



Decision and Reasons for Decision

Citation:	<i>Q67 and Council of the City of Gold Coast [2025] QICmr 60 (15 September 2025)</i>
Application Number:	317862
Applicant:	Q67
Respondent:	Council of the City of Gold Coast
Decision Date:	15 September 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - request for documents relating to a development - scope narrowed on external review - whether agency has taken all reasonable steps to locate internal agency communications - whether access to further documents may be refused - nonexistent documents - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Council of the City of Gold Coast (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)² for access to internal and external Council communications between January 2018 and May 2020 relating to the development of a childcare centre at Metricon Stadium.³ Council decided⁴ to release 1,791 full and 15 part pages, and refuse access to 6 full and 15 part pages.⁵
2. The applicant applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision, submitting that Council should have located more documents, particularly internal Council communications. Following negotiations on external review the applicant agreed to limit the scope of the additional information he was seeking to: '*All internal communications*' involving three specified Council officers, and the Council City Architect (**Agreed Scope**).⁷

¹ On 5 September 2023.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. In accordance with the transitional provisions in Chapter 7 Part 9 of the RTI Act, particularly section 206K of the RTI Act, references in this decision are to the RTI Act as in force prior to 1 July 2025.

³ The applicant requested communications between Council and six Council officers, four individuals employed by private companies, two government agencies and one company.

⁴ Decision dated 8 December 2023. This is the *reviewable decision* for the purpose of the external review.

⁵ Relying on the grounds of legal professional privilege, contrary to public interest, and irrelevant information. The applicant did not contest the information to which access was refused in those pages and therefore, those issues did not form part of the review.

⁶ On 29 February 2024. This application was received outside the statutory timeframe but, due to the particular circumstances, the applicant was allowed a longer period to apply under section 88(1)(d) of the RTI Act.

⁷ Confirmed by email to the applicant on 20 August 2024.

3. During the review Council located and released additional documents falling within the Agreed Scope to the applicant.⁸ However, the applicant did not accept disclosure of this additional information in resolution of the review and provided further submissions to OIC outlining the reasons why he considers further documents should have been located.⁹ The applicant's submissions also detail his broader concerns about Council and the particular development, including reference to information access requests made to other agencies in connection with his wider concerns.¹⁰ For the purpose of reaching my decision in this external review, I have only had regard to the applicant's submissions to the extent they are relevant to the issue for determination (as set out in paragraph 6).
4. In making this decision, I have also taken into account the evidence, submissions, legislation and other material as set out in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information and in doing so, have acted in accordance with section 58(1) of the HR Act.¹¹
5. For the reasons set out below, I vary Council's decision and find that Council has taken all reasonable steps to locate documents falling within the terms of the Agreed Scope, and access may be refused to further documents because they are nonexistent.¹²

Issue for determination

6. The issue for determination is whether access may be refused to additional documents falling within the Agreed Scope, on the basis they do not exist.¹³ In determining that issue, it is necessary to examine Council's searches to assess whether it has taken all reasonable steps to locate information falling within the Agreed Scope. During the review process, the applicant contested OIC's interpretation of the Agreed Scope; effectively seeking to broaden the terms of his request. As the terms of an application set the parameters for an agency's searches, I have made additional findings on the scope of the application before setting out my findings on Council's searches.

Scope of application

Relevant law

7. The RTI Act requires that an access application must 'give sufficient information concerning the document to enable a responsible officer of the agency or Minister to identify the document'.¹⁴ 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.¹⁵ It is also well settled that the scope of an access

⁸ A total of 559 additional pages of documents were released to the applicant on external review. Consultation was also conducted with several third parties and no objections to disclosure were received.

⁹ On 17 April 2025 and 16 May 2025.

¹⁰ For example, 13 of the 63 pages in the applicant's submission of 16 May 2025 directly related to External Review 317862 with the remaining pages related to a separate external review with OIC, as well as information relating to access applications made to Office of Liquor and Gaming and Department of Tourism and Sport. The submission also attached further supplementary documents comprising 168 pages.

¹¹ OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹² Under sections 47(3)(e) and 52(1)(a) of the RTI Act

¹³ Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁴ Section 24(2)(b) of the RTI Act.

¹⁵ See *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] cited with approval in *Rolfe and Banana Shire Council* (Unreported, Queensland Information Commissioner, 9 October 2009) at [104], *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33], *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20] and *S59 and Griffith University* [2025] QICmr 29 (3 June 2025) at [18].

application may not be unilaterally widened on external review.¹⁶ The Information Commissioner has held that although the principles outlined in those cases are ‘in the context of the repealed FOI Act’ they ‘remain relevant and are consistent with the object and pro-disclosure bias of the RTI Act’.¹⁷

Applicant’s submissions

8. The applicant acknowledged that, during the review process, *‘agreement was reached for narrowing the scope of the information request to; all internal communications involving’* the named individuals and City Architect.¹⁸ However, in his final submissions to OIC, responding to OIC’s preliminary view letter, he submitted *‘the wording of the search be refined’* to also capture:¹⁹

- *‘all drafts and comments on all versions of draft documents’ in connection with the ‘Delegated Report’*
- transcripts of a meeting held on 5 September 2019 between Council and a commercial entity
- information to *‘show basis’* for comments made at the 5 September 2019 meeting
- *‘information/content for any meetings or communications whereby ministerial approval or prospective ministerial approval, and State Government will, were to have bearing on GCC’s approval of the development’*
- *‘meeting notes and information on discussions’* after the 5 September 2019 meeting.

