



## Decision and Reasons for Decision

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Citation:	<b><i>J16 and Queensland Police Service [2025] QICmr 45 (14 July 2025)</i></b>
Application Number:	<b>317704</b>
Applicant:	<b>J16</b>
Respondent:	<b>Queensland Police Service</b>
Decision Date:	<b>14 July 2025</b>
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits further information should exist - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Background

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>1</sup> for access to various documents regarding a QPS investigation including the *'Forensic Scientific file including CCTV restoration report ... Total file of coronial investigation'*.<sup>2</sup>
2. QPS did not make a decision within the required statutory timeframe and was therefore taken to have made a deemed decision<sup>3</sup> refusing access to all requested documents.<sup>4</sup>
3. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of QPS's deemed decision. During the review, QPS located documents relevant to the terms of the access application and disclosed<sup>6</sup> them to the applicant, subject to the redaction of certain information.<sup>7</sup> Following this disclosure, the applicant submitted that further documents should exist, specifically, a *'CCTV restoration report'*.<sup>8</sup>

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<sup>1</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. In accordance with the transitional provisions in Chapter 7 Part 9 of the RTI Act, particularly section 206K of the RTI Act, references in this decision are to the RTI Act as in force prior to 1 July 2025.

<sup>2</sup> Access application dated 6 September 2023. The investigation had been undertaken into the death of the applicant's adult son.

<sup>3</sup> Notice of the deemed decision was given to the applicant by letter dated 28 November 2023.

<sup>4</sup> Section 46(1) of the RTI Act.

<sup>5</sup> External review application dated 30 November 2023.

<sup>6</sup> On 1 August 2024 and 26 March 2025.

<sup>7</sup> 118 pages including the investigating officer's report summarising the coronial investigation (47 pages), a Form 1 Police Report of Death to the Coroner (15 pages), and multiple supplementary reports (56 pages).

<sup>8</sup> Submission to OIC dated 6 September 2024 and confirmed by email to the applicant dated 12 September 2024.

4. The applicant's outstanding concerns on external review are limited to the issue of missing information, specifically, a CCTV restoration report.<sup>9</sup> I have therefore, examined the reasonableness of QPS's searches and made a finding on whether access to further documents, specifically in the nature of a CCTV restoration report, may be refused on the basis they are nonexistent.<sup>10</sup>
5. In making this decision, I have taken into account evidence, submissions, legislation and other material set out in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information and in doing so, have acted in accordance with section 58(1) of the HR Act.<sup>11</sup>
6. For the reasons set out below, I vary QPS's deemed decision and find that access to further documents may be refused on the basis they do not exist.<sup>12</sup>

### Relevant law

7. Access to a document may be refused under the RTI Act if it is nonexistent or unlocatable.<sup>13</sup> A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>14</sup> A document will be 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.<sup>15</sup>
8. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures and the nature and age of requested documents.<sup>16</sup> By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained.
9. Where 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, depending on which of the key factors are most relevant in the circumstances. 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.<sup>17</sup>

<sup>9</sup> The applicant did not seek to pursue the information redacted from the 118 pages released by QPS and therefore, that information is not considered in these reasons.

<sup>10</sup> Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>11</sup> OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

<sup>12</sup> Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>13</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>14</sup> Section 52(1)(a) of the RTI Act.

<sup>15</sup> Section 52(1)(b) of the RTI Act.

<sup>16</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (**PDE**). These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) [19].

<sup>17</sup> Section 130(2) of the RTI Act. The Information Commissioner also has power under section 115 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] 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.

10. On an external review, the agency or Minister who 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.<sup>18</sup> However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.<sup>19</sup> Suspicion and mere assertion will not satisfy this onus.<sup>20</sup>

### Searches, evidence and submissions

11. QPS submitted<sup>21</sup> that while searches conducted by the relevant unit did not locate any document called a CCTV restoration report, there were *'records / statements on the Forensic Register in relation to the downloading of files from the relevant SD cards and CCTV storage'*. These records comprised notes prepared by Examiner A and Examiner B (**Examination Notes**) and QPS agreed to disclose<sup>22</sup> the Examination Notes to the applicant.<sup>23</sup> In respect of the request for a *'CCTV restoration report'*, QPS submitted<sup>24</sup> that access could be refused as it was nonexistent or unlocatable.
12. After receiving the Examination Notes, the applicant submitted<sup>25</sup> *'QPS should be made to show evidence of their alleged CCTV restoration'* as she found it *'extremely hard to believe that they have stated nothing was intentionally deleted'* sonas the applicant had paid for restoration of the CCTV footage to be undertaken and *'it showed it was intentionally deleted & shortened'*.
13. The report of the investigating officer<sup>26</sup> outlined concerns that had been raised by the applicant during the investigation process in relation to the CCTV footage.<sup>27</sup> That report relevantly stated as follows:

*Due to the concerns raised by [the applicant] the SD cards [that were retrieved from the CCTV cameras] were **forensically examined** and there has not been any relevant material in the 'carved' files (any that would have been deleted). None of the 'carved' files were recent.*  
[emphasis added]

14. At OIC's request<sup>28</sup> QPS undertook further searches for documents relating to the forensic examination of the SD cards (as referred to in the report cited in the preceding paragraph) and made further inquiries with Examiners A and B. Through these searches and inquiries<sup>29</sup>, QPS located a statement by Examiner A (**Statement**) and disclosed it to the applicant.<sup>30</sup> In addition, the investigating officer responded as follows:<sup>31</sup>

*... **no other records were created** of the review of the forensic extractions. The forensic extraction reports already provided **contain all relevant notes** on each extracted file and the **statements** made by [Examiner A] and [Examiner B] outline how the extractions were completed and the results of those extraction.*

<sup>18</sup> Section 87(1) of the RTI Act.

