



Decision and Reasons for Decision

Citation:	<i>Sensus Building Group Pty Ltd ACN 153 602 861 and Queensland Building and Construction Commission [2022] QICmr 32 (23 June 2022)</i>
Application Number:	315837
Applicant:	Sensus Building Group Pty Ltd ACN 153 602 861
Respondent:	Queensland Building and Construction Commission
Decision Date:	23 June 2022
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - request for documents generally related to a building works complaint - whether agency has taken all reasonable steps to locate the requested documents - whether access to further documents may be refused on the ground they are nonexistent or unlocatable - sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Queensland Building and Construction Commission (**QBCC**) for access to certain information generally relating to a complaint made about building works undertaken by the applicant.¹
2. QBCC located relevant documents and disclosed these to the applicant, subject to the deletion of irrelevant information.²
3. The applicant sought an internal review of the decision and raised concerns that QBCC had not located all requested documents.³ On internal review, QBCC upheld its original decision and did not locate any additional, relevant documents.⁴

¹ The access application is dated 23 June 2020 and became compliant on 27 July 2020. The applicant subsequently agreed to narrow the scope of the access application in correspondence with QBCC dated 3 September 2020 (**Application**).

² Decision dated 19 October 2020, which confirmed QBCC had located 955 pages and 1 audio recording and decided to disclose that information, subject to deletion of irrelevant information from documents it located as relevant to Items 3 and 7 of the Application.

³ Internal review application dated 16 November 2020.

⁴ Internal review decision dated 14 December 2020.

4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review.⁵
5. During the review, QBCC disclosed further information to the applicant.⁶ Following this disclosure, the applicant confirmed that it only continued to seek access to further documents relevant to Items 1 to 5 of the Application, and generally asserted that '*good governance procedures*' suggested that such further relevant documents should exist.⁷
6. For the reasons set out below, I vary QBCC's decision and find that access to any further documents may be refused on the basis that they do not exist or are unlocatable.⁸

Background

7. QBCC is the State's building and construction industry regulator and, relevant to this review, QBCC has responsibility for considering complaints that it receives about defective or incomplete building work.⁹
8. In April 2017, QBCC received a homeowners' complaint about building work undertaken by the applicant. After investigating the complaint, QBCC decided to issue a Direction to Rectify to the applicant¹⁰ (**First Direction**) for some, but not all, of the complaint items. Both the applicant and the homeowners sought internal review of that decision. After completing certain property inspections, QBCC notified the applicant and the homeowners on 28 November 2017 that:
 - the First Direction was withdrawn
 - a new direction would be issued; and
 - as a result, the internal review applications were also taken to have been withdrawn.
9. QBCC subsequently issued a new Direction to Rectify to the applicant¹¹ for some, but not all, of the complaint items. Again, both the applicant and the homeowners sought internal review. On 21 June 2018, QBCC notified the applicant and the homeowners of its internal review decisions.¹²
10. The homeowners applied to the Queensland Civil and Administrative Tribunal (**QCAT**) for review of QBCC's internal review decisions (**Homeowners' Proceeding**).¹³ In February 2020, QCAT confirmed QBCC's internal review decision to the homeowners and amended QBCC's internal review decision to the applicant, by requiring that QBCC direct the applicant to rectify one additional complaint item.¹⁴

⁵ External review application dated 14 January 2021. The applicant applied for external review of QBCC's decision concerning items 1-5 and 7 of the Application, contesting the deletion of information from the document located a relevant to Item 7 of the Application and contending that further, relevant documents exist for Items 1-5 of the Application.

⁶ A further 306 pages were disclosed to the applicant on 14 September 2021. As these further pages disclosed information which QBCC had previously deleted as irrelevant in the document located for Item 7 of the Application, it is unnecessary to address that previously deleted information in this decision. The further disclosed pages also redacted certain information under section 47(3)(b) of the RTI Act. As the applicant did not contest the redaction of this information in the disclosed pages, that redacted information is not considered in these reasons for decision.

⁷ Submissions dated 12 October 2021.

⁸ Sections 47(3)(e) and 52 of the RTI Act.

⁹ Under section 72 of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**), QBCC has the power to direct the rectification of building work that it considers to be defective or incomplete.

¹⁰ Direction 1022556 issued on 7 September 2017.

¹¹ Direction 0103035 issued on 8 February 2018.

¹² Namely, to issue a further Direction to Notify to the applicant for only two of the complaint items (this further direction was issued to the applicant on 25 June 2018 and was numbered 0103554).

¹³ QCAT reference GAR-239-18. The applicant was not a party to these proceedings.

¹⁴ *Christiansen & Anor v Queensland Building and Construction Commission* [2020] QCAT 57. Direction 0106830 was issued to the applicant on 16 September 2020 to reflect QCAT's decision (**Amended Direction**).

11. The applicant then applied to QCAT for review of the Amended Direction and, on 21 January 2022, that application was struck out.¹⁵
12. The significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision and evidence considered

13. The decision under review is QBCC's internal review decision dated 14 December 2020.
14. The evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).¹⁶

Issues for determination

15. The issue for determination is whether access to further documents relevant to Items 1, 2, 3, 4 and 5 of the Application may be refused under section 47(3)(e) of the RTI Act, on the basis that they are nonexistent or unlocatable.¹⁷
16. Some issues raised by the applicant are outside the scope of this external review, including the applicant's concerns that QBCC has:¹⁸
 - made decisions about the homeowners' complaint based on erroneous information¹⁹
 - not complied with its legislative and internal policy requirements for record keeping; and
 - not complied with its internal policy requirements for decision-making in respect of complaints about residential building works.²⁰
17. To the extent the applicant's submissions relate to the issues for consideration in this review, I have addressed them below.

