



Decision and Reasons for Decision

Citation:	<i>Kroymans Developments Pty Ltd and Cairns Regional Council [2025] QICmr 102 (18 December 2025)</i>
Application Number:	318719
Applicant:	Kroymans Developments Pty Ltd (ACN 636 101 687)
Respondent:	Cairns Regional Council
Decision Date:	18 December 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits agency did not locate all relevant documents - whether agency has conducted all reasonable searches - whether access to further documents may be refused on the basis they are unlocatable - sections 47(3)(e) and 52(1)(b) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Cairns Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)² for access to certain documents concerning a project meeting held on 23 January 2025:

Any minutes, file notes or records regarding Pinecrest Estate or Kroymans Developments Pty Ltd, specifically the briefing notes and any minutes of the project meeting held on 23 January 2025 as well as any relevant direct email correspondence from [named] Council Personnel...

2. Council located 15 responsive pages and decided³ to give full access to three pages, and partial access to 12 pages. It refused access to some information on the grounds that its disclosure would, on balance, be contrary to the public interest.

¹ Valid application received 10 March 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's application was made before this change, the RTI Act and IP 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 RTI Act and IP Act in this decision are to those Acts **as in force prior to 1 July 2025**. These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> respectively.

³ Decision dated 10 April 2025.

3. The applicant sought internal review of Council's decision⁴ on the basis of missing documents. The applicant contended that some additional documents should exist in Council's possession, including (relevantly) a draft version of the project meeting minutes that was stated to be attached to released emails and that was described as containing comments in red text (**Minutes**).
4. In its internal review decision,⁵ Council advised that '*a thorough search of [its] records had been conducted, including a review of the email attachments and associated file notes*'. A copy of the Minutes was not located. While Council's decision was to 'uphold' its initial decision, it is apparent that it intended to refuse access to the Minutes on the basis that they were unlocatable under section 47(3)(e) and section 52(1)(b) of the RTI Act.
5. By application dated 17 June 2025, the applicant⁶ applied to the Office of the Information Commissioner (**OIC**) for review of Council's decision.
6. For the reasons set out in this decision, I decide to affirm Council's decision that the Minutes are unlocatable and that access to them may therefore be refused under section 47(3)(e) and section 52(1)(b) of the RTI Act.

Reviewable decision

7. The decision under review is Council's internal review decision dated 6 June 2025.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes).⁷

Issue for determination

9. The only issue for OIC's determination is whether access to the Minutes may be refused under the RTI Act on the grounds that the Minutes are unlocatable. The Minutes are referred to as comprising attachments to emails between Council staff dated 24 January 2025 and 29 January 2025.

Relevant law

10. The RTI Act permits an agency to refuse access to information where the requested information is nonexistent or unlocatable.⁸

⁴ On 13 May 2025.

⁵ Dated 6 June 2025.

⁶ The applicant was represented throughout the review by its lawyers.

⁷ Including the *Human Rights Act 2019* (Qld) (**HR Act**), to the extent necessary to do so. The participants in this review are not 'individuals', and only individuals have human rights under the HR Act, section 11. However, Kingham J in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33 at [90] indicated that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and to not act or make a decision that is not compatible with human rights. To the extent then that it is necessary to observe relevant rights under section 58(1) of the HR Act, I am satisfied that I have done so. This is because in observing and applying the law prescribed in the RTI Act, as I have done in this case, an RTI decision maker will be '*respecting and acting compatibly with*' applicable human rights as stated in the HR Act (*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].) In this regard, I note Bell J's observations at [573] of XYZ on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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 Sections 47(3)(e) and 52(1) of the RTI Act.

11. 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 it, but it cannot be found.⁹
12. Under section 130(2) of the RTI Act, the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate requested documents. QCAT confirmed in *Webb v Information Commissioner*¹⁰ that this '*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. OIC is also reliant on the agency's own knowledge of its structure, and its records management systems, practices and procedures, to determine whether the searches by the agency have been reasonably targeted, and ought reasonably be expected to have located the requested document.
13. In determining whether a document is unlocatable, it is necessary for OIC to consider the specific circumstances of each case,¹¹ and in particular whether:
 - there are reasonable grounds for the agency to be satisfied that the requested documents have been, or should be, in the agency's possession;¹² and
 - the agency has taken all reasonable steps to find the document.¹³
14. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted by an agency during an external review. In assessing an agency's searches, the Information Commissioner has confirmed that the relevant question is whether the agency has taken all *reasonable* steps to identify and locate responsive documents, as opposed to all *possible* steps.¹⁴
15. What constitutes reasonable steps will vary from case to case. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.¹⁵
16. 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.¹⁶ Where the issue of missing documents is raised on external review, the agency must demonstrate that reasonable steps have been taken to identify and locate relevant documents.¹⁷ If the applicant maintains further documents exist, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation. Suspicion and mere assertion will not satisfy this onus.¹⁸

⁹ Section 52(1)(b) of the RTI Act.

