



Decision and Reasons for Decision

Citation:	<i>H19 and Queensland Police Service [2024] QICmr 32 (29 July 2024)</i>
Application Number:	317434
Applicant:	H19
Respondent:	Queensland Police Service
Decision Date:	29 July 2024
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - PREVIOUS APPLICATION FOR SAME DOCUMENTS - application for access to information relating to a complaint made to police - where the agency's decision on a previous application has been the subject of a completed review - whether the later application, on its face, discloses any reasonable basis for again seeking access - section 62(3) of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether the agency has conducted reasonable searches - whether access may be refused to documents on the basis they are nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to full reports of all QPS officers involved in the investigation of an assault complaint he had made in 2010 (**Later Application**). In the Later Application, the applicant named several QPS officers involved in the investigation and sought any reports they had prepared, including Officer G.²
2. QPS located 10 pages and refused access to information on 8 pages.³ The applicant applied to QPS⁴ for internal review of the decision, submitting that a Report by Officer

¹ Application dated 4 April 2023.

² The timeframe stated in the Later Application was 7 October 2010 to 23 May 2014.

³ On 15 May 2023.

⁴ On 3 June 2023.

G had not been located. On internal review, QPS decided⁵ to refuse to deal with the application, on the basis that the applicant had previously sought access to a Report by Officer G in an IP Act application which he made in 2011 (**First Application**).

3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's internal review decision, submitting that he was seeking access to the '*Full Report*' of Officer G on the basis that it exists and '*never has been released by QPS*'.⁶
4. On external review, OIC examined the documents located by QPS on the Later Application, QPS processing documents pertaining to the First Application, and correspondence and findings of the external review of the First Application.
5. The applicant maintains his position that a standalone Report by Officer G exists, that QPS has consistently failed to disclose it to him, and that further searches for a Report by Officer G are justified. The applicant points to what he considers to be the exonerative value of a Report by Officer G in respect of charges later brought against him.
6. For the reasons outlined below, I find that:
 - (i) section 62(3)(d)(ii) of the IP Act applies to the Later Application, to the extent that it seeks access to the same documents requested in the First Application, including a Report by Officer G, and QPS was therefore, entitled to refuse to deal with part of the Later Application on that basis; and
 - (ii) QPS has taken all reasonable steps to locate documents in response to the remaining part of the Later Application⁷ and may refuse access on the basis that further documents do not exist.⁸

Background

7. Significant procedural steps are set out in the Appendix to this decision.
8. In 2010 the applicant made a complaint to QPS that he had been assaulted by a third party (**Third Party**). No proceedings were instituted by QPS as a result of the applicant's complaint.⁹ In 2011, the applicant applied to QPS under the IP Act for access to documents regarding QPS's investigation into his complaint. The applicant has indicated to OIC that he remains aggrieved by the outcome of the QPS investigation and believes that there are further documents held by QPS about the investigation which have not yet been located or released to him. The applicant is particularly concerned that QPS has failed to locate a Report by Officer G which he contends was created in connection with the investigation.

Reviewable decision

9. The decision under review is QPS's internal review decision dated 5 July 2023 refusing to deal with the Later Application.

⁵ On 5 July 2023.

⁶ On 17 July 2023.

⁷ That is, the timeframe beyond that covered by the First Application.

⁸ Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

⁹ As evidenced by QPS documents available to OIC in this review.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
11. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁰ I consider a decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act, when applying the law prescribed by the RTI Act and IP Act.¹¹ I have done so in making this decision, as required under section 58(1) of the HR Act.¹²
12. The applicant made extensive submissions outlining the human rights he considers QPS has breached.¹³ I have carefully considered the applicant's human rights in making this decision, including ensuring the disclosure of documents for the benefit of the applicant through the informal resolution process.
13. To assist in promoting informal resolution of this review, QPS agreed to release certain documents pertaining to the assault complaint to the applicant, notwithstanding its position that these were the subject of the First Application.¹⁴ These documents comprise two internal QPS reports titled: *Request for direction – complaint of assault by [the applicant] against [the other party]*. They comprise a briefing, authored by the Officer in Charge of Carseldine station dated 17 February 2011 (**Officer M Report**), which refers to and attaches an internal QPS report, authored by the North Brisbane District Brief Manager dated 15 February 2011 (**Officer W Report**).¹⁵
14. The documents detailed in the preceding paragraph do not form part of the information in issue in this review.¹⁶ However, I have had regard to the nature and content of those documents to the extent they are relevant to the issues for determination, particularly whether the applicant has established a reasonable basis for the Later Application.

