partner during the call and provided an update.
1 August 2022	OIC contacted Council for further information.
4 August 2022	OIC returned the applicant's call and provided a brief update.
30 August 2022	OIC requested Council undertake two further searches. OIC emailed the applicant to provide an update.
21 September 2022	OIC contacted Council about the overdue searches. Council requested further time. OIC granted an extension of time.
26 September 2022	OIC emailed the applicant to provide an update.
27 September 2022	OIC received the requested search information, and Additional Documents, from Council.
13 October 2022	OIC issued a preliminary view to the applicant. OIC asked Council to disclose to the applicant the 12 pages of Additional Documents and 1 page of out of scope information.
19 October 2022	Council disclosed the Additional Documents and out of scope document to the applicant.
20 October 2022	OIC received submissions from the applicant contesting its preliminary view.
1 November 2022	OIC confirmed its preliminary view to the applicant.
11 November 2022, 22 November 2022, 2 December 2022, 12 December 2022, 16 December 2022	The applicant requested, and received, extensions of time to provide submissions contesting OIC's preliminary view.
17 January 2023	OIC received submissions from the applicant.
24 February 2023	OIC received correspondence from the applicant.
7 March 2023	OIC advised the applicant the review would proceed to a formal decision.
13 March 2023	OIC advised Council that the review would be finalised by a formal decision.
23 March 2023	OIC confirmed information with Council regarding 3 pages in the Additional Documents.