¹⁰ [2021] QCATA 116 at [6].

¹¹ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

¹² Section 52(1)(b)(i) of the RTI Act.

¹³ Section 52(1)(b)(ii) of the RTI Act.

¹⁴ *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].

¹⁵ As set out in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [38].

¹⁶ Section 87 of the RTI Act.

¹⁷ Section 130(2) of the RTI Act.

¹⁸ *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

Submissions of the parties

17. At the commencement of the review, Council was asked to provide details of the searches it had conducted in an effort to locate the Minutes. A summary of Council's search advice¹⁹ was provided to the applicant as follows:²⁰

Areas/databases searched	Search terms
DM (Electronic Document Records Management System) Authority/CRM (Councils Property and Customer Request Management System) Off-site Storage Facility (Grace Web Portal) A review of all available document version control features accessible in Council's document management system; and Direct enquiries with [Council officer who created the Minutes].	*Pinecrest Project Meeting* *Pinecrest* - Dated 20/01/2025 to 07/02/2025 *Kroymans* - Dated 20/01/2025 to 07/02/2025 *Pinecrest**Meeting* – Dated 20/01/2025 to 07/02/2025 *Pinecrest**Meeting* - (no dates)

18. In response,²¹ the applicant submitted that it was reasonable to ask Council to conduct additional searches using further key words suggested by the applicant. The applicant also contended that, as the emails to which the Minutes were attached were able to be located by Council, it was not 'logical' that the Minutes could not be found. The applicant also raised the document retention requirements contained in the *Public Records Act 2023* (Qld) and argued that, as Council was required to retain the Minutes, they therefore should be locatable.
19. The applicant's submissions were communicated to Council²² with a request that it consider the submissions and undertake any necessary further searches. Council was also asked to provide a signed search certificate from the officer to whose emails the Minutes were attached, and to confirm that all available document version control features accessible in Council's document management system had been used in an effort to locate the Minutes.
20. In response,²³ Council reaffirmed the information it had provided previously regarding its use of document version control features to search for the Minutes in its document management system. It also provided a search certificate setting out the searches conducted of the relevant officer's computer:

Time taken	Locations searched and reasons for that location	Description of searches/action taken	Result of searches	Comments/reasons why not located

¹⁹ Provided in emails from Council on 2 and 25 July 2025.

²⁰ Letter to applicant dated 29 July 2025.

²¹ Letter from the applicant dated 15 August 2025.

²² Letter to Council dated 20 August 2025.

²³ Email from Council on 1 September 2025.

30mins	Computer Name: CL3H5X3	'commentary in red text'	Nil.	Search results showed no documents.
	Includes: Desktop	'red comments for review'	Nil.	Search results showed no documents.
	[name of officer] (\\admin\home)	'red text'	Text Sidebar (annual report Red and black design)	Not relevant.
	(H:)			
		'Draft Minutes of 23 January 2025'	Nil.	Search results showed no documents

21. Council further submitted as follows:

Council has undertaken reasonable steps to locate the red text in the original Meeting Minutes. These steps included a thorough review of all available document version control features accessible in Council's document management system, as well as direct enquiries with [name of Council officer].

Despite these efforts, Council has been unable to locate the missing red text portion of the Meeting Minutes. Accordingly, Council considers that the red text is unlocatable.

22. This information was communicated to the applicant, together with my preliminary view that Council has taken all reasonable steps in an effort to locate the Minutes.²⁴ However, the applicant rejected my preliminary view and continued to maintain that further searches and inquiries were reasonably required. It (relevantly) submitted as follows:²⁵

...

... the original documents provided by Council clearly demonstrate the existence of an attachment to the email dated 29 January 2025 titled "LIVE7558787MMonthly_Meeting_Minutes_Rocky_Creek_Operational_Matters.DOCX.DRF"

*3. We consider that the red-text document is still **locatable** because Council have already provided the email which it was attached to.*

4. Having regard to the orthodox legal principles set out in paragraph 2 above (and adopting the sub-paragraph numbering used in that paragraph), our client's position is that:

a. The specific circumstances of this case are such that it does not appear to be in dispute that the document sought exists and Council have previously located an email which it was attached to;

²⁴ Letter dated 30 September 2025.

²⁵ Letter dated 17 October 2025.