Issues determination

15. There are two issues for determination in this review.
16. Firstly, I must decide whether section 62(3)(d)(ii) of the IP Act applies to the Later Application *to the extent* that it requests access to the same documents requested in the First Application. In considering that provision, I must determine whether the Later Application discloses a reasonable basis for again seeking access to the same documents.

¹⁰ As embodied in section 21 of the HR Act.

¹¹ *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]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw 'no reason to differ' from our position ([23]).

¹² I also note the following observations made by Bell J in *XYZ* at [573], 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*'.

¹³ Pages 8-15 of his submissions received on 12 April 2024. The applicant's submissions were primarily focussed on the human rights he considers QPS has breached in its dealings with him on the criminal matters including his prosecution.

¹⁴ QPS sent the documents to the applicant on 19 March 2024, subject to the redaction of third party personal information.

¹⁵ The Officer W Report outlined why Officer M recommended no charges regarding the alleged assault of the applicant, and the Officer M Report approved this recommendation and sought the approval of Officer M's superior officer, Inspector S.

¹⁶ I have therefore, made no findings on the information QPS redacted from those documents.

17. In the particular circumstances of this review, I have also considered whether QPS has taken all reasonable steps to locate documents responding to the Later Application, *to the extent* it spans a timeframe beyond that of the First Application, and whether access may, therefore, be refused to any further documents on the basis they do not exist or cannot be located.¹⁷

Issue 1: Previous application for same documents

Relevant law

18. Parliament intends for an agency or Minister to deal with an access application, unless to do so would not be in the public interest.¹⁸ The circumstances outlined in sections 59, 60 and 62 of the IP Act are the only circumstances in which Parliament considers it would not be in the public interest to deal with an access application.¹⁹ Even if an agency is entitled to refuse to deal with an access application, Parliament has expressly intended the IP Act should be administered with a pro-disclosure bias.²⁰
19. Relevantly in this case, an agency may refuse to deal with an access application under section 62 of the IP Act where:
- (a) an applicant has made a first application²¹ **and** the agency's decision on the first application has been the subject of a completed external review;²² and
 - (b) the applicant makes another access application to the same agency for access to one or more of the same documents sought under the first application **and** the later application does not, on its face, disclose any reasonable basis for again seeking access to the documents.²³

Findings

20. For the reasons set out below, I have found that requirements (a) and (b) set out in the preceding paragraph are met in the circumstances of this case.
21. The First Application was made by the applicant to QPS in 2011 for access to documents about the investigation of an assault.²⁴ The applicant identified the relevant documents by providing the QPRIME occurrence number, and specifically requested access to a Report by Officer G and other QPS officers, within the timeframe 7 October 2010 to 31 August 2011.
22. The Later Application, which is the subject of this external review, sought access to the following, for the timeframe 7 October 2010 to 23 May 2014:
- Full reports of all QPS officers involved in QP [occurrence number] ... I am seeking the release/access to the Full Report of [Officer G] [registration number] and all QPS officers involved in this matter...*
23. I am satisfied the Later Application seeks access to the same documents as sought in the First Application, on the basis that the same QPRIME occurrence number was stated in both applications as was the specific request for access to a Report by Officer

¹⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

¹⁸ Section 58(1) of the IP Act.

¹⁹ Section 58(2) of the IP Act.

²⁰ Section 58(4) of the IP Act.

²¹ Section 62(1)(a) of the IP Act.

