



Decision and Reasons for Decision

Citation:	<i>D82 and Queensland Police Service [2024] QICmr 62 (19 November 2024)</i>
Application Number:	317972
Applicant:	D82
Respondent:	Queensland Police Service
Decision Date:	19 November 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - application to access documents regarding police investigations - whether agency has conducted reasonable searches - whether access to further documents may be refused 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)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for documents ‘...regarding the Queensland Fixated Threat Assessment Centre and any type of investigation regarding [himself]’ for the period 2014 to 2024.¹
2. QPS refused access to the requested information on the basis it does not exist.²
3. The applicant applied to the Information Commissioner for external review.³ During the review, relevant documents were located and released to the applicant, but the applicant maintains that further documents exist which have not been located.
4. For the reasons set out below, I affirm QPS’ decision.

Background

5. Significant procedural steps relating to the external review are set out in the appendix.

¹ Application dated 14 March 2024.

² Pursuant to sections 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld).

³ On 24 April 2024.

Reviewable decision

6. The reviewable decision is QPS' decision dated 24 April 2024.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken the applicant's submissions into account to the extent they are relevant to the issue for determination in this decision.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁴ I consider a decision-maker will be 'respecting and acting compatibly with' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).⁵ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Issue for determination

9. As noted above, QPS decided that the requested documents do not exist. However, on external review, QPS accepted that the scope had been interpreted too narrowly and conducted additional searches. These searches identified relevant documents which were released to the applicant, subject to the redaction of certain information.⁶ The applicant did not challenge the redaction of this information but maintained that further documents should exist.⁷ As such, the only issue for determination in this review is whether QPS has now taken all reasonable steps to locate relevant documents and any further documents are nonexistent or unlocatable.⁸

Relevant law

10. An individual has a right to access the documents of an agency, to the extent the documents contain the individual's personal information.⁹ This right is subject to certain limitations, including grounds to refuse access.¹⁰ One ground to refuse access is where a document is nonexistent or unlocatable.¹¹
11. To be satisfied that a document is nonexistent,¹² certain key factors must be considered, including:¹³
- the administrative arrangements of government

⁴ Section 21(2) of the HR Act.

⁵ *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]. The Information Commissioner'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].

⁶ QPS advised the Information Commissioner documents were sent to the applicant on 7 August 2024.

⁷ Email dated 19 August 2024.

⁸ Section 67(1) of the IP Act, and sections 47(3)(e) and 52(1) of the RTI Act.

⁹ Section 40 of the IP Act. 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

¹⁰ Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under section 47 of the RTI Act.

¹¹ Sections 47(3)(e) and 52(1) of the RTI Act.

¹² Section 52(1)(a) of the RTI Act.

¹³ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], applying the Information Commissioner's findings in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (**PDE**).

- the agency's 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.
12. In some circumstances, an adequate explanation may be sufficient to establish that certain documents do not exist, for example, where a particular document is not created because the agency's processes do not involve creating such a document. In such instances, it may not be necessary for the agency to search for the document. However, if searches are relied upon to establish that a document does not exist, all reasonable steps must be taken to locate the documents.¹⁴ What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the particular circumstances.
13. To determine whether a document exists, but is unlocatable, requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find it.¹⁵ In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.¹⁶
14. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.¹⁷ In assessing an agency's searches, the relevant question is whether the agency has taken all reasonable steps to identify and locate documents, as opposed to all possible steps.¹⁸
15. 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.¹⁹ Where an external review involves the issue of missing documents, the agency must demonstrate that reasonable steps have been taken to identify and locate relevant documents.²⁰ If the applicant maintains that further documents exist, a practical onus shifts to the applicant to establish reasonable grounds to believe that the agency has not discharged its obligation. Suspicion and mere assertion will not satisfy this onus.²¹

Analysis and findings

16. As noted at paragraph 1, the applicant applied to access documents '*regarding the Queensland Fixated Threat Assessment Centre and any type of investigation regarding [himself]*'.²²

¹⁴ As set out in *PDE* at [49].

¹⁵ Section 52(1)(b) of the RTI Act.

¹⁶ *Pryor* at [21].

¹⁷ Section 137(2) of the IP Act.

¹⁸ *Webb v Information Commissioner* [2021] QCATA 116 at [6], McGill J.