- b. *In those circumstances, it defies logic that Council can not only not locate the document but be considered to have taken reasonable steps to locate the document; and*
- c. *In these circumstances, our client's position rises well above suspicion or mere assertion and our client has discharged its practical onus of establishing that Council has not discharged its obligation.*
5. *Section 3(2) of the Right to Information Act 2009 ("**the Act**") provides that "the Act must be applied and interpreted to further the primary object" (emphasis added).*
6. *The primary object of the Act is set out in section 3(1)(a) of the Act to give:*
- A right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.
7. *The Act expressly confers on our client a right of review against the decision of Council in circumstances where Council maintains that the document is unlocatable. If Parliament intended for there to be no ability to review such decisions (which appears to be the practical effect of the preliminary conclusion reached by your office) then it is submitted that Parliament would have expressly stated that in the Act. This reading is also consistent with the object of the Act.*
8. *Relevantly, no public interest ground been advanced by Council as to why the document ought not to be disclosed.*
9. *Accordingly, we request that the Council carry out further, more thorough investigations before issuing any final determination under section 11 of the RTI Act. We refer you also to the submissions dated 15 August 2025 (**attached** for your ease of reference).*
23. The applicant also provided a list of additional search terms that it requested be used to conduct further searches, including '*DELETED reference to red-text*'. Alternatively, the applicant submitted that '*Council could simply access the copy of the email already provided, and retrieve the attachment*'.
24. Again, the applicant's submissions were communicated to Council, including the suggested additional search terms.²⁶ Council responded as follows:²⁷

Further Searches Proposed by the Applicant

Council has reviewed the additional search terms suggested by the applicant. Where feasible and relevant to the scope of the original access application, Council has conducted further searches across applicable systems and information sources.

These include:

DM (Electronic Document Records Management System)

Authority/CRM (Councils Property and Customer Request Management System)

Outlook archives and shared drives, using the proposed keywords and date ranges.

1. *The outcome of these searches did not yield any new documents responsive to the application. Council remains committed to transparency and has taken reasonable steps to ensure all relevant records have been identified.*
2. *Explanation of existing search coverage and recordkeeping [I]limitations Council considers that the initial searches conducted were comprehensive and appropriately directed. The original search strategy included terms and parameters that encompass the applicant's proposed keywords.*

²⁶ Email dated 21 October 2025.

²⁷ Email of 22 October 2025.

For example, searches were conducted using broader and synonymous terms that would have captured documents containing the applicant's suggested phrases.

...

Staff recollections and manual checks did not identify any further responsive documents.

25. By letter dated 28 October 2025, I communicated a further preliminary view to the applicant, responding to the applicant's submissions set out at paragraphs 22 and 23 above, and taking account of Council's latest search response set out above in paragraph 24:

- *The existence of the attachment at one time is not in contention – the **only** issue for OIC to determine in this review whether the searches and inquiries conducted by Council in an effort to locate the attachment have been reasonable in all the circumstances.*
- *Simply asserting that the attachment must be locatable because Council located the email to which it was attached and that it 'defies logic' that the attachment cannot be located does not assist in advancing the issue that OIC must consider – that is, whether Council has taken all reasonable steps to try to locate the attachment.*
- *The public interest balancing test contained in the RTI Act has no relevance and no application to the issue of whether an agency has taken all reasonable steps to locate a missing document.*
- *Your argument that 'no public interest ground has been advanced by Council as to why the document ought not be disclosed' is misguided: Council has not disclosed the attachment because it is unable to locate it, not because it is arguing that it is contrary to the public interest to disclose it.*

I reject your assertion that the practical effect of OIC's preliminary view is that there has, in fact, been no review of Council's position that the attachment cannot be located. The steps taken in this external review to date are as follows:

- *Upon commencement of the review, OIC asked Council to clarify the searches that Council had undertaken to try to locate the attachment. It also required Council to provide a completed search certification.*
- *After considering that information, OIC asked Council to provide further information confirming that searches had been conducted of all available document version control features, and that inquiries has been made directly with [a Council officer]. Council provided that confirmation.*
- *A first preliminary view was then communicated to you.*
- *You responded to the preliminary view on 15 August 2025, suggesting further key word searches.*
- *Your submissions were communicated to Council and Council was asked to undertake further searches and inquiries.*
- *Council responded with a fresh search certification, confirming that the keyword searches had been conducted, without success.*
- *OIC communicated this to you in conjunction with a second preliminary view on 30 September 2025.*
- *You responded with a further submission on 17 October 2025, suggesting more search terms.*
- *Council was asked to consider the additional terms you had suggested and conduct any further necessary searches or inquiries.*

Council has now provided its response to your final submission as follows: [as per paragraph 24 above].