²² Sections 62(3)(d)(ii), (5)(b) and (6) of the IP Act.

²³ Section 62(1)(b) of the IP Act.

²⁴ QPS Reference Number RTI/5447.

G. I am further satisfied that the only point of difference between the two applications is that the Later Application spans a longer timeframe, until 23 May 2014. Accordingly, I find that the Later Application seeks access to the same documents as in the First Application, but only in respect of the original date range of 7 October 2010 to 31 August 2011.²⁵

24. The applicant applied to OIC for external review in respect of the First Application on 16 November 2011. That external review application was accepted by OIC on 23 November 2011 and finalised by way of a formal decision issued in 2012.²⁶ For these reasons, I find that QPS's decision in the First Application was the subject of a completed external review.²⁷
25. Turning to whether the applicant has established a reasonable basis for reapplying, I have carefully reviewed the Later Application dated 4 April 2023 and the cover email of 4 April 2023 attached to the Later Application—neither document refers to the First Application. It follows that, *on its face*, the Later Application does not disclose any reasonable basis for again seeking access to the documents.
26. The applicant acknowledged in submissions to OIC that he has previously sought access to documents relating to investigation of his complaint, including a Report by Officer G.²⁸ To justify his reapplication for the documents, the applicant submitted as follows:

I had previously applied for this information on 4 April 2023 and many years ago (in 2011) in that matter, I requested all documents of the investigation of my complaint [redacted], including reports of [Officer G]. This report has never been released or disclosed to me or the QDPP by QPS.

I submit that Queensland Police Service's Officers never included [Officer G's] Report in the documents released. They always have an unlawful excuse to refuse to release this Report which is in relation to the events that happened on [redacted date and location]. This Report is the evidence to prove beyond reasonable doubt that [Third Party] committed the offence of Serious Assaulting me...

...
[Officer G's] Report is very important Exculpatory Evidence for me.

...
QPS must prove with credible and reliable evidence that they released or disclosed [Officer G's] Report in my previous applications. QPS is unlawfully misinterpreting the Information Privacy Act 2009 (Qld) to refuse the release or disclosure of [Officer G's] Report.

...
[Officer G's] Report is the evidence to prove beyond reasonable doubt that [the Third Party] committed the offence of Serious Assault against [the applicant] on the [date redacted] and not the other way around.

...
QPS' decision is invalid, the assessment is vitiated by jurisdictional error, erroneous test, denial of procedural fairness, error of law, actual bias, prejudice, pre-judgment, arbitrary decision, misinterpretation and misunderstanding of relevant legislations.

Decisions must be made according to law, and NOT humour: Illogicality and administrative decision-making after MIAC v SZMDS (2010) 240 CLR 611: For the first time, the High Court has embraced the notion that an administrative decision can be set aside on the basis that no rational or logical decision-maker could have arrived at the decision based on evidence

²⁵ Section 62(1) of the IP Act.

²⁶ I have not identified the date or month of issue, or other identifying information from that decision, as it is publicly available on OIC's website and the name of the applicant is listed in the published decision. Including the details of that decision in this decision may lead to the identification of the applicant or other individuals.

²⁷ Section 62(3)(d)(ii) of the IP Act.

²⁸ 17 September 2023 and 12 April 2024.

before the decision-maker. ...

[sic]

27. As I understand it, the applicant believes a Report by Officer G to be a document of critical evidentiary value to the administration of justice, given the negative outcome of the QPS investigation on his complaint and the later charges that were brought against him. In his view, there is sufficient evidence to establish that such a report exists and that therefore, a further application requesting it and further searches to find the document, are justified.
28. I acknowledge that the applicant did not enunciate the arguments in the preceding paragraphs on the face of the Later Application. However, in conducting merits review, OIC stands in the shoes of the original decision maker²⁹ and can take into account information available at the time the review decision is made. Given the applicant has, on review, submitted that there is evidence to support a view a Report by Officer G exists, I have taken these submissions into account to determine whether there was a reasonable basis for the Later Application.

