

Decision and Reasons for Decision

Citation:	<i>C89 and West Moreton Health [2026] QICmr 20 (12 February 2026)</i>
Application Number:	318768
Applicant:	C89
Respondent:	West Moreton Health
Decision Date:	12 February 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches and inquiries - whether access to further documents may be refused on the basis they are nonexistent - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the respondent agency (**WM Health**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**)² for access to medical records associated with her involuntary admission to Ipswich Hospital, as well as any body-worn camera (**BWC**) footage taken of her by Hospital security on the day of her admission.
2. WM Health decided³ to grant access to some information, but refused access to other information either on the basis that it was exempt information, or because its disclosure would, on balance, be contrary to the public interest. It refused access in full to BWC footage that was recorded in the Hospital's Emergency Department.

¹ Application received 24 March 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009 (Qld)* (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and 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 IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**.

These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> respectively.

³ Decision dated 27 June 2025.

3. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of WM Health's decision.
4. During the external review, a number of issues were resolved and additional information was disclosed to the applicant, specifically, the audio of the BWC footage to which WM Health had previously refused access in full.⁵ However, the applicant contended that there should be additional footage in existence that recorded her transfer from the Emergency Department to a ward.
5. For the reasons explained below, I decide to vary WM Health's decision by finding that access to any additional BWC footage may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the ground that it is nonexistent.

Reviewable decision

6. The decision under review is the decision of WM Health dated 27 June 2025.

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 account of the applicant's submissions to the extent that they are relevant to the issue for determination in this review.⁶
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ 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 RTI Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*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.*'¹⁰

Issue for determination

9. The issue for determination is whether access to BWC footage that recorded the applicant's transfer from the Hospital's Emergency Department to a ward may be refused under the IP Act on the ground that it is nonexistent.

⁴ On 7 July 2025.

⁵ The applicant did not pursue access to the refused information from her medical records as she was able to obtain a complete copy of the records via her legal representative in the context of legal proceedings in which she was involved. The applicant also did not seek to pursue access to the vision of the BWC footage. While WM Health was agreeable to the applicant attending at the Hospital to view the footage, the applicant advised that she did not wish to take up this offer due to the stress that it would cause her.

⁶ Including the external review application and emails received on 7 October 2025, 14 October 2025, 13 November 2025 (multiple emails), 4 December 2025, 20 December 2025, 18 January 2026, 28 January 2026, and 1 February 2026.

⁷ Section 21 of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

Relevant law

10. Access to a document may be refused if the document is nonexistent or unlocatable.¹¹
11. Under section 137(2) of the IP Act, the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify, search for, and locate requested documents. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner*¹² that this '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.
12. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted by an agency during an external review. In assessing an agency's searches, the Information Commissioner has recently confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate responsive documents, as opposed to all *possible* steps.¹³ What constitutes reasonable steps will vary from case to case, as the search and inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.¹⁴
13. A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁵ To be satisfied that a document does not exist, the Information Commissioner has previously had regard to various key factors, including the agency's record-keeping practices and procedures (including, but not limited to, its information management approaches).¹⁶ By considering the relevant factors, the decision-maker may conclude that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
14. The Information Commissioner may also take into account the searches and inquiries conducted by an agency in determining whether a document is nonexistent. As noted above, the key question is whether those searches and inquiries amount to '*all reasonable steps*'.¹⁷
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.¹⁸ Where the issue of missing documents is raised on external

¹¹ 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.

¹² [2021] QCATA 116 at [6].

¹³ *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

¹⁴ As set out in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [38].

¹⁵ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

¹⁶ *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15] which adopted the Information Commissioner's comments in *PDE* at [37]-[38]. *PDE* addresses the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant.

¹⁷ As set out in *PDE* at [49].

¹⁸ Section 100 of the IP Act.

review, the agency must demonstrate that reasonable steps have been taken to identify and locate relevant documents.¹⁹ However, if the applicant maintains further documents exist, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation. Suspicion and mere assertion will not satisfy this onus.²⁰

Submissions of the parties

16. Throughout the review, the applicant made adamant assertions that her transfer to the ward was recorded by the security officers who escorted her. In her various emails about this issue,²¹ the applicant submitted as follows:
 - she had disclosed to the security officers that she was carrying pocket knives in her bag²² and these were taken from her on her arrival on the ward
 - when she asked for a receipt, a security guard wearing a red shirt told her that no receipt was necessary because it was captured on a BWC recording that couldn't be deleted; and
 - she was threatened and assaulted with *'involuntary forcible sedation'* on the ward.
17. In further support of her argument that a BWC recording ought reasonably be expected to exist, the applicant provided a screenshot of notes contained in her medical record that described her demeanour upon arrival on the ward as well as the surrendering of the pocket knives, and submitted: *'So do you really think they didn't video what is in the notes on this screenshot?!?!'*²³
18. In response to the applicant's contentions, WM Health was asked to conduct any necessary further searches or inquiries in an effort to determine whether any additional BWC footage, that recorded the applicant's transfer to the ward, existed.
19. WM Health responded²⁴ by providing a search certification completed by the Hospital's Security Coordinator (Security Services) attesting to the fact that no additional footage had been located following searches. OIC sought further clarification from WM Health about the searches which advised that:
 - the Security Coordinator had conducted a search of Axon Evidence.com, which is the account where all security footage recorded on the Hospital's Axon body-worn cameras is held
 - the only footage located that related to the applicant for the relevant timeframe was taken in the Emergency Department²⁵
 - the Security Coordinator confirmed that all footage is automatically uploaded to the Cloud – individual security officers are not required to download or save footage; and
 - only the Security Coordinator has access to Axon Evidence.com.
20. This information was communicated to the applicant, together with my preliminary view that, based on the information provided by WM Health, access to any additional footage could be refused under the IP Act on the ground that it was nonexistent. I advised the

¹⁹ Section 137(2) of the IP Act.