¹⁵ *Sensus Building Group Pty Ltd v QBCC* [2022] QCAT 26 (**Applicant's Proceeding**).

¹⁶ The *Human Rights Act 2019* (Qld) (**HR Act**) affords human rights to individuals in Queensland and the application in this matter was made by a corporation. 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 decisionmaker 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.*'

¹⁷ Section 52 of the RTI Act. The applicant did not specifically contest QBCC's decision to delete irrelevant information from one document it located as relevant to Item 3 of the Application—namely, a 'document history' for QBCC's Resolution Services - Procedures and Processing Manual. Instead, the applicant's external review application and subsequent submissions contend that further documents relevant to Item 3 exist and have not been located by QBCC. On this basis, QBCC's deletion of irrelevant information from the disclosed 'document history' is not an issue requiring determination and that deleted information is not considered in these reasons for decision. However, for completeness, I am satisfied that, as a matter of fact, the information QBCC deleted from the 'document history' is irrelevant to Item 3 of the Application and was permissibly deleted under section 73 of the RTI Act.

¹⁸ External review application and submissions dated 15 June 2021, 12 October 2021 and 17 November 2021.

¹⁹ Section 85 and Schedule 5 of the RTI Act sets out the 'reviewable decisions' that I can consider. The decisions made by QBCC in respect of the homeowners' complaint are not reviewable decisions under the RTI Act. I note however that such decisions have already been the subject of review by QCAT.

²⁰ In its submissions dated 12 October 2021, the applicant also asserted that '*the piecemeal fashion of the releases demonstrates that the QBCC has information on its systems and in its control, but may be seeking to unduly delay and avoid the release of these documents, only releasing parts consequent upon [the applicant] escalating the matter*'. There is no evidence before me which supports this assertion.

Scope

18. As noted above, following the disclosure of further information on external review, the applicant only continued to seek access to further documents relevant to Items 1 to 5 of the Application (**Items in Issue**). The applicant agreed,²¹ in consultation with QBCC, to the terms of the Items in Issue as follows:
1. *IRU Case file 307094 which resulted in the decision to not issue a direction on all items (withdraw) 28/11/2017. IRU states the reasons are required to be documented under the decision – Sensus requires the reasons QBCC identified all items could not be upheld following the lawful [sic] decision making process. Including the upper management that signed off on subjecting Sensus to a process not consistent with the lawful [sic] decision making process.*
 2. *QBCC states Page 4 IRU formal decision 2- 19/7/2019 - “ I do note the evidence on file suggests Sensus preference at the time may have been for the original decision maker to withdraw the first DTR and issue a second one as to preserve Sensus right [to] seek internal review of the amended decision if necessary- Sensus requests the evidence as stated from file that formed this IRU conclusion ,highlighting where Sensus made request to be subject to an unlawful process subjecting Sensus to significant costs increase to that of the lawful process which all others were afforded.*
 3. *QBCC director of ethics stated that it only became legislative for QBCC to decline claims and directions after 12 months of becoming aware of the defect in 2017. Sensus requires the section number of legislation or subordinate legislation that empowered QBCC and QCAT to make hundreds of declines to consumers under the 12 months of becoming aware prior to the specific approval of this 2017 [sic] as it is not mutually possible for this outcome to exist prior to 2017 if not approved.*
 4. *Under the section of the DPM provided by QBCC it appears to suggest a requirement for QBCC to assess complaints to establish that QBCC is able to assist. Sensus requires this document that certified the owners completion certificate which is a requirement of the DPM and the date of becoming aware which both were confirmed erroneous.*
 5. *QBCC application to QCAT which included the multiple reasons why additional directions should not be given - GAR239-18. (Excluding the annexures / inspectors statements and the owners application as QBCC has already provided this).*

Nonexistent or unlocatable documents

Relevant law

19. The RTI Act provides a general right of access to documents of an agency,²² however, this right is subject to limitations, including grounds for refusal of access.²³
20. Access to a document may be refused if the document is nonexistent or unlocatable.²⁴
21. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.²⁵ To be satisfied documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:²⁶
- the administrative arrangements of government

²¹ More specifically, these terms were set out in an email from the applicant's representative to QBCC dated 3 September 2017.

²² Section 23(1)(a) of the RTI Act. What comprises a 'document of an agency' is defined in section 12 of the RTI Act.

²³ The grounds on which an agency may refuse access are set out in section 47 of the RTI Act.

²⁴ Sections 47(3)(e) and 52 of the RTI Act.

²⁵ Section 52(1)(a) of the RTI Act.

²⁶ *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]. Refer also to *Van Veendelaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) and *Y20 and Department of Education* [2021] QICmr 20 (11 May 2020) at [45].