Reasonable basis for Later Application

29. Central to the applicant's submission that a standalone Report by Officer G exists are what he says are references in other documents to that report. On this point, the applicant submits as follows:³⁰

I submit that [Officer G's] Report either a simple handwritten piece of paper, standalone or in any format, was created and exist. This can be proven by the same QPS reports/statements confirming that [Officer G] Report was created and exist.

This can be proved in the Report of [Officer W] dated 15 February 2011, and by Detective [redacted] in his statements under oath [in the criminal matter against the applicant].

[Officer G's] Report is the best evidence to prove beyond reasonable doubt that I have never assaulted or threatened to use violence/used violence on [Third Party] or [Another third party], on the [redacted date] or any other date.

[sic]

30. I have examined the content of the Officer W Report and accept that in the first paragraph, it states as follows:

*I have considered the attached statements from the complainant ... and witness ... and affidavits by witness and ... and **report by [Officer G]** regarding a complaint of assault arising out of an incident ...*

A direction has been sought by [Officer G] in relation to the complaint of assault ...

[emphasis added]

31. For the reasons set out in the following paragraphs, I am satisfied that in making the above statement, Officer W was referring to the entire QPRIME occurrence, **not** to a standalone Report by Officer G. I consider it is reasonable to expect that, in seeking a direction from Officer W, it would have been necessary for Officer G to provide Officer W with the entirety of the QPRIME occurrence as it contained all the relevant facts and the actions taken to investigate the complaint. Accordingly, I consider a reasonable conclusion is that the 'report by' Officer G referred to above is the QPRIME occurrence.

²⁹ *Palmer and Townsville City Council* [2019] QICmr 43 (3 October 2019) at [21]-[40].

³⁰ On 12 April 2024.

32. In reaching this finding, I have also had regard to the QPS Operation Procedures Manual (**OPM**)³¹ which sets out relevant recordkeeping obligations placed on QPS officers in relation to a QPRIME occurrence:

*The location of any original statements or other attachments should be recorded in a general/supplementary report **within the relevant QPRIME occurrence**.*

.....

*Officers may record investigative activities on QPRIME occurrences **in the Occurrence Enquiry Log** (e.g. attempts to contact a person, neighbourhood inquiries). **Supplementary reports** should be used when taking action or **adding information to an occurrence**, or in circumstances where a supplementary report is expressly required.*

...

*When an officer has made investigations in relation to an occurrence and there is sufficient evidence the offender committed the offence but will not be charged as it is not in the public interest, the officer should: (i) record in a general or supplementary report **within the occurrence**: (a) the particulars of the offending act or omission; and (b) the reason why proceedings should not be commenced; and (ii) submit a task for review and approval by their OIC or delegate.*

[emphasis added]

33. I also observe that the QPRIME occurrence contains multiple entries within the document itself that are authored by Officer G—including records of him having taken an affidavit, witness statement, and seeking a direction from Officer W. These entries *within the QPRIME occurrence* are consistent with what appears to have been Officer G's involvement in investigation of the complaint and also align with the OPM requirements set out above to record relevant information *within the QPRIME occurrence*.
34. I sought clarification from QPS regarding the recordkeeping issues outlined in paragraphs 31-33.³² QPS was generally able to confirm that a QPRIME occurrence 'represents a group of information details associated with an event, or series of events, that are of interest to police' and is 'updated over time'.³³ QPS also agreed with the following propositions:

'Any 'reports' prepared by [Officer G] would appear within the QPRIME occurrence itself.

The report that was scanned into the occurrence by [Officer G], as per his 14 March 2011 entry in the QPRIME occurrence, was [Officer M's Report] to [Inspector S] attaching [Officer W's] assessment and recommendation [Officer W's Report].'

35. Having regard to the way information appears in the QPRIME occurrence, the requirements of the OPM set out above and QPS's clarification, I find as follows:
- a QPRIME occurrence is the central electronic recordkeeping location for QPS officers to record events on a complaint/investigation
 - a QPRIME occurrence is a 'live' rather than 'static' document that is regularly updated over time
 - officer(s) involved in investigating a complaint enter relevant information in the QPRIME occurrence to record actions that are taken on a matter; and
 - individual entries and updates that appear within a QPRIME occurrence are commonly referred to as a 'report'.