9. Further, the applicant submitted:²⁰

It would be reasonable to expect that post the 05/09/2019 ‘Response to Information Request’ meeting with [third party] there would have been, and should have been, considerable discussion and deliberation between the Council officers attending the meeting. While not in attendance at the meeting, it is reasonable to assume [named person] would also have been involved in discussions.

...

It is considered the scope of my original RTI application includes all transcripts and or recordings of the meeting on 05/09/2019 between Gold Coast Council officers ... [and relevant third parties].

It is also considered that the scope of my original application would have included all drafts and comments on all versions of draft documents, showing the progress of drafts to final document and comments shown in the Delegated Report for approval of a child care centre development (MCU/2019/238).

It is appreciated that the extent of the searches is enormous and cumbersome. It also has to be appreciated that outcomes of the searches potentially lead to profound public interest consequences.

Moving ahead, in consideration of information processing times, perhaps searches can be confined to the following - all are identifiable in the ‘Response to Information Request’ document by [third party] and were listed on the agenda for the meeting on 05/09/2019

1) Amended Proposal Plans & CPTED Letter

¹⁶ *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]; and *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].

¹⁷ *Lindeberg and Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts* [2023] QICmr 34 (30 June 2023) at [19].

¹⁸ Page 12 of submission dated 16 May 2025.

¹⁹ *Ibid.*

²⁰ Pages 12-13 of submission dated 16 May 2025

- 2) Architectural considerations
- 3) Stadiums QLD & [third party] correspondence
- 4) Economic Needs Assessment

10. The applicant also submitted:²¹

Evidence has been provided to substantiate the case that information relevant to the public interest exists and that the information has significant public interest consequences justifying the release of that information.

Information searches should include Council's correspondence (if any) with the Departments of Sport, and Planning and Infrastructure. This was listed in the scope of the original RTI application to GCC.

While the information requested may represent a substantial impact on an agency's resources, it is considered the processing of the request is not unreasonable. Public interest issues involving alleged apprehended bias and malfeasant public administration should be prioritised.

Findings

11. By the applicant's own admission, the 'extent of the searches [which he requested] is enormous'.²² The anticipated scale of searches necessarily led, by agreement, to the scope of the access application being narrowed on external review to the Agreed Scope, limited to internal communications involving specific Council officers and the City Architect.
12. The applicant has received access to over 2,300 documents from Council in response to this application. The applicant acknowledges²³ that he has received information of interest to him including emails which provided background/context to Council's decision to approve the development. Disclosure of this information appears to have given rise, in the applicant's mind, to further lines of inquiry pertaining to the development application approval process, and in particular, the 5 September 2019 meeting and further documents associated with that meeting. It is not uncommon for applicants to identify further lines of inquiry after receiving documents from an agency. However, such further lines of inquiry must still be tested against the scope of the application, and the reasonableness of any further searches (discussed below). In many cases, a fresh access application, framed in clear and unambiguous terms, to the agency to allow the application and search process to be recommenced, within revised and defined search parameters, will be required.
13. As noted at paragraph 7, it is well settled that an applicant cannot unilaterally broaden the scope of an application on external review. For the purpose of this review, I consider the Agreed Scope as confirmed by OIC to the applicant on 20 August 2024, represents the scope of this external review. I do not accept the applicant's submission on further *refining* of the scope, nor to the extension of search terms to capture draft documents, nor specific further documents he is seeking in connection with the 5 September 2019 meeting. Therefore, in assessing the reasonableness of Council's searches below, I have done so within the parameters set by the Agreed Scope.

²¹ Page 21 of submission dated 16 May 2025.

²² Page 13 of submission dated 16 May 2025.

²³ In a phone call with OIC on 28 February 2025.

Existence of further documents

Relevant law

14. Under the RTI Act, an individual has a general right to be given access to documents held by a Queensland government agency.²⁴ While the legislation is to be administered with a pro-disclosure bias,²⁵ the right of access is subject to certain limitations, including grounds for refusing access.²⁶ Relevantly, access to a document may be refused if there are reasonable grounds to be satisfied it does not exist.²⁷
15. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, recordkeeping practices and procedures and the nature and age of requested documents.²⁸ By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained.
16. Where searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances. 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
17. On external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.³⁰ However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.³¹ Suspicion and mere assertion will not satisfy this onus.³²

²⁴ Section 23 of the RTI Act.

²⁵ Section 44 of the RTI Act.

²⁶ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.

²⁷ Section 52(1)(a) of the RTI Act.

²⁸ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15] and *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12].

²⁹ 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. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

³⁰ Section 87(1) of the RTI Act.

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

³² *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].