- the agency structure
 - the agency's functions and responsibilities
 - the agency's practices and procedures (including, but not limited to, its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant (including the nature and age of the requested documents).
22. An agency may rely on an explanation of its recordkeeping systems to justify the nonexistence of particular documents. If searches are relied on to justify a decision that documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case.
23. A document is unlocatable if a decision-maker is satisfied that the requested document has been or should be in the agency's possession, and the agency has taken all reasonable steps to find the document and it cannot be located.²⁷ To determine if documents are unlocatable, regard should again be had to the circumstances of the case and the key factors.²⁸
24. 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.²⁹ However, where an external review involves the issue of missing documents, as is the case here, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.
25. Relevantly, the decision-maker (on external review, the Information Commissioner or their delegate) must be satisfied that the document is nonexistent or unlocatable. The issue is not determined by whether an applicant or agency is satisfied that the document is nonexistent or unlocatable.

Applicant's submissions

26. In respect of the Items in Issue, the applicant submits that:
- QBCC has not provided all the information which is required to be kept under its internal policies, processes and procedures³⁰
 - *'it is a requirement of QCAT that QBCC holds evidence to support a statement of facts surrounding all decisions made under the legislation'*³¹
 - contrary to proper and good governance, *'QBCC's decisions to date suggest that the QBCC is making decisions on the fly without any proper notes, consideration, documents, and paper trail'*,³² and
 - *'If the information does not exist that is a mandatory requirement of policy and legislation, used as evidence and chronologically affects all decisions, a statement to QCAT would have been added by QBCC to reflect the RTI investigation conclusion and findings which has not occurred'*.³³

²⁷ Section 52(1)(b) of the RTI Act.

²⁸ Pryor at [20]-[21].

²⁹ Section 87(1) of the RTI Act.

³⁰ For example, the applicant asserts that QBCC's Internal Review Policy requires that QBCC keep records of all phone or face to face discussions about the review file on the QBCC system (external review application). In its submissions dated 12 October 2021, the applicant references the requirements of QBCC's Resolution Services - Procedures and Processing Manual (a copy of which was partially disclosed to the applicant and is dated 'March 2016') and its understanding of QBCC's electronic record management systems as the basis for its belief that further relevant documents exist.

³¹ Submissions dated 15 June 2021.

³² Submissions dated 12 October 2021.

³³ Submissions dated 17 November 2021.

27. 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 an applicant.³⁴ However, the applicant submits that the Commissioner's powers and functions³⁵ '*demonstrate the importance of ascertaining the true state of affairs for a matter at an external review and to verify the veracity of information by the commissioner administering an oath or affirmation to a relevant person*'.³⁶ In this context, the applicant asked OIC to:³⁷
- request evidence, such as a signed statement from relevant QBCC personnel, that no further information or documents can be found; and
 - require that such a signed statement specifically confirm whether documents are not being disclosed because they do not exist or they did exist but cannot now be located (and reasons for not being able to locate those documents eg because the documents have been destroyed).

Steps taken by QBCC to locate documents

28. QBCC provided OIC with a copy of its search records and certifications for its processing of the Application. In summary, the documents provided to OIC show that:
- searches were conducted of QBCC's electronic record management systems (Salesforce, ECM and Merido) and files held by QBCC's Legal Services Unit (to locate documents relevant to the Homeowners' Proceeding); and
 - QBCC's RTI decision-maker made enquiries with officers in QBCC's Internal Review Unit and Integrity and Complaints Branch who had relevant knowledge of the matters in which the applicant was involved.
29. As a result of these searches and enquiries, QBCC located 955 pages and 1 audio recording as relevant to the Application.
30. On external review, OIC requested that QBCC conduct further searches for information responsive to items 1, 2 and 4 of the Application and provide submissions concerning the scope of Item 5 of the Application.
31. A case note relevant to Item 2 of the Application was located by these further searches, which QBCC disclosed, without redaction, to the applicant. In respect of item 5 of the Application, QBCC also agreed to disclose, without redaction, a 24 page submission filed in the Homeowners' Proceeding. Apart from these documents, no additional documents were located by QBCC as a result of the further searches.

³⁴ Section 130 of the RTI Act.

³⁵ Including the Information Commissioner's function under section 128(1) of the RTI Act (to give information and help to agencies, applicants and third parties at any stage of an access application) and the powers in sections 103(3) and 104 of the RTI Act (to require the attendance of individuals to answer questions relevant to an external review and to examine and administer an oath or affirmation to the recipient of such a requirement).

³⁶ Submissions dated 12 October 2021. The applicant also requested that I refer a series of questions to QCAT under section 118 of the RTI Act. On 3 November 2021, I notified the applicant that I did not intend to refer the applicant's submitted questions to QCAT.

³⁷ Submissions dated 12 October 2021. In the applicant's submissions dated 17 November 2021, it also contended that: '*Unless a letter has been received by OIC from each of the QBCC agents..., and all others involved in the files, meetings, dates and evidence as documented by these individuals, QBCC has failed to undertake the most important step in searching for the information under RTI which is to consult with the people that have consistently used and verified the information or who were in charge of the document creation under the policy to verify where this was saved or last located to demonstrate reasonable steps were undertaken by RTI to confirm that this has not accidentally been saved on their desktop or emails, or other files where RTI search does not have access to search.*'

32. QBCC provided OIC with details of these further searches³⁸ which, in summary, confirm that QBCC:
- conducted further searches of QBCC's electronic records management systems (ECM and Salesforce)
 - made further enquiries with the internal review officer and building inspector who were delegated to deal with the homeowners' complaint; and
 - did not consider the requested documents would have been kept in a backup system and, accordingly, no search of a backup system was required.³⁹
33. QBCC relied on searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents relevant to the Application (including documents relevant to the Items in Issue).