³¹ Chapter 1.11.2, 1.11.3 and 1.11.11, QPS Operation Procedures Manual, pages 54, 55 and 62 < [OPM-ch.1-Operational-Management.pdf \(police.qld.gov.au\)](#) >.

³² On 1 July 2024.

³³ Email received on 12 July 2024.

36. I acknowledge that there is an entry in the QPRIME occurrence³⁴ by Officer G, dated 14 March 2011 which states:

*'A direction was sought in relation to this matter. [Officer W] who is the [North Brisbane District] Prosecutions brief checker has recommended no proceeding be instituted in relation to a complaint of assault by [the applicant]. [The parties] have been notified of this decision. **A copy of the report** has been sanned [sic] into the occurrence. Please finalise this occurrence.'*

[emphasis added]

37. Based on the evidence available to me, including QPS's confirmation of the recordkeeping issues at paragraph 34 and the Officer M Report and Officer W Report, I am satisfied that Officer G's reference to the '*s[c]anned report*' in his QPRIME entry on 14 March 2011 is in fact, the Officer M Report and Officer W Report.³⁵
38. My finding in this regard is also informed by QPS's confirmation that reports are scanned into the 'Reports' tab in QPRIME.³⁶ QPS was able to locate the Officer M Report and Officer W Report in this matter *because* they were scanned into the Reports tab of the QPRIME occurrence. QPS did not locate any other reports scanned into the QPRIME occurrence. To my mind, this aligns with the requirements of the OPM in terms of uploading/attaching further supplementary reports to the QPRIME occurrence itself.
39. In the circumstances of this case, I am satisfied that it is open on the evidence to find that:
- the reference in the Officer W Report is to the *entire* QPRIME occurrence
 - any individual 'reports' of Officer G appear *within* the QPRIME occurrence; and
 - the 'report' scanned into the QPRIME occurrence on 14 March 2011 was the Officer M Report and Officer W Report.
40. Notwithstanding my findings set out in the preceding paragraph, I have also had regard to the extensive enquiries, and searches that have been conducted by QPS in response to the First Application, on the Later Application and for the purpose of this external review (set out in more detail below). These extensive searches did not locate any additional documents, including any Report by Officer G, and to my mind, demonstrate that *if* a standalone Report was in fact ever created by Officer G, it has since been destroyed in accordance with the QPS Retention and Disposal Schedule (RDS) or due to the passage of time, cannot be located, eg. because it has been lost.
41. The QPS RDS requires that documents relating to the investigation of assaults are retained for 10 years after the last action, after which they may be destroyed.³⁷ However, noting that other documents pertaining to the complaint have not yet been destroyed by QPS³⁸, I consider the preferable conclusion is that Officer G never created a standalone Report and that rather, any information that Officer G recorded about the investigation is contained within the QPRIME occurrence, and the QPRIME occurrence constitutes what Officer G provided to Officer W in seeking a direction.

³⁴ Page 1 of the QPRIME occurrence comprising 10 pages (ending in 451). This document has been largely disclosed to the applicant.

³⁵ Both of these Reports have been disclosed to the applicant – see paragraph 13 above.

³⁶ Email received 12 July 2024. See paragraph 34.

³⁷ *Crime Prevention and Detection, Investigations, Assault, Reference CD/INV/9, Retain for 10 years after last action* (page 22, QPS RDS, approved by the Queensland State Archivist on 12/09/2008).

³⁸ For example, the pages released by the initial decision maker and the Officer M and W Reports released during this review.

