Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***L98 and Metro North Hospital and Health Service*** **[2026] QICmr 33 (3 March 2026)**
Application Number:	**318950**
Applicant:	**L98**
Respondent:	**Metro North Hospital and Health Service**
Decision Date:	**3 March 2026**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT - applicant contends insufficient searches - whether there are reasonable grounds to be satisfied the documents do not exist - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied[1] to Metro North Hospital and Health Service (**MNHHS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:

> *Adverse Event / Serious Adverse Event line listings relating to infectious diagnoses (de-identified), and any tables/appendices from the Clinical Study Report listing organisms detected in participants.*

2. The applicant identified the relevant study (**Study**) to be:

> *Clinical study titled Performance of emerging diagnostic techniques for the diagnosis of severe infections in neutropenic patients with haematological malignancies (short title New Diagnostics in Neutropenia), ethics approval HREC/2021/QRBW/78988 (also referenced as 78989), conducted at RBWH (Metro North Health).*

3. MNHHS decided to refuse access to these documents on the ground they are nonexistent.[2]

4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of MNHHS's decision.[3]

5. During the external review, MNHHS provided a record responding to the request for tables/appendices listing organisms detected in participants (**Organism Results**). The

[1] The application was originally made to Queensland Health on 21 August 2025 and transferred to MNHHS on 22 August 2025.
[2] The **'reviewable decision'** dated 26 September 2025.
[3] External review application dated 26 September 2025.

applicant confirmed as they have previously received the Organism Results through another process, they did not seek this information as part of the review.

6. MNHHS submitted that adverse event/serious adverse event line listings (**Adverse Event Records**) were not created as part of the Study. In support of this position, MNHHS provided background information about the nature of the Study, which was conveyed to the applicant.

7. The applicant maintains that Adverse Event Records should have been created during the Study.

8. For the reasons outlined below, I affirm MNHHS's decision and I find that access to the requested information may be refused under section 47(3)(e) and 52(1)(a) of the RTI Act on the basis this information is nonexistent.

9. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the applicant's right to seek and receive information.[4] I consider that in observing and applying the law prescribed in the RTI Act, a RTI decision-maker will be *'respecting and acting compatibly with'* this right and others prescribed in the HR Act,[5] and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act:[6] *'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 1982.'[7]

Relevant law

10. The RTI Act provides a right to apply for documents of an agency or Minister.[8] This right of access is not absolute but subject to the conditions and refusal grounds in the RTI Act itself.[9] Relevantly, an agency may refuse access to documents if they do not exist.[10]

11. A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.[11] To be satisfied that a document does not exist, the Information Commissioner has previously had regard to various key factors, including an agency's record keeping practices and procedures (including, but not limited to, its information management approaches).[12] By considering 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 the relevant circumstances to account for the nonexistent document are adequately explained by the agency.

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[4] See section 21 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]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by Queensland Civil and Administrative Tribunal 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] *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[7] *XYZ* at [573].
[8] Section 23 of the RTI Act. See also section 3 of the RTI Act.
[9] Section 47 of the RTI Act outlines the grounds on which access may be refused to a document to the extent which the grounds apply.
[10] Section 47(3)(e) and 52(1)(a) of the RTI Act.
[11] Section 52(1)(a) of the RTI Act. For example, a document has never been created.
[12] *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (***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.

12. The Information Commissioner may also take into account the searches and inquiries conducted by an agency in determining whether a document is nonexistent. The key question then is whether those searches and inquiries amount to '*all reasonable 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. The agency that made the decision under review has the onus of establishing that the decision was justified, or the Information Commissioner should give a decision adverse to the applicant.[15] However, where an external review involves the issue of missing documents, and the agency has satisfied the Information Commissioner, or her delegate, that it has met the requirements of section 52 of the RTI Act, a practical onus shifts to the applicant to establish reasonable grounds which demonstrate that the agency has not discharged its obligation to take all reasonable steps to locate the requested documents. Suspicion and mere assertion will not satisfy this onus.[16]

Findings

14. OIC sought information from MNHHS regarding its searches for the responsive documents as well as any explanation to account for the nonexistence of Adverse Event Records.[17] MNHHS submitted that:[18]

> *Metro North was a collaborating site in the University of Queensland (UQ) led research study titled "*Performance of emerging diagnostic techniques for the diagnosis of severe infections in neutropenic patients with haematological malignancies (short title "New Diagnostics in Neutropenia*"). It is important to distinguish that this research study was not a clinical trial. Adverse Event/Serious Adverse Event line listings are only collected in clinical trials, therefore as this study was not a clinical trial, adverse events/serious adverse events were not collected. This observational research study aimed to determine the value of novel tests for infection in a haematology patient population. The role of Metro North investigators was to facilitate sample collection and transfer of de-identified clinical data, to help determine how these novel research tests compared to standard diagnostic tests for infection.*
>
> *Additionally, this study was led by UQ, who are the holders of all study-related research laboratory results and/or clinical study reports…*
>
> *Accordingly, the RTI Request for Document was completed as 'No Documents Found.' The Metro North Office of Research only holds records relating to the ethics and governance approval for the study and does not hold any research records pertaining to individual studies. [Staff member 1] confirmed in writing that there were no documents held relating to adverse events/serious adverse events or any other results or reports pertaining to this study.*
> *…….*
>
> *Metro North Research applies the World Health Organisation (WHO) definition of a clinical trial, which is also the definition applied by the Australian Commission on Safety and Quality in Health Care for the purposes of the National Clinical Trials Governance Framework. The relevant definition of a clinical trial is "any research study that prospectively assigns human*

[13] As set out in *PDE* at [49]. This is a different test than all *possible* steps: *P52 and Fraser Coast Regional Council* [2024] QICmr 7 (19 February 2024) at [24]; *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23].
[14] As set out in *PDE* at [38].
[15] Section 87(1) of the RTI Act.
[16] *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].
[17] By email dated 29 September 2025 and 23 October 2025. OIC's requests were also informed by the applicant's submissions in their external review application dated 26 September 2025, and submission dated 16 October 2025.
[18] By email dated 14 October 2025 and 3 November 2025.

participants or groups of humans to one or more health-related interventions to evaluate the effects on health outcomes."

This study was not recorded as a clinical trial in either the ethics application nor the Site-Specific Assessment application. The approved Human Research Ethics Application (HREA) listed the study as:

1) Observational Research
2) Biospecimen analysis research; and the protocol was approved by the HREC as a prospective observational study.

Review of protocol by the Metro North Deputy Director Research and Executive Director Research concurs that this study does not meet the WHO definition of a clinical trial.

This is primarily on the basis that participants were not undergoing an intervention, which is ordinarily administration of a drug, device or new therapy that differs from their standard of care treatment.

As outlined above, the WHO definition requires a "health-related intervention to evaluate the effects on health outcomes." In this study there was no health-related intervention, and the clinical information collated had no impact on health outcomes, as it was not used for any clinical decision making.

In this study, additional blood samples were being collected from participants to explore the performance of different new tests in diagnosing blood stream infection compared to standard laboratory testing. However, this analysis was being done retrospectively and was not being used for clinical decision making. Standard of care testing (blood cultures) were used for clinical decision making. The Participant Information Sheet and Consent Form clearly set out that the results of this study would not be used for any clinical decision-making. The reasoning outlined was as follows:

"Since the technologies we are studying are not part of usual care yet, the results obtained by their use during the present study will not be used to make any decisions regarding your clinical care. However, results from this study will help to understand the performance of these new tests and possibly improve the care of patients with fever and neutropenia in the near future."

As this study was not a clinical trial, adverse events were not collected. It is noted that the Participant Information Sheet and Consent Form (PICF) did include a "Complaints and compensation" section. This is a required section of a PICF given that complications/injury can still arise from additional blood tests which formed part of this study protocol.

15. At our request, MNHHS also made direct enquiries with officers involved in the Study about the existence of Adverse Event Records.[19] In response, MNHHS explained that:

[Staff member 1] has confirmed that no adverse events, complications, or related incident reports were generated, reviewed, or discussed during the study period. As outlined above, as this did not meet the WHO definition for a clinical trial, adverse even information need not be collected.
[Staff member 2], on behalf of the Metro North HREC and Research Governance Office, confirms that no adverse