



## Decision and Reasons for Decision

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Citation:	<b><i>Q48 and Queensland Corrective Services [2025] QICmr 96 (12 December 2025)</i></b>
Application Number:	<b>318336</b>
Applicant:	<b>Q48</b>
Respondent:	<b>Queensland Corrective Services</b>
Decision Date:	<b>12 December 2025</b>
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT - request for documents relating to a fire at a correctional centre - applicant submits documents should exist - whether agency has conducted reasonable searches and inquiries - whether access to 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<sup>1</sup> to Queensland Corrective Services (**QCS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>2</sup> for access to various documents relating to a fire at Capricornia Correctional Centre on 14 September 2023 (**Correctional Centre Fire**).
2. After consulting with the applicant<sup>3</sup> QCS decided that the access application did not comply with all relevant application requirements within section 24(2)(b) of the RTI Act as it was *'too broad for [QCS] to accurately determine the location of the documents [the applicant was] seeking to access'*.<sup>4</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QCS's decision on the basis that she considered she had complied with all relevant application requirements.<sup>5</sup> During the review, the applicant agreed<sup>6</sup> to narrow the scope of her access application and, following targeted searches and inquiries with

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<sup>1</sup> Access application dated 13 October 2024.

<sup>2</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act. As the applicant's application was made before this change, the RTI Act **as in force prior to 1 July 2025** remains applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act in this decision is to that Act **as in force prior to 1 July 2025**.

<sup>3</sup> By letters to the applicant dated 21 and 24 October 2024 and 11 November 2024. The applicant provided responses to QCS dated 22 and 31 October 2024 and 12 November 2024.

<sup>4</sup> Decision dated 14 November 2024. This is the *'reviewable decision'* for the purpose of this review.

<sup>5</sup> Email and attachments to OIC dated 25 November 2024.

<sup>6</sup> Submission dated 1 September 2025, following a request for clarification of the scope from OIC dated 19 August 2025.

relevant staff, QCS confirmed that no documents within the narrowed scope could be located.<sup>7</sup> OIC conveyed the outcome of the searches to the applicant along with a preliminary view that QCS was entitled to refuse access to documents under section 52(1) of the RTI Act on the basis they are nonexistent.<sup>8</sup> In response, the applicant maintains that documents responding to the narrowed scope should exist and should have been located by QCS.<sup>9</sup>

4. The applicant's concern on external review is limited to the issue of missing information, specifically documents relating to concerns raised about the Correctional Centre Fire and requests for firefighting equipment for use with a tractor. In considering the applicant's submissions, I have considered the reasonableness of QCS's searches and made a finding about whether access to documents 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 below reasons, I set aside QCS's decision and find that access to the documents sought may be refused on the basis they are nonexistent.<sup>12</sup>

### Relevant law

7. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.<sup>13</sup> While the legislation is to be administered with a pro-disclosure bias,<sup>14</sup> the right of access is subject to certain limitations, including grounds for refusing access.<sup>15</sup>
8. Relevantly, access to a document may be refused if it is nonexistent or unlocatable.<sup>16</sup> A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>17</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>18</sup>
9. 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>19</sup> By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's

<sup>7</sup> Submission to OIC dated 21 October 2025.

<sup>8</sup> Email to the applicant dated 31 October 2025.

<sup>9</sup> Submissions dated 26 November 2025.

<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> Section 23 of the RTI Act.

<sup>14</sup> Section 44 of the RTI Act.

<sup>15</sup> Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.

<sup>16</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>17</sup> Section 52(1)(a) of the RTI Act.

<sup>18</sup> Section 52(1)(b) of the RTI Act.

<sup>19</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) 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]. 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) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].

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.

