



Decision and Reasons for Decision

Citation:	<i>B33 and A Magistrates Court of Queensland [2025] QICmr 65 (8 October 2025)</i>
Application Number:	318778
Applicant:	B33
Respondent:	A Magistrates Court of Queensland
Decision Date:	8 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - application for CCTV recordings - whether access may be refused on the basis the recordings are nonexistent or unlocatable - 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 under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to access two closed circuit television recordings depicting the applicant at the Atherton Courthouse on 28 May 2024 and 21 June 2024 (**CCTV Recordings**) and a body worn camera recording of the applicant at a particular police station on 27 March 2024 (**BWC footage**).¹
2. As the applicant sought documents held by separate agencies, the Magistrates Court (**Court**) dealt only with the part of the access application which sought the CCTV Recordings.
3. The Court decided,² under section 52 of the IP Act, that the part of the access application which requested CCTV Recordings fell outside the scope of the IP Act, as the CCTV Recordings related to the judicial functions of the Court.

¹ Access application dated 9 May 2025. On 1 July 2025, key parts of the *Information Privacy and Other Legislation Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009 (Qld)* (**RTI Act**). As the applicant's access application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**.

² Decision dated 13 June 2025, which was issued by the Assistant Director-General/Principal Registrar of the Magistrates Court Service.

4. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of the Court's decision about the CCTV Recordings.⁴ The Department of Justice (**Department**) provided submissions on behalf of the Court during the review.
5. For the reasons set out below, I vary the decision under review and find that access to the CCTV Recordings may be refused on the basis they do not exist.⁵

Background

6. On 8 July 2024, the applicant provided a written request to the Court, seeking access the CCTV Recordings (**Initial Request**).
7. Shortly after receiving the Initial Request, the Court notified the applicant that the CCTV Recordings did not include sound and asked whether the applicant wished to proceed with the Initial Request.⁶ The applicant confirmed that they did wish to proceed.
8. Subsequent to that confirmation, the applicant was informed that certain approval was required in respect of the Initial Request.
9. The applicant sought updates from the Court about the progress of the Initial Request and, on 13 December 2024, the Court notified the applicant that the CCTV Recordings were no longer available to be retrieved from the server.
10. The applicant was dissatisfied with the manner in which the Initial Request had been dealt with and subsequently lodged the formal access application.

Reviewable decision

11. The decision under review is the Court's decision dated 13 June 2025.

Evidence considered

12. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons.
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ 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 RTI Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁹

³ On 10 July 2025.

⁴ Accordingly, this decision does not deal with the applicant's request for the BWC footage.

⁵ Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

⁶ The applicant submitted this notification from the Court was received on 10 July 2024.

⁷ Section 21 of the HR Act.

⁸ *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]. This approach, in the context of the IP Act and RTI Act, was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

⁹ I note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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*'.

14. The applicant provided a number of submissions to OIC. I have summarised and addressed the applicant's submissions below, to the extent they are relevant to the issue for determination.
15. In respect of the submissions that are not relevant to the issue for determination, these generally relate to concerns the applicant has about the manner in which the Initial Request was dealt with.¹⁰ While I acknowledge the applicant's disappointment with not being able to obtain the CCTV Recordings via the Initial Request (that is, outside the IP Act formal access process), the formal access application (not the Initial Request) is the subject of the decision under review. OIC's jurisdiction under the IP Act relates only to decisions made about access to documents¹¹ held by government agencies and does not extend to any consideration of the applicant's concerns about the separate process associated with the Initial Request. Accordingly, in this decision, I have not addressed the applicant's submissions which are not relevant to the issue for determination.

Issue for determination

16. On external review, the Department maintained that the application for the CCTV Recordings fell outside the scope of the IP Act, as the recordings related to the judicial functions of the Court.¹² However, the Department also confirmed that, in any event, the CCTV Recordings were no longer in existence, having been overwritten prior to the Court's receipt of the access application.
17. The issue for determination is therefore whether access to the CCTV Recordings may be refused under the IP Act, on the basis they do not exist or cannot be located.¹³

Relevant law

18. Under the IP Act, an individual has a right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.¹⁴ This access right is subject to limitations, including the grounds on which access to information may be refused.¹⁵
19. Access may be refused to a document where the document is nonexistent or unlocatable.¹⁶

¹⁰ For example, the applicant's email dated 9 September 2025 requested that OIC 'research...the veracity of' statements made by Court staff concerning the approvals required in respect of the Initial Request.