42. For the reasons set out above, I am satisfied that the evidence does not support the applicant's position that a standalone Report by Officer G exists, and accordingly, the applicant has not established a reasonable basis to reapply for the same documents. For these reasons, I find that the requisite elements of section 62 of the IP Act are satisfied³⁹ in this case and that QPS was therefore, entitled to refuse to deal with part of the Later Application to the extent it seeks access to the same documents requested in the First Application.⁴⁰

Issue 2: Nonexistent or unlocatable documents

43. The applicant's submissions regarding his belief that further documents should exist have already been set out in these reasons at paragraphs 26 and 29. To the extent that they are relevant to the component of the Later Application which is not subject to section 62 of the IP Act, I have examined them below.

Relevant law

44. Under the IP Act, an individual has the right to be given access to documents of an agency or Minister to the extent they contain the individual's personal information.⁴¹ This right is not an absolute right but subject to the provisions of the IP Act itself and to certain provisions in the RTI Act.⁴² Relevantly, access to a document may be refused if the document is nonexistent or unlocatable.⁴³
45. 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.⁴⁴ When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, 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. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
46. To determine whether a document exists, but is **unlocatable**, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the key factors.⁴⁵

³⁹ Including section 62(3)(d)(ii) of the IP Act.

⁴⁰ Between 7 October 2010 and 31 August 2011.

⁴¹ Section 40 of the IP Act.

⁴² Section 40(1) of the IP Act states '[s]ubject to this Act'. Section 67(1) of the IP Act allows an agency or Minister to refuse access to a document in the same way and to the same extent under section 47 of the RTI Act were the document to be subject to an access application under the RTI Act.

⁴³ Section 67(1) of the IP Act and sections 47(3)(e) and 52 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. 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.

⁴⁴ *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). The key factors include: the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); 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.

⁴⁵ *Pryor* at [21].

47. The functions of the Information Commissioner on external review include investigating and reviewing whether an agency has taken reasonable steps to identify and locate documents applied for by applicants.⁴⁶ While the agency bears an onus to justify an adverse decision against an applicant,⁴⁷ if the applicant maintains further documents exist, the Information Commissioner has recognised there is a practical onus placed on the applicant to demonstrate that the agency has not discharged its obligation.⁴⁸ Suspicion and mere assertion will not satisfy this onus.⁴⁹
48. 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.⁵⁰ This follows the approach taken by the Queensland Civil and Administrative Tribunal where His Honour Judge McGill reasoned that it is open to reach a finding that an agency has taken all reasonable steps *'even if, at least in theory, further and better searches might possibly disclose additional documents.'*⁵¹

Searches conducted by QPS

49. As noted above at paragraph 40, QPS conducted searches when it first received the Later Application and located the QPRIME occurrence. On external review, QPS located and released the documents mentioned in paragraph 13 to the applicant. Importantly, all of the located documents fall within the timeframe of the First Application and had been released to the applicant on the First Application.
50. QPS did not, however, locate any documents falling within the later timeframe of 1 September 2011 to 23 May 2014 through either its original searches, or the further enquiries conducted on external review. QPS submitted⁵² that it undertook the following searches and inquiries:
- Sandgate Station (where Officer G was stationed) searched its physical and electronic files, and Officer G's police notebooks
 - searches were conducted of QPRIME
 - Carseldine Station (where Officer M was stationed) undertook searches including searches of its file server; and
 - QPS RTI officers made direct enquiries with Officer W.
51. QPS also explained that particular officers, including Officer G and Inspector S⁵³ no longer work for QPS and accordingly, direct inquiries could not be made with those individuals. QPS further explained that the location of Inspector S at the time was stated in the Officer M Report as Patrol Services (West) however, that is not a station or area that can be searched and the patrol sectors have changed significantly since 2011.

Findings

⁴⁶ Section 137(2) of the IP Act.

⁴⁷ Section 100(1) of the IP Act.

⁴⁸ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

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

⁵⁰ *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23].

⁵¹ *Webb v Information Commissioner* [2021] QCATA 116 at [5]-[6].

⁵² On 31 October 2023, 30 November 2023, 21 December 2023 and 8 March 2024.

⁵³ Inspector S received and approved the Officer M Report, which recommended no charges be laid against the Third Party.