Analysis

34. Under the RTI Act, the manner in which an external review is conducted is, subject to the Act, at the Information Commissioner's discretion.⁴⁰ QCAT has also recently confirmed⁴¹ 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.
35. As QBCC has relied on searches by its officers to demonstrate that all relevant documents have been located, the question I must consider is whether QBCC has taken *all reasonable steps* to locate documents responsive to the Application. This entails consideration of whether QBCC has required appropriate staff to conduct sufficient searches of all locations where the documents in question could reasonably be expected to be found.
36. In this matter, QBCC provided search records and certifications to OIC regarding the searches it conducted in processing the Application. OIC then requested that QBCC conduct further searches and QBCC provided details to OIC about those further searches. There is nothing before me which calls into question the efficacy of those searches or the accuracy of QBCC's search certifications and submissions to OIC concerning those searches.⁴² I therefore accept QBCC's evidence in relation to its search efforts and enquiries. In the circumstances, I consider there is no reason for the Information Commissioner to issue any notice to QBCC, or any of its officers, pursuant to section 103 of the RTI Act concerning information relating to the Items in Issue.
37. On the other hand, in terms of the applicant's assertions that QBCC *should* have created and retained further documents,⁴³ I consider this of itself is insufficient to support a reasonable expectation that such further documents were in fact created.
38. Based on consideration of the entirety of information before me, including records of QBCC's conducted searches, the documents located by QBCC and submissions received from the applicant and QBCC, I consider that officers of QBCC have:

³⁸ Submission dated 23 June 2021 (received by OIC on 24 June 2021).

³⁹ As contemplated in section 52(2) of the RTI Act.

⁴⁰ Section 95(1)(a) of the RTI Act.

⁴¹ *Webb v Information Commissioner* [2021] QCATA 116 at [6].

⁴² As noted above, there is also nothing before me which supports the applicant's 12 October 2021 assertion that QBCC are deliberately withholding information from the applicant so as to '*unduly delay and avoid*' its release.

⁴³ The applicant's submissions reference specific requirements in QBCC's internal policies and the applicant's understanding of QBCC's records systems as the basis for these assertions.

- conducted appropriately targeted searches of all relevant QBCC record keeping systems for information responsive to the parts of the Application which are the subject of this decision; and
 - identified relevant staff and made enquiries of them regarding the possible existence and location of responsive documents.
39. Accordingly, I am satisfied that QBCC has taken all reasonable steps to locate documents relevant to the Application (including documents relevant to the Items in Issue) and access to any further documents may be refused on the basis they do not exist or cannot be located.⁴⁴
40. While I am not required to deal separately with each of the applicant's sufficiency of search submissions or to make separate findings about QBCC's search efforts in relation to each of the types of documents the applicant believes exist, I have considered below each of the five categories of further information which the applicant contends should be located.

Findings - Item 1 of the Application (Item 1)

41. QBCC located 656 pages as relevant to Item 1 and these were released to the applicant without redaction. This disclosed information confirms that, as noted in paragraph 8 above:
- QBCC notified the applicant and the homeowners on 28 November 2017 that the First Direction was withdrawn; and
 - as a result, the internal review applications lodged in respect of that First Direction were also taken to have been withdrawn.
42. In its external review application, the applicant contended that the documents QBCC had released in response to Item 1 were missing '*information, emails and meeting notes*', '*correspondence and communications relating to the QBCC's reasoning and sign-off on withdrawing the direction*' and further information of the type outlined in section 5.10 of QBCC's Internal Review Policy. It is the applicant's position that these missing documents should form part of the requested '*IRU Case file 307094*'.⁴⁵
43. No additional documents relevant to Item 1 were located by the further searches and enquiries conducted by QBCC and QBCC submitted that:⁴⁶
- '*all emails, meeting notes and records have been located and assessed*'
 - the First Direction was withdrawn by the original decision maker (not pursuant to an internal review decision) meaning that '*there was no longer a reviewable decision to be reviewed*' in the internal review
 - a withdrawal of this nature does not require the creation of a '*reasons for decision*' document; and
 - accordingly, a reasons for decision document does not exist in relation to IRU case file 307094.
44. Following QBCC's further searches, the applicant maintained that '*information which would be expected to be logged on the QBCC's automated system appears to be missing*'.⁴⁷ More specifically, the applicant submits:

⁴⁴ Under section 47(3)(e) of the RTI Act.

⁴⁵ External review application.

⁴⁶ Submissions received 24 June 2021.

⁴⁷ Submissions dated 12 October 2021.