<sup>19</sup> See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) [13].

<sup>20</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) [38].

<sup>21</sup> Submission dated 10 April 2024.

<sup>22</sup> On 1 August 2024.

<sup>23</sup> Subject to the deletion of the personal information of Examiners A and B.

<sup>24</sup> Submission dated 24 April 2024.

<sup>25</sup> Submission dated 6 September 2024.

<sup>26</sup> Released to the applicant, see footnote 7 above.

<sup>27</sup> At paragraph 68.

<sup>28</sup> Email dated 12 September 2024.

<sup>29</sup> Submission dated 23 January 2025 and attached search certification and records forms completed by Examiners A and B.

<sup>30</sup> On 26 March 2025. Subject to the deletion of the personal information of Examiner A and non-public facing contact details.

<sup>31</sup> Search record and certification form dated 13 March 2025 completed by the investigating officer.

15. In response to the released Statement, the applicant submitted:<sup>32</sup>

*...it is reasonable to conclude that [Examiner A's] reports and notes do, in fact, qualify as additional documents [relating to the forensic examination of the SD cards retrieved from the CCTV cameras and]... a copy of these reports and notes [should] be provided...*

16. The applicant pointed to the Statement<sup>33</sup> where Examiner A stated:

*A report was generated for each memory card. The reports include all viewable, existing and previously existing video and still image files identified on the two media.*

*...*

*The reports and **my notes** were then copied to an Optical Disc (Blu-ray) ...*

[emphasis added]

17. QPS subsequently 'located ... the contents that were downloaded to the optical disc'<sup>34</sup> and confirmed that the contents comprised the raw media (images and videos) that had been stored on the memory cards.<sup>35</sup> QPS confirmed that no further 'notes' appeared within the downloaded contents of the optical disc.

## Findings

18. As demonstrated by the information set out in paragraphs 11 to 17 above, as a result of the additional searches undertaken on external review, QPS was able to locate information relevant to the forensic examination of the CCTV footage (and SD cards) in the form of the Examination Notes and Examiner A's Statement.
19. Having examined all of the information available to me, including the outcome of QPS's further searches and inquiries with relevant officers, I am satisfied that QPS has now taken all reasonable steps to locate relevant documents and that access to further documents, including a document in the nature of a CCTV restoration report, may be refused on the basis such documents are nonexistent. While I accept that there are various references to 'notes' in the located documents, I am satisfied that those references are exclusively to the Examination Notes that have been located and released to the applicant. Further, taking into account the information obtained from the investigating officer<sup>36</sup> and the content of Examiner A's Statement<sup>37</sup>, I consider it is reasonable to conclude that no further forensic extraction notes or records were created beyond what has been located and released to the applicant.
20. I acknowledge that the documents located by the QPS have not met the applicant's expectations and that she has outstanding questions about the investigation and forensic examination process. However, OIC does not have jurisdiction to interrogate the investigative actions of QPS, nor make any determinations about the QPS investigation process or its forensic examination methods, nor to comment upon any alleged/perceived deficiencies in those processes. The issue for determination in this external review is whether access to further documents may be refused on the basis they do not exist or cannot be located.

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<sup>32</sup> Submission dated 28 March 2025.

<sup>33</sup> Paragraphs 9 and 11 of the Statement.

<sup>34</sup> Submission to OIC dated 24 April 2025 in response to a request by OIC for further information.

<sup>35</sup> Submission to OIC dated 27 May 2025, including a copy of the images and videos. These were not examined by OIC other than to the extent that their file type was confirmed as being a video or photographic file. The only other file type within the downloaded contents comprised metadata.

<sup>36</sup> At paragraph 14 above.

<sup>37</sup> At paragraph 16 above.

21. Based on the information before me, including the located documents, QPS's search records, and submissions, I am satisfied that, QPS has conducted searches in locations where it would be reasonable to expect documents relevant to the application to be found. I also consider that the inquiries made with the investigating officer and Examiner A and B were appropriate avenues to pursue in the circumstances of this case, as those officers were directly involved in the investigation and examination of evidence. While I acknowledge that it took several rounds of searches and inquiries by QPS to locate all relevant documents, I consider this can be partly attributed to the decentralised structure of QPS, and the technical/forensic nature of the specific documents being sought by the applicant. In the circumstances of this case, I find there are no further reasonable searches that QPS could undertake.
22. For the reasons set out above, I find that QPS has taken all reasonable steps to locate documents relevant to the scope of the access application, including a document in the nature of a CCTV restoration report, and access may be refused to any further documents, on the basis that they do not exist.<sup>38</sup>

## DECISION

23. I vary QPS's deemed decision and find that access to further documents may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.
24. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 14 July 2025**

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<sup>38</sup> Section 47(3)(e) and 52(1)(a) of the RTI Act.