10. 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>20</sup>
11. 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>21</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>22</sup> Suspicion and mere assertion will not satisfy this onus.<sup>23</sup>

### Searches, evidence and submissions

12. As noted at paragraph 3, the applicant agreed to narrow the scope of her access application during the review.<sup>24</sup> The **narrowed scope** is as follows:<sup>25</sup>

*The following documents held or previously held by [a specified QCS Acting Deputy Commissioner (ADC)] and/or [the Acting Assistant Commissioner (AAC)] who acted in [the ADC]'s role while [the ADC] was on secondment/leave:*

- (i) *Documentation relating to concerns raised by prison staff and prisoners in relation to the Capricornia Correctional Centre Fire 14 September 2023*
- (ii) *Documentation relating to requests for firefighting equipment for use with the tractor – ie. prior to the Capricornia Correctional Centre Fire of 14 September 2023*

*[Date range: 1 September 2020 to 30 September 2023]*

13. In support of her contention that documents responding to the narrowed scope exist, the applicant stated that she held a telephone conversation with the ADC on 23 December 2024 during which:<sup>26</sup>
  - she 'advised [the ADC] that [she was] aware that there wasn't any firefighting equipment for use with the tractor and that it was [her] understanding that the equipment was requested (prior to the fire) although it was not supplied'; and

<sup>20</sup> Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 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.

<sup>21</sup> Section 87(1) of the RTI Act.

<sup>22</sup> See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

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

<sup>24</sup> Submission dated 1 September 2025.

<sup>25</sup> Confirmed by email to the applicant dated 3 September 2025.

<sup>26</sup> Submission dated 7 August 2025.

- the ADC responded *'Yes and what an awful position for those staff to be in' and 'it is certainly not lost on me that one of the accountabilities for Minister Gerber is to give people on the front line the things they need to do their job effectively'.*
14. The applicant submits that these responses by the ADC during their conversation *'confirm the existence of the information'* she is requesting and that OIC should make enquiries with the ADC *'who will in fact be placed to confirm the existence and location'* of the requested documents.<sup>27</sup>
15. As the narrowed scope sought access to documents held by the ADC and/or ACC, OIC requested QCS undertake searches and make enquiries with the ADC and ACC.<sup>28</sup> In response, QCS provided OIC with submissions and records of the searches conducted by, and inquiries made with, the ADC and ACC regarding documents responding to the narrowed scope, which are summarised below:<sup>29</sup>
- searches were conducted of electronic systems (including email archives and manual searches of all inbox folders) using appropriate keywords (such as firefighting equipment, concerns prison staff and prisoners, fire 14 September 2023, fire, TCC fire, Townsville fire, tractor, and prisoners concerns) for the relevant time period
  - the searches performed by the ADC located some documents containing some of the keywords mentioned, however on inspection of those documents, they did not relate to concerns raised by prison staff and/or prisoners in relation to the Correctional Centre Fire or requests for firefighting equipment for use with the tractor and therefore were not considered documents responsive to the narrowed scope<sup>30</sup>
  - the AAC stated *'I don't believe the documents exist and/or were not sent to me'* and *'I archive ALL email correspondence'*; and
  - if the documents existed, the searches performed would have located them.
16. The outcome of the searches and inquiries was conveyed to the applicant along with OIC's preliminary view that QCS had taken reasonable steps to locate the documents sought in the narrowed scope and access to documents may be refused on the basis they are nonexistent.<sup>31</sup> In response, the applicant stated she did not *'accept that the QCS has taken all reasonable steps to identify the documents [she has] repeatedly requested'*, submitting in summary:<sup>32</sup>
- she does *'not accept for good reason that documentation confirming requests for fire fighting equipment were not made by prison staff prior to the fire of 14 September 2023 and refused'*
  - QCS and the State have displayed a *'persistent approach to conceal factual information about'* the Correctional Centre Fire
  - despite her numerous RTI access applications, QCS has not released information which reveals *'prison officers requested firefighting equipment before the 14 September 2023 fire and it had been refused'*
  - she was contemporaneously made aware of a conversation between another individual and a prison guard during which the prison guard stated that prison

<sup>27</sup> Submission dated 7 August 2025.

<sup>28</sup> By letter dated 3 September 2025.

<sup>29</sup> Submission dated 21 October 2025 and search certification and records forms provided to OIC on 27 October 2025 completed by the ADC and ACC.