- logs in QBCC's electronic document and records management system (**EDRMS**) indicate that there were only three items for the relevant date period, however, '*hundreds of other pages and supporting information (albeit some of little relevance) which were included on the IRU case file*' do not appear to be included in the EDRMS logs;⁴⁸ and
 - because QBCC's systems use automatically generated sequential numbering for document ID's, it can be inferred that some documents have been omitted from the information disclosed by QBCC.⁴⁹
45. QBCC provided further information regarding its record keeping systems to address the concerns raised by the applicant. In summary, QBCC explained⁵⁰ that when a document is stored in QBCC's Electronic Content Manager (**ECM**) system,⁵¹ it is allocated a Unique Identifier (**UID**)—which is a global unique number within the ECM as a whole—and as this is a global numbering system, rather than being restricted to any given file, there may be gaps of hundreds or thousands in the sequence of UID numbers for documents within QBCC's file for a particular matter.⁵² I accept QBCC's explanation about the gaps in the sequential UID numbers identified by the applicant and find that these numbering gaps are not evidence of missing documents as the applicant contended.
46. The applicant also contends that:
- '*QBCC has failed to provide a detailed chronology of logged information in its EDRMS/Salesforce system*'⁵³
 - the case note disclosed to the applicant on 14 September 2021 (in response to Item 2) '*lacks fundamental details*', including sequential numbering, the time of creation of the entry and comment section with full details, and appears to have been '*manually edited*';⁵⁴ and
 - QBCC has failed to provide any documents evidencing '*a critical meeting*' the applicant contends occurred on or about 25 October 2017, and for which the applicant '*would expect that the meeting minutes, or at minimum, some form of notes on the outcome of this meeting would be recorded*'.⁵⁵
47. To the extent the applicant's submissions request QBCC provide a '*detailed chronology*' to support its position that it has conducted adequate searches, I note that the RTI Act does not give me the power to compel an agency to create new documents in response to an access application.⁵⁶
48. In respect of the applicant's concerns about the case note disclosed during this review, the adequacy of the content of that located record is not a matter that I can consider on external review. My role is limited to ascertaining whether QBCC has discharged its

⁴⁸ Submissions dated 12 October 2021. The applicant identified specific categories of documents it believes are missing from the EDRMS log, including extension of time requests and automatically generated deadlines for extensions of time.

⁴⁹ Submissions dated 12 October 2021 and 17 November 2021. For example, the applicant has identified that it has received documents with document ID's 307094 IRU_9612027 and 307094 IRU_9612030; and submits that, based on its understanding that QBCC's EDRMS/Salesforce system automatically generates sequential numbers for document IDs, it has not been given access to documents with ID's numbered 307094 IRU_9612028 and 307094 IRU_9612029.

⁵⁰ Submissions dated 25 November 2021.

⁵¹ QBCC confirmed that the title, or subject of the stored document is as entered by the officer declaring the document, or it may be automatically generated for system-generated documents.

⁵² I conveyed this information to the applicant on 23 December 2021.

⁵³ Submissions dated 12 October 2021. In these submissions, the applicant requested that '*all log entries in chronological order*' be disclosed as information relevant to Item 1.

⁵⁴ Submissions dated 12 October 2021. In these submissions, the applicant requested that '*all case notes relevant to Sensus's matter*' be disclosed as information relevant to Item 1. See also submissions dated 17 November 2021.

⁵⁵ Submissions dated 12 October 2021. In these submissions, the applicant requested that '*minutes/notes of the meeting held between [named QBCC personnel] on or around October 2017*' be disclosed as information relevant to Item 1.

⁵⁶ I confirmed this to the applicant on 3 November 2021.

search obligations in response to the Application. Further, there is nothing before me which supports the applicant's assertion that this case note has been manually edited.⁵⁷

49. QBCC also submits that it conducted enquiries with staff to identify any records for the October 2017 meeting referenced by the applicant, and no further documents were located as a result of those enquiries.⁵⁸
50. As I have noted above, there is nothing before me which calls into question the accuracy of QBCC's search records or submissions and I am satisfied that QBCC has conducted searches of all locations where it is reasonable to expect documents responsive to Item 1 would be located. I consider the applicant's expectation that further documents relevant to Item 1 *should* exist is not evidence that such further documents do exist. To the extent that the applicant asserts that QBCC's internal procedures require the generation of such further documents, I consider this too is not sufficient to support a reasonable expectation that such further records were, in fact, created.
51. Accordingly, I am satisfied that:
 - QBCC has taken all reasonable steps to locate documents requested in Item 1; and
 - there are reasonable grounds to be satisfied that further documents relevant to Item 1 do not exist or cannot be located and access may be refused on that basis.⁵⁹

Findings - Item 2 of the Application (Item 2)

52. QBCC located and disclosed 37 pages to the applicant in respect of Item 2.
53. The applicant submitted that this disclosed information did not include the referenced '*evidence on file*' which explained QBCC's conclusion about its preference⁶⁰ and QBCC is required to hold the requested information to support its decisions.⁶¹ QBCC's further searches located an additional case note relevant to Item 2 and QBCC disclosed this, without redaction, to the applicant. In respect of the First Direction withdrawal, that additional case note referred to '*agreement with both party [sic]*'.
54. Notwithstanding this further disclosure, the applicant maintained that there should be a file note or correspondence which specifically recorded its agreement to the withdrawal of the First Direction.⁶² On the other hand, QBCC submitted that its further searches and enquiries did not identify any file notes or correspondence which specifically recorded the applicant's agreement to the withdrawal of the First Direction.⁶³
55. I acknowledge that, given the terms of the QBCC statement quoted in Item 2 (that is, referencing '*evidence on file*' as suggesting what the applicant's preference '*may have been*' on withdrawal of the First Direction), it is not unreasonable for the applicant to expect that a specific document may exist recording the applicant's position in that regard. However, QBCC has conducted searches of the locations where it is reasonable

⁵⁷ In its submissions dated 25 November 2021, QBCC explained that, as its Salesforce Case Notes are exported via Microsoft Excel, '*some reformatting may be required for readability*' and that this was done to isolate the particular case note referred to by the applicant '*because it was the only note relating to the question at hand*'. QBCC also confirmed that this particular case note related to a resolution case file and not the IRU case file requested in Item 1. I have also reviewed the case note as it appeared in the Excel format and, as notified to the applicant on 23 December 2021, I can confirm that no further details appeared for the particular case note in its Excel format.