Applicant's submissions

18. The applicant's submissions set out at paragraphs 8-10 of these reasons outline his concerns about additional documents. Given my finding that the scope of this review is limited to '*internal communications*', the submissions which go beyond the parameters of the Agreed Scope, similarly fall outside the scope of the issue for determination and I have therefore, not considered them in making my decision.

Council's searches and submissions

19. Council provided submissions outlining the searches and enquiries conducted by its officers.³³ As set out in these reasons, Council located and released over 2300 pages to the applicant in response to this application, including plans, reports, meeting minutes, and a significant volume of internal Council emails.
20. Council provided further information³⁴ about its searches, recordkeeping systems and practices, and operations of the relevant business unit, as set out below:

*Upon receiving the original RTI application, Council's RTI team undertook detailed searches for documents relating to Development Application MCU/2019/238. These searches were conducted in **Objective Navigator**, our centralised electronic document and records management system (EDRMS), using the reference number **MCU/2019/238** as identified by the applicant. A search action form was completed and signed by an RTI officer on **6 October 2023** ... documenting the process and results of the search.*

As part of Council's internal business process, following this initial search, the RTI team contacted the relevant business unit (Planning and Assessment) via email, confirming that records relating to the relevant development application had been extracted and requesting confirmation that no additional documents existed outside the records located in Objective Navigator ... it was verbally confirmed at the time that no further documents were held beyond what had been retrieved and recorded.

21. And further:³⁵

*Council's **Pathway system** is used to log all development applications against the relevant property. Each application, including MCU/2019/238, is then linked to a corresponding file in Objective Navigator. This file is named according to the development application reference number and contains all relevant documentation for the matter, including internal and external correspondence, assessments, reports, and related material.*

The Planning and Assessment business unit is well-versed in these procedures and consistently stores all records associated with development applications in the designated Objective file. Given this centralised and systematic recordkeeping approach, it is Council's position that a search of the relevant MCU file within Objective Navigator encompasses all documentation held in response to the narrowed scope of the application.

Findings

22. Having reviewed the located information, and Council's submissions on its searches, I am satisfied that the searches conducted by Council were appropriately informed by the details provided by the applicant in the access application, the Agreed Scope on external review and Council's record-keeping practices (such as the use of Objective Navigator - as the primary storage facility for documents related to a development application - and the Pathway system).

³³ Council email dated 10 July 2025 attaching completed search form.

³⁴ Ibid

³⁵ Ibid.

23. I am further satisfied that the direct inquiries with the Planning and Assessment business unit constituted a further reasonable step taken by Council to search for relevant documents. The extensive number of emails that were located and released to the applicant during the review process, in my view, demonstrate that further relevant documents were identified through those inquiries.
24. I accept Council's submission that the relevant business unit '*consistently stores all records*' in the designated Objective file and that due to this recordkeeping practice, there are no reasonable grounds to believe further documents, *within* the Agreed Scope, exist outside of that system.
25. The applicant firmly believes further internal communications were undertaken by Council officers in relation the development. Given the scale of and community interest in the development, that very well may be the case; however, for the purpose of this review, there must be reasonable grounds to believe further documents exist *within* the Agreed Scope so as to warrant further searches *on this application*. As noted above, following his careful examination of the released documents from Council (over 2300 pages), the applicant identified additional documents which he considers relevant to his interests, e.g. documents in connection with the 5 September 2019 meeting. In addition to seeking further information, the applicant also conceded the extent of searches he seeks is '*enormous*' and the information request would have a '*substantial impact*' on Council's resources. To my mind, the applicant's submissions (and attempts to reframe the scope on review) demonstrate that the extent of information of interest to the applicant remains exceptionally broad, reinforcing the view that further documents are beyond the parameters of the Agreed Scope.
26. I acknowledge that the applicant has significant concerns around Council's handling of the development approval process, and the conduct of officers involved, and that he is seeking to pursue access to information to substantiate those concerns. It is also apparent that the applicant is seeking to look behind decisions that were made by Council to gain further insight into why certain actions were/were not taken in relation to the development. He is also specifically seeking to interrogate any Council deliberations following the 5 September 2019 meeting. While I recognise that these are genuinely held concerns of the applicant, and that he considers there to be public interest value in his pursuit of information from Council, I do not consider his submissions establish reasonable grounds to believe that further documents falling within the Agreed Scope exist, nor am I satisfied that it would be reasonable for Council to conduct any further searches *on this application*. I am satisfied, based on the evidence available to me that the applicant's ongoing concerns about additional documents would require searches that would not, to my mind, be reasonable steps for Council to take in response to the Agreed Scope.
27. Given the terms of the original application, the parameters of the Agreed Scope, the nature and extent of searches that have been undertaken by Council, the extensive number of documents located to date and Council's relevant recordkeeping systems, practices and business unit operations, I am satisfied that further documents responding to the Agreed Scope do not exist. Accordingly, access to further documents may be refused on that basis.

DECISION

28. For the reasons set out above, I vary³⁶ the decision under review and find that Council may refuse access to any further documents falling within the terms of the Agreed Scope under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they are nonexistent.
29. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



K Shepherd
Assistant Information Commissioner

Date: 15 September 2025

³⁶ Section 110(1)(b) of the RTI Act.