²⁰ *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

²¹ See footnote 6 above.

²² The applicant lives rurally and stated that she kept a pocket knife with her as a matter of course in order to carry out jobs around her property.

²³ Email of 20 December 2025.

²⁴ By letter dated 16 December 2025.

²⁵ The audio of that footage has been disclosed to the applicant.

applicant that I was unable to identify any further searches that I considered WM Health could reasonably be asked to undertake in an effort to locate any additional footage.²⁶

21. The applicant did not accept my preliminary view, maintaining that she had been told by security officers that the BWC recording was all that she needed as proof her knives had been taken from her by security, and relying on the screenshot referred to in paragraph 17 above.
22. In a final effort to address the applicant's concerns, WM Health was asked²⁷ to identify the security officers who were on duty at the relevant time and who would likely have accompanied the applicant to the ward, and to ask them whether they could recall anything of the transfer and whether or not it was recorded. WM Health was also asked to provide a copy of the Hospital's BWC Procedure.
23. WM Health's response was communicated to the applicant by OIC on 28 January 2026:

[WM Health] advised that it had identified and spoken directly with both the Security Manager and the Security Supervisor who were on duty that day and who accompanied you to the ward. The Security Supervisor was the officer who wore the red shirt you referred to. He advised that he recalled the ward transfer, and provided these specific details:

He stated that [the applicant's] property (knives) was taken from her that day, and a patient sticker was applied to them in her presence. [The applicant] was advised that she could collect her property from the security office the following day. [He] advised that we do not issue receipts for property.

[He] stated that the day she was discharged, she attended the security office, and her property was returned to her.

[He] confirmed that BWC recording only occurs where there is an incident, risk, or potential threat and that the transfer/escort of [the applicant] to the ward did not meet that threshold or require BWC recording.

24. In terms of the Procedure, I advised the applicant that, while the Procedure indicated that body worn cameras should ordinarily be used when a security officer is deployed or engaged, there appeared (based on the information provided by WM Health) to be a discretion in practical operation, depending on the relevant officer's assessment of the level of risk and need for the recording of an interaction. As noted in WH Health's response, the Security Supervisor on duty assessed the applicant's transfer to the ward as not presenting a risk or potential threat to safety, and advised that it was not recorded.
25. A further preliminary view was communicated to the applicant that access to the footage she sought could be refused on the ground that it was nonexistent. The responses provided by the applicant did not engage with the sufficiency of search issue to be determined,²⁸ but made clear that the applicant was not agreeable to resolving the review on the basis of the information provided by WM Health and my preliminary view. She continued to express her anger at her treatment by the Hospital.

²⁶ Letter dated 18 December 2025.

²⁷ Email on 24 December 2025.

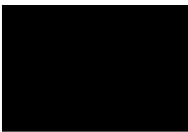
²⁸ In emails received on 28 January 2026 and 1 February 2026. The applicant did not, for example, suggest any further searches or inquiries that it would be reasonable to ask the Hospital to undertake.

Findings

26. I acknowledge the applicant's concerns regarding her interactions with the Hospital generally, and her submissions about the impact those interactions have had on her health and wellbeing. However, as I have advised the applicant, the only issue remaining that OIC has jurisdiction to deal with under the IP Act in this review is whether access to BWC footage recording her transfer to the Hospital ward may be refused on the ground that it is nonexistent.
27. I am satisfied that WM Health has discharged the onus upon it to demonstrate that it has taken all reasonable steps in an effort to locate the footage. I consider that the searches and inquiries that WM Health undertook were reasonably targeted and ought reasonably be expected to have located the footage if it existed, or to at least identify any other avenues of search or inquiry.
28. On the information before me, I am unable to identify any other searches or inquiries it would be reasonable to ask WM Health to undertake, and nor has the applicant suggested any. In terms of the applicant's reliance upon the extract from her medical records that describes her arrival onto the ward, I note that there is nothing in the extract that establishes that the applicant was being recorded. The applicant asserts that her interaction with security officers must have been recorded because of the description of events contained in the extract. However, as noted at paragraph 15 above, suspicion and mere assertion will not satisfy the practical onus that is on an applicant to demonstrate that the agency has not discharged its reasonable search obligations.
29. I am therefore satisfied that access to BWC footage recording the applicant's transfer from the Hospital's Emergency Department to the ward may be refused under the IP Act on the ground that it is nonexistent.

DECISION

30. For the reasons set out above, I vary the decision under review²⁹ and find that access to the BWC footage sought by the applicant may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.
31. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.



R Moss
A/Assistant Information Commissioner

Date: 12 February 2026

²⁹ Under section 123(1)(b) of the IP Act.