⁵⁸ Submissions dated 25 November 2021.

⁵⁹ Under sections 47(3)(e) and 52(1) of the RTI Act.

⁶⁰ External review application.

⁶¹ Submissions dated 15 June 2021.

⁶² Submissions dated 12 October 2021.

⁶³ Submissions received 24 June 2021.

to expect that any such record would be located and has not located any further, relevant documents. Therefore, based on the searches undertaken by QBCC, I am satisfied that:

- QBCC has taken all reasonable steps to locate documents requested in Item 2; and
- there are reasonable grounds to be satisfied that further documents relevant to Item 2 do not exist or cannot be located and access may be refused on that basis.⁶⁴

Findings - Item 3 of the Application (Item 3)

56. While the wording of Item 3 is not entirely clear, it appears to only request the legislative provisions that empowered QBCC to make decisions declining certain complaints about defective or incomplete building works.
57. Under section 24(2)(b) of the RTI Act, an applicant is required to give sufficient information concerning the documents sought to enable a responsible officer of the agency to locate the relevant documents. There are sound practical reasons for the documents sought in an access application to be clearly and unambiguously identified, including that the terms of an access application set the parameters for an agency's response and the direction of an agency's search efforts.⁶⁵ Accordingly, an applicant cannot unilaterally expand the terms of an application⁶⁶ and the terms of an application are of primary importance where an applicant contends, as is the case in this review, that the agency has not located all relevant documents.⁶⁷
58. In responding to Item 3, QBCC located and disclosed:
- a three page internal guidance statement titled '*Timeframes for Lodging a Complaint under 71J*' (created in February 2018); and
 - a two page 'document history' for the Resolution Services - Procedures and Processing Manual.⁶⁸
59. In its internal review application,⁶⁹ the applicant referred to that disclosed information as comprising '*legislation and policy supporting the declines from November 2017 onwards*'⁷⁰ and confirmed that it had expected QBCC to locate further information, namely, '*some relevant legislation and policy existed between 2014 and 2017, given QBCC declined hundreds of claims of assistance in this time whilst outside the 12 months of becoming aware*'.⁷¹ On internal review, QBCC decided that it was satisfied about the sufficiency of the searches it had carried out, in light of the scope of the Application, and no further information was disclosed to the applicant in respect of Item 3.
60. In its external review application, the applicant confirmed that Item 3 requested '*information on the relevant provision/sections of the legislation or regulations*'. However, the applicant subsequently submitted that Item 3 was not limited to a request for

⁶⁴ Under sections 47(3)(e) and 52(1) of the RTI Act.

⁶⁵ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] (**Cannon**) and *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (**O80PCE**) at [33].

⁶⁶ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17] and *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 at [14].

⁶⁷ *Usher and Department of Natural Resources and Mines* [2014] QICmr 51 at [15]. See also *Lonsdale and James Cook University* [2015] QICmr 34 at [9] and *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 at [15].

⁶⁸ I note that, on external review, a copy of the Resolution Service - Procedures Manual (dated March 2016) was partially disclosed to the applicant.

⁶⁹ Dated 16 November 2020. The applicant's external review application states that it '*repeats, and relies upon, its grounds for internal review*'.

⁷⁰ As noted in footnote 17, the applicant did not specifically contest the deletion of irrelevant information in the disclosed 'document history'.

⁷¹ In this regard, I note that section 71J, which was inserted into the QBCC Act in 2014, was amended in 2017 to introduce timeline requirements for requests made under that section.

legislative provisions that applied to certain claims and that further, relevant information existed and should be disclosed.⁷² In this regard, the applicant argued that Item 3:

- encompassed '*information and documents which the QBCC will rely on, or relied on to substantiate its decisions issued under legislation*';⁷³ and
- it sought '*assistance in identifying any documentation held by the QBCC in which it has applied the relevant legislation and regulations, to decline claims that were out of time, prior to November 2017*' and it requested release of documents such as '*policies, procedures, manuals, guidance notes etc*' which the QBCC have relied upon between 2014 and 2017 to decline particular claims.⁷⁴