¹¹ And, where relevant, amendment of documents.

¹² Under section 52 of the IP Act, an agency may decide that an application is outside the scope of the Act if it is made to an entity that is not an agency of the purpose of Chapter 3 of the IP Act. By virtue of other legislative provisions (that is, section 17 of the IP Act, sections 14 and 17 of the RTI Act and schedule 2, part 2, items 1 and 2 of the RTI Act), an application made to the following entities will fall outside of the IP Act:

- a court or the holder of a judicial office or other office connected with a court, in relation to the court's judicial functions; and
- a registry or other office of a court, or the staff of a registry or other office of a court in relation to their official capacity, so far as its or their functions relate to the court's judicial functions.

¹³ Given the findings I have made about this issue, it has not been necessary to also address whether the CCTV Recordings, or any of them, fall outside the scope of the IP Act.

¹⁴ Section 40 of the IP Act.

¹⁵ The grounds on which access can be refused are set out in section 47 of the RTI Act. Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

¹⁶ Sections 47(3)(e) and 52(1) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act.

20. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:¹⁷
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities¹⁸
 - 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.
21. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.¹⁹ However, searches may be relied on to satisfy the decision-maker that a document does not exist—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.²⁰ What constitutes reasonable steps will vary from case to case.²¹
22. In assessing an agency's searches, the Information Commissioner has confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.²²
23. To determine whether a document exists, but is unlocatable, 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 it.²³ In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.²⁴
24. Under section 137(2) of the IP Act, 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.²⁵ QCAT has confirmed that the equivalent provision in 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.²⁶
25. 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

¹⁷ These factors are identified in *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) at [37]-[38] (*PDE*). These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

¹⁸ Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

¹⁹ For example, where a particular document was not created because the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document.

²⁰ As set out in *PDE* at [49].

²¹ 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.

²² *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

²³ Section 52(1)(b) of the RTI Act.

²⁴ *Pryor* at [21].

²⁵ The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review.

²⁶ *Webb v Information Commissioner* [2021] QCATA 116 at [6].

decision adverse to the applicant.²⁷ However, where an external review involves the issue of missing documents and the decision under review indicates the conducted searches encompassed record-keeping systems where the requested documents would likely be stored,²⁸ there is a practical onus placed on the applicant to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.²⁹

Findings

26. Given the Court confirmed to the applicant on 10 July 2024 that the CCTV Recordings did not have sound, I consider it is reasonable to conclude that they existed on that date.
27. However, on external review, the Department has confirmed that:
- it has a routine overwrite process in place for CCTV footage after 30 days
 - the CCTV Recordings were not extracted at the time of the Initial Request; and
 - the Court had notified the applicant, prior to her lodgement of the formal access application, that the CCTV Recordings were no longer able to be retrieved from the Court's server.
28. During the review, a search was conducted of the Court's registry drive, where the CCTV Recordings would, if they existed, be stored. The CCTV Recordings were not located by this search, which was conducted by a senior officer within Information Technology Services division of the Department.³⁰ There is nothing before me which calls into question the efficacy of this conducted search.
29. Having considered the information before me, including the parties' submissions, I am satisfied that all reasonable steps have been taken to locate the CCTV Recordings and access to them may be refused,³¹ on the basis they do not exist.

DECISION

30. For the reasons set out above, I vary the reviewable decision³² and find that access to the CCTV Recordings may be refused on the basis they do not exist.³³
31. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.



T Lake
Principal Review Officer

Date: 8 October 2025

²⁷ Section 100(1) of the IP Act.

²⁸ In reviewing such information, the Information Commissioner (or delegate) may form a view that an agency has taken reasonable steps to identify and locate requested documents.

²⁹ *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].

³⁰ This division forms part of the Department's Corporate Services unit.

³¹ Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

³² Under section 123(1)(c) of the IP Act.

³³ Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.