¹⁹ Section 100(1) of the IP Act.

²⁰ Section 137(2) of the IP Act.

²¹ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23].

²² Access application dated 14 March 2024.

17. QPS initially conducted searches only for Queensland Fixated Threat Assessment Centre (**QFTAC**) documents relating to the applicant. QPS provided evidence to the external review²³ of searches of Queensland Police Records Information Management Exchange (**QPRIME**)²⁴, correspondence systems, emails, case notes/reports and QFTAC internal case management system and explained:²⁵

'Search conducted of QFTAC internal systems failed to locate any information relating to the subject. Searches included QFTAC 'Incoming Referrals' document, QFTAC email archive and case management file server. Searches on QPRIME show no indication that the subject has been referred or discussed by QFTAC.'

18. On external review, QPS conducted further searches for documents relating to any other QPS investigations involving the applicant during the nominated date range. The search record provided demonstrates that QPS searched the QPRIME database for any relevant occurrences, using the applicant's name as the search term.²⁶
19. I note that the application itself is expressed in general terms and lacks any detail that could be used to target further searches, such as specific interactions with police, involved officers or relevant dates. The applicant's submissions on external review are similarly imprecise, submitting that QPS is withholding information about certain human rights abuses he says he has experienced over the last six years²⁷ and evidence of torture and corruption.²⁸
20. Having reviewed the terms of the access application and the submissions received from the applicant and QPS, I am satisfied that QPS has conducted appropriately targeted searches in locations where it would be reasonable to expect any relevant information to be stored, using an appropriate search term (the applicant's name), guided by the information supplied by the applicant in his access application. I am unable to identify any further lines of enquiry which would be reasonable to request in the circumstances of this case.
21. Accordingly, I am satisfied that:
- QPS has taken all reasonable steps to locate documents relevant to the access application; and
 - access to any further documents relevant to the access application may be refused on the basis they do not exist or are unlocatable.²⁹

DECISION

22. For the reasons set out above, I affirm QPS' decision and find that access may be refused to any further documents relevant to the access application on the ground that they are non-existent.³⁰

²³ Email received on 31 May 2024.

²⁴ QPRIME is QPS' central electronic records database, which houses investigation information such as occurrence reports, linked documents (such as statements) and records regarding historic documents.

²⁵ Search certification dated 3 April 2024.

²⁶ Search certification dated 20 August 2024.

²⁷ Submission received on 19 August 2024.

²⁸ Submission received on 4 September 2024.

²⁹ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

³⁰ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

23. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Jane Williams
Assistant Information Commissioner

Date: 19 November 2024

APPENDIX

Significant procedural steps

Date	Event
24 April 2024	The application for external review is received by the Information Commissioner.
26 April 2024	The Information Commissioner requests preliminary documents from QPS.
29 April 2024	The Information Commissioner receives preliminary documents from QPS.
15 May 2024	The Information Commissioner receives further preliminary documents from QPS.
27 May 2024	The Information Commissioner notifies QPS and the applicant that the application for external review has been accepted and requests search records from QPS.
29 May 2024	<p>QPS notifies the Information Commissioner that the application had been interpreted as only relating to QFTAC, and acknowledges the scope also captures any QPS investigation involving the applicant. QPS confirms additional information within scope have been located.</p> <p>The Information Commissioner requests a copy of the information along with search records and a submission.</p>
31 May 2024	QPS provides the located QPRIME documents and search records for the QFTAC documents.
25 July 2024	<p>The Information Commissioner asks QPS to release the located information to the applicant.</p> <p>The Information Commissioner writes to the applicant to:</p> <ul style="list-style-type: none"> • advise of the pending release • provide a preliminary view on the issues in the review; and • propose informal resolution.
7 August 2024	QPS releases the located information to the applicant.
19 August 2024	<p>The applicant advises the Information Commissioner that he does not agree to resolve the review and provides a submission in response to the preliminary view.</p> <p>The Information Commissioner requests outstanding search records from QPS.</p>
20 August 2024	<p>The applicant provides a submission to the Information Commissioner.</p> <p>The Information Commissioner receives search records from QPS.</p>
28 August 2024	The Information Commissioner conveys a further preliminary view to the applicant.
4 September 2024	The applicant advises the Information Commissioner that he does not agree with the preliminary view and provides a submission in support of his case.