61. The applicant has therefore proposed a number of different, and sometimes conflicting, interpretations of the Item 3 scope in the submissions it relies on in this matter.
62. The applicant also contended that it is '*crucial*' for it to be informed and provided with information QBCC relied on to '*substantiate its decision issued under legislation*'.⁷⁵ In this regard, I note that the legislative provisions relating to residential building works complaints include rights of review where an affected party disagrees with QBCC's decision—in this matter, the applicant appears to have exercised its review rights concerning the homeowners' complaint.
63. The applicant's contention that QBCC has not taken reasonable steps to locate the information requested in Item 3 relies on an expansive interpretation of the Item 3 scope—namely, that it captured *any* documents '*in which QBCC applied the relevant legislative provisions*' to decline what it described as '*hundreds of claims of assistance in this time*'. I consider this proposed interpretation seeks to expand on the agreed terms of Item 3. It is reasonable to expect that, had this been the intended Item 3 scope, QBCC would have needed to undertake searches for *every* document in its possession which related in any way to QBCC's assessment, between 2014 and 2017, of defective or incomplete homeowner complaints. In practical terms, under this interpretation of Item 3, the applicant requested that QBCC to go behind each of these 'hundreds' of decline decisions to locate information which justified the position that it took in each matter.
64. Item 3 of the access application was, as noted, awkwardly worded, and interpreted strictly and literally, might simply be taken as a request for access to statutory provisions to which other access is obviously available. Applying a somewhat more generous interpretation, this item seems, in essence, to have been aimed at obtaining access to internal guidance material relied on by QBCC in applying the relevant provision of the QBCC Act. On this view, Item 3 was to my mind fully satisfied, by QBCC disclosing to the applicant the material noted at paragraph 58—specifically, the located internal guidance statement concerning the interpretation and application of the relevant statutory provision.
65. On this basis, having carefully considered the applicant's submissions and the agreed terms of Item 3, I consider that any further documents *in which QBCC applied the relevant legislative provisions* would, if they exist, fall outside the scope of Item 3.

⁷² Submissions dated 12 October 2021.

⁷³ Submissions dated 15 June 2021. In its submissions dated 12 October 2021, the applicant also confirmed that Item 3 sought information about '*the particular legislation or power that empowered the QBCC to decline consumer claims made over 12 months of becoming aware*'.

⁷⁴ Submissions dated 12 October 2021. I again note that, on external review, a copy of the Resolution Service - Procedures Manual (dated March 2016) was partially disclosed to the applicant.

⁷⁵ Submissions dated 15 June 2022.

66. In the circumstances, and having considered the records of QBCC's conducted searches and the submissions before me, I am satisfied that:
- QBCC has taken all reasonable steps to locate documents relevant to Item 3; and
 - there are reasonable grounds to be satisfied that further documents relevant to Item 3 do not exist.

Findings – Item 4 of the Application (Item 4)

67. QBCC located and disclosed 39 pages as relevant to Item 4. Those disclosed documents included a complaint assessment file note and correspondence with the applicant about the complaint. I also note that:
- the QCAT decision issued in respect of the Homeowners' Proceeding includes a chronology relevant to the complaint;⁷⁶ and
 - during the complaint processes, QBCC's Integrity Branch had written to the applicant⁷⁷ about why 27 April 2016 was taken as the completion date by QBCC.
68. The applicant submits that additional documents which justify that 27 April 2016 is the correct completion date are missing and that:
- in asserting that 27 April 2016 is the correct completion date, QBCC must have relied on '*some form of completion certificate or other formal document*'⁷⁸
 - '*it is not feasible that there is not, somewhere, a documented chain of reasoning that was required in order to reach that decision*'⁷⁹
 - QBCC's Resolution Services - Procedures and Processing Manual requires a completion date to be entered into the EDRMS system for the complaint, together with relevant supporting documents;⁸⁰ and
 - QBCC has not explained why it relied on '*erroneous information*' in making decisions regarding the homeowners' complaint.⁸¹
69. On external review, I have no jurisdiction to address the applicant's concern that QBCC relied on an '*erroneous date*' when dealing with the homeowners' complaint (and subsequently in the review proceedings before QCAT concerning that complaint).
70. QBCC's further searches and enquiries did not identify any additional documents relevant to Item 4. As noted above, there is nothing before me which calls into question the accuracy of the QBCC search records. I am satisfied that additional documents of the nature referenced by the applicant would, if they existed, have been located with QBCC's electronic record keeping systems which have been searched by QBCC. While the applicant contends there *should* be additional documents supporting the 27 April 2016 completion certificate,⁸² this is insufficient to establish that such further documents do exist.

⁷⁶ *Christiansen & Anor v Queensland Building and Construction Commission* [2020] QCAT 57 at [14] to [21]. Member Kanowski also observed at [41]: '*The current section 71J(4) of the QBCC Act, which imposes a legislative deadline for a complaint to be made – 12 months after the consumer became aware of the defect – had not been inserted into the Act at the time relevant in this case*'.

⁷⁷ In a letter dated 19 July 2019, extracted in submissions received from QBCC on 24 June 2021.

⁷⁸ Submissions dated 12 October 2021.

⁷⁹ External review application.

⁸⁰ Submissions dated 12 October 2021.

⁸¹ External review application and submissions dated 12 October 2021. In the latter submissions, the applicant also contends that QBCC has relied on this '*erroneous date*' in correspondence, reports and in statements of reasons for the Homeowners' and Applicant's Proceedings at QCAT.

⁸² And '*the date of becoming aware*' as referenced in Item 4.

71. For these reasons, I am satisfied that:

- QBCC has taken all reasonable steps to identify and locate documents sought by the applicant in Item 4; and
- there are reasonable grounds to conclude that further information relevant to Item 4 does not exist or cannot be located and access may be refused on that basis.⁸³

Findings - Item 5 of the Application (Item 5)

72. Item 5 requested QBCC's 'application to QCAT' in the Homeowners' Proceeding. QBCC located 58 pages as relevant to Item 5 and disclosed those pages in full to the applicant.

73. On external review, the applicant submitted that this request also encompassed QBCC's submissions filed in those proceedings, which it expected 'to have included and referred to the vast amount of evidence of which the QBCC requested [the applicant] provide to the QBCC in support of its position in the QCAT application against the homeowners'.⁸⁴ Notwithstanding that Item 5 expressly requested QBCC's application to QCAT, not its submissions,⁸⁵ QBCC agreed to disclose its filed QCAT submissions to the applicant, without redaction.