<sup>30</sup> A copy of the documents located by the ADC were provided to OIC on 27 October 2025.

<sup>31</sup> By letter dated 31 October 2025.

<sup>32</sup> Submissions dated 26 November 2025.

guards at Capricornia Correctional Centre *'had requested firefighting equipment prior to the fire'* but the requests had been refused

- the Executive Summary of the Evexia report commissioned in 2022 states that a *'lack of appropriate focus on workplace health and safety processes and procedures, including transparency and effectiveness of risk mitigation strategies and decision making was identified by some staff'*; and
- during their conversation on 23 December 2024, the ADC acknowledged Capricornia Correctional Centre had no firefighting equipment at the time of the Correctional Centre Fire.

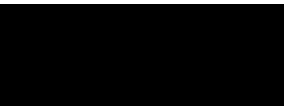
## Findings

17. Having examined the information available to me, including QCS's submissions, the records of searches completed by the ADC and ACC, the extent of the searches conducted, and the documents located by the ADC which QCS submitted fall outside the narrowed scope, I am satisfied that QCS has conducted targeted searches and inquiries to locate information relevant to the terms of the narrowed scope. In relation to the documents located by the ADC, I have considered them and am satisfied that QCS correctly identified that while they contain some of the key search terms, they do not comprise documents which respond to the narrowed scope as they do not relate to concerns raised about the Correctional Centre Fire or requests for firefighting equipment for use with a tractor.
18. I acknowledge that the comments by the ADC, as reported by the applicant and set out at paragraph 13, could be taken to indicate an awareness of request/s for equipment prior to the Correctional Centre Fire and, to this extent, appear consistent with the conversation between another individual and a prison guard she is aware of. However, I also note that the comments of the ADC could be taken to respond to the first part of the applicant's comment that *'there wasn't any firefighting equipment for use with the tractor'* rather than the second part of her comment that *'the equipment was requested (prior to the fire) although it was not supplied'*. Further, even if the comments by the ADC respond to the latter part of the applicant's comment, it could be the case that the awareness of a request/s for equipment prior to the Correctional Centre Fire related to requests that were made verbally and/or verbally relayed to the ADC.
19. I acknowledge that QCS's inability to locate documents responding to the narrowed scope has not met the applicant's expectations and that she generally has outstanding concerns about QCS's record keeping practices regarding concerns raised by prison staff and prisoners and requests for firefighting equipment for use with a tractor. However, OIC does not have jurisdiction to make any determinations about QCS's processes including how it manages concerns raised by prison staff and prisoners or requests for equipment.
20. Notwithstanding the applicant's broader concerns, the issue for determination in this external review is whether access to documents may be refused on the basis they do not exist. Based on the information set out in the preceding paragraphs, I am satisfied that QCS has conducted searches in locations where it would be reasonable to expect documents relevant to the narrowed scope to be found. I also find that making inquiries with the ADC and ACC were appropriate avenues to pursue in the circumstances, as they are the officers nominated as holding the documents sought and would therefore be able to reliably comment on whether documents responding to the narrowed scope had been received or created. In the circumstances, I am unable to identify any further searches that would be reasonable for QCS to undertake.

21. For the reasons set out above, I find that QCS has taken all reasonable steps to locate documents relevant to the narrowed scope and access may therefore be refused on the basis they do not exist.<sup>33</sup>

## DECISION

22. For the reasons set out above, I set aside the reviewable decision<sup>34</sup> and find that access to documents responding to the narrowed scope may be refused under section 47(3)(e) of the RTI Act on the basis they do not exist under section 52(1)(a) of the RTI Act.
23. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**K McGuire**  
**Acting Manager, Right to Information**

**Date: 12 December 2025**

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<sup>33</sup> Sections 47(3)(e) and 52(1)(a) of the RTI Act. In the circumstances of this case, I do not consider QCS was required to undertake a backup system search under section 52(2) of the RTI Act.

<sup>34</sup> Under section 110(1)(c) of the RTI Act.