52. I have considered the searches and inquiries undertaken by QPS and the documents located by QPS. As stated above, all located documents are responsive to the timeframe of the First Application, including the QPRIME occurrence.
53. The timeframe of the Later Application which is relevant to determination of Issue 2 in this review, is 1 September 2011 to 23 May 2014. Accordingly, given the findings I have made on Issue 1, it is only necessary for me to determine the reasonableness of QPS's searches for documents falling within this later timeframe.
54. It is relevant to note that there are no further entries to the QPRIME occurrence after 14 March 2011. Given the nature of that last entry was to *'finalise this occurrence'*, I consider it is reasonable to expect that QPS officers involved in investigating and considering the complaint, did not create any further records after 14 March 2011. In the circumstances, I consider the searches which QPS did proceed to conduct on the Later Application both originally and on review, were reasonable.
55. I did not press for further searches of stations which now comprise Patrol Services (West).⁵⁴ I am satisfied that searches of those stations would not constitute reasonable steps in the circumstances of this case, taking into account the date of the complaint (14 October 2010) and the fact that the located documents are all dated between 7 October 2010 to 14 March 2011.⁵⁵ Given the much later timeframe of this part of the Later Application, I am satisfied it would not be reasonable to conduct further searches in circumstances where documents after 14 March 2011 are unlikely to exist, and extensive searches on multiple applications to date have confirmed no further documents have been located after that date.⁵⁶
56. On the material before me I find that QPS has taken reasonable steps to search for documents responding to the part of the Later Application that is not subject to section 62 of the IP Act. I am satisfied that QPS has searched locations in which it would be reasonable to expect relevant documents to be located, and has provided sufficient reasons to establish reasonable grounds that further documents do not exist.
57. Accordingly, I find that access to any further documents may be refused on the basis they do not exist.⁵⁷

DECISION

58. I vary QPS's internal review decision by finding that:
- (i) section 62(3)(d)(ii) of the IP Act applies to the Later Application but only to the extent that it seeks access to the same documents requested in the First Application; and
 - (ii) access to documents responding to the remaining part of the Later Application may be refused under section 67(1) of the IP Act and sections 47(3) and 52(1)(a) of the RTI Act on the basis the documents do not exist.
59. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

⁵⁴ QPS advised these would include Indooroopilly, The Gap and Ferny Grove stations.

⁵⁵ The date of the alleged assault of the applicant was 7 October 2010.

⁵⁶ See paragraph 40.

⁵⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 29 July 2024

APPENDIX

Significant procedural steps

Date	Event
17 July 2023	OIC received the external review application.
18 July 2023	OIC requested preliminary information from QPS.
4 September 2023	OIC advised the applicant and QPS that the application for external review was accepted. OIC issued a preliminary view to the applicant.
17 September 2023	OIC received submissions from the applicant contesting the preliminary view.
26 and 30 October 2023	OIC requested and received information from QPS.
1 November 2023	OIC received correspondence from the applicant.
6 November 2023	OIC received further information from QPS.
22 November 2023	OIC requested further information and searches from QPS.
30 November 2023	OIC received information from QPS.
1 December 2023	OIC requested further searches by QPS. OIC updated the applicant.
19 December 2023	OIC requested the overdue information from QPS.
21 December 2023	OIC received information from QPS.
13 and 14 February 2024	OIC received correspondence from the applicant. OIC updated the applicant.
15 February 2024	OIC relayed a preliminary view to QPS and requested information.
8 March 2024	OIC received information and submissions from QPS.
13 March 2024	OIC issued a preliminary view to the applicant. OIC requested QPS disclose certain information to assist with informal resolution.
2 April 2024	OIC received correspondence from QPS confirming it disclosed information to the applicant on 19 March 2024.
12 April 2024	OIC received submissions from the applicant contesting the preliminary view.
13 and 23 May 2024	OIC advised the applicant and QPS the review would proceed to a formal decision.
1 July 2024	OIC requested further submissions from QPS.
12 July 2024	OIC received submissions from QPS.