74. The applicant accepted that QBCC had disclosed the QCAT submissions it requested on external review. However, it then contended⁸⁶ that the following additional documents it considered relevant to Item 5 had not been disclosed:

- (a) an itemised list of information which QBCC provided to QCAT, in chronological order
- (b) QBCC's application to join the applicant to the Homeowners' Proceeding
- (c) Directions the applicant believes were issued by QCAT on 26 June 2019; and
- (d) an application for miscellaneous matters filed by QBCC on 10 July 2019.

75. In support of its position, the applicant relies on the pro-disclosure bias of the RTI Act⁸⁷ and argues that:

- QBCC 'forced' the narrowed wording for Item 5 upon the applicant, following scope discussions during the processing of the access application,⁸⁸ and
- it agreed to narrow the scope of the access application 'under the understanding that it would not change the ability to seek that of the original documents and information sought'.⁸⁹

76. There is no evidence before me which supports the applicant's assertion that the wording of Item 5 was forced upon the applicant.

⁸³ Under sections 47(3)(e) and 52(1) of the RTI Act.

⁸⁴ External review application. In submissions dated 15 June 2021, the applicant argued that QBCC had confirmed that the words 'application to QCAT' were 'interchangeable' with 'submission to QCAT' and, although the applicant had agreed to narrow the scope of the access application, that did 'not alter the original intention' of the access application.

⁸⁵ On 31 May 2021, OIC conveyed a preliminary view to the applicant that the terms of Item 5 were unambiguous and did not seek QBCC's submissions to QCAT.

⁸⁶ Submissions dated 12 October 2021.

⁸⁷ Section 44 of the RTI Act, as referenced in submissions dated 12 October 2021. While the applicant referenced the agency disclosure discretion in section 44(4) of the RTI Act, the Information Commissioner does not have similar discretion on external review (refer to sections 105(2) and 108 of the RTI Act).

⁸⁸ Submissions dated 12 October 2021.

⁸⁹ Submissions dated 12 October 2021. I note that, before the access application was narrowed, the applicant sought (as item 8) 'the Qcat submissions by QBCC to the owners application which resulted in a direction being overturned to Sensus and what Sensus supporting information was provided'.

77. Regardless of the pro-disclosure bias described in the RTI Act, my jurisdiction in this external review is limited by the agreed scope of the Application. On an objective reading of Item 5, the further documents identified by the applicant do not fall within its scope. As noted above, it is not open for an applicant to unilaterally expand the scope of an access application on external review.⁹⁰
78. Accordingly, I consider that the further documents identified by the applicant (as outlined in paragraph 74 above), if they exist, fall outside the scope of Item 5.
79. In the circumstances, and having considered the records of QBCC's conducted searches and the submissions before me, I am satisfied that:
- QBCC has taken all reasonable steps to locate documents relevant to Item 5; and
 - there are reasonable grounds to be satisfied that further documents relevant to Item 5 do not exist.

DECISION

80. For the reasons set out above, I vary⁹¹ QBCC's decision and find that access to further documents may be refused pursuant to sections 47(3)(e) and 52 of the RTI Act on the basis that they do not exist or cannot be located.

T Lake
Acting Assistant Information Commissioner

Date: 23 June 2022

⁹⁰ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17] and *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 at [14].

⁹¹ As a delegate of the Information Commissioner, under section 145 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
14 January 2021	OIC received the external review application.
17 February 2021	OIC notified the applicant's legal representative and QBCC that it had accepted the application for external review and requested information from QBCC.
9 March 2021	OIC received the requested information from QBCC.
27 May 2021	OIC requested further information and submissions from QBCC.
31 May 2021	OIC conveyed a preliminary view to the applicant's legal representative with respect to jurisdictional issues.
15 June 2021	OIC received the applicant's submissions.
24 June 2021	OIC received requested information and submissions from QBCC.
16 July 2021	OIC requested further information from QBCC.
3 August 2021	OIC received the applicant's request for an update.
12 August 2021	OIC received requested information from QBCC.
13 August 2021	OIC wrote to the applicant's legal representative to request a single point of contact for the external review.
17 August 2021	OIC requested further information from QBCC.
25 August 2021	The applicant's legal representative asked OIC to confirm that the applicant's 15 June 2021 submissions would be taken into account.
6 September 2021	OIC received further information from QBCC, conveyed a further preliminary view to the applicant's legal representative and asked QBCC to release certain information to the applicant.
12 October 2021	OIC received further submissions from the applicant's legal representative, which included that OIC consider referring specified questions to QCAT under section 118 of the RTI Act.
3 November 2021	OIC conveyed a further preliminary view to the applicant's legal representative and advised that it did not intend to exercise its discretion to refer any questions to QCAT under section 118 of the RTI Act. OIC requested further information from QBCC to address certain issues raised by the applicant's legal representative.
17 November 2021	OIC received further submissions from the applicant's legal representative.
25 November 2021	OIC received requested information from QBCC.
13 December 2021	OIC requested further information from QBCC.
20 December 2021	OIC received the requested further information from QBCC.
23 December 2021	OIC confirmed the preliminary view to the applicant's legal representative and advised that a decision would be issued to finalise the review.