Having regard to these searches and inquiries, it remains my preliminary view that Council has discharged the onus upon it to take all reasonable steps to locate this document. On the information presently before OIC, I am unable to identify any further searches or inquiries that it would be reasonable to ask Council to undertake in an effort to locate the document. As

noted, it is not OIC's role to somehow check Council's records – OIC is entitled to rely upon Council to do the actual searching, and upon Council's own knowledge of its records management system to identify reasonably targeted searches.

In terms of the practical onus on your client, the additional search terms you provided have been searched by Council, without success. As noted, a mere assertion that the attachment must exist because it once existed, and because the email it was attached to exists, is not helpful. Nor is the suggestion that 'Council could simply access the copy of the email already provided, and retrieve the attachment'.

26. Again, the applicant declined to accept my preliminary view and advised, in a letter dated 3 November 2025, that it required OIC to proceed to a formal decision in order to finalise the review:

If your office is minded to give any further direction to Council, we are instructed that your office could direct Council to:

- 1. search the emails on their server for the specific email in question, using the exact date and time and or subject searches if required; and/or*
- 2. provide all emails in relation to this subject matter that are between [officers A, B and C] for at least 30 days from the date of the subject email and 7 days prior. This search is for all emails from [officer A] and [officer B] to [officer C] and any emails from [officer C] to [officer A] or [officer B].*

27. In a final effort to resolve the review, Council was provided with a copy of the applicant's submission and was asked to conduct a search of its server for the two emails to which a copy of the Minutes was attached.²⁸ In response, Council confirmed that a search had been conducted by Council's Coordinator, Infrastructure & Operations, Information & Technology Services. While the relevant emails and attachments were successfully retrieved, no version of the Minutes containing red text commentary was located in the attachments.²⁹ Council was asked to release the located emails and their attachments to the applicant, which it did on 11 November 2025. Also on 11 November 2025, I advised the applicant that, in light to the results of the searches conducted in response to item 1 of the applicant's letter dated 3 November 2025 (see paragraph 24 above), I did not consider that the item 2 searches were reasonably required in an effort to locate the Minutes. I also noted that the applicant's request in item 2 went beyond the scope of the access application, which only sought email correspondence from officers B and C.

28. The applicant again confirmed in response³⁰ that it was not agreeable to resolving the review and that it required OIC to proceed to a decision. It also noted that it had not been provided with any emails from officer C, and submitted that it was reasonable to expect that the Minutes may have been included in an email sent by officer C.

Findings

29. It seems clear that the Minutes existed at one time in Council's records and formed attachments to two internal emails dated 24 January 2025 and 29 January 2025. The only issue for OIC to determine is whether Council has taken all reasonable steps to try to locate the Minutes. As noted, OIC is reliant upon Council both to identify reasonably targeted searches in its records system, and to conduct the actual searches for the Minutes.

²⁸ Email to Council on 6 November 2025.

²⁹ Email from Council on 10 November 2025.

³⁰ Letter dated 14 November 2025.

30. Having regard to the searches conducted by Council, as set out in detail above, I am satisfied that Council has discharged the onus upon it to demonstrate that that it has taken all reasonable steps to try to locate the Minutes. Based on the search information provided by Council and the various search terms used to conduct those searches, I consider that Council has conducted reasonably targeted searches of its:
- document management system (including using document version control features)
 - customer request system
 - server
 - Outlook email system
 - shared drives; and
 - offsite storage facility
31. In addition, Council made direct inquiries with the officer to whose emails the Minutes were attached. Searches of that officer's computer were also conducted, without success.³¹
32. On the information before me, I am unable to identify any further searches or inquiries that it would be reasonable to ask Council to undertake in an effort to locate the Minutes. I am not satisfied that the applicant has discharged the practical onus upon it to demonstrate that Council has not discharged its reasonable search obligations. I note that, late in the review and in its final submission, the applicant contended that further searches for emails sent by officer C should be conducted in an effort to locate the Minutes. However, I am satisfied that the searches already conducted by Council, as identified above (including of its email system), should reasonably have been expected to locate the Minutes.
33. I note the applicant's contention that Council may be in breach of the *Public Records Act 2023* (Qld) if it has disposed of the Minutes. Whether or not that is the case is not a matter that OIC has jurisdiction to determine under the RTI Act. It is open to the applicant to raise that matter with the State Archivist if it so wishes.

DECISION

34. For the reasons set out above, I decide to affirm Council's decision³² that the Minutes are unlocatable and that access to them may therefore be refused under section 47(3)(e) and section 52(1)(b) of the RTI Act.
35. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



R Moss
Principal Review Officer

Date: 18 December 2025

³¹ See paragraph 20 above.

³² Under section 110(1)(a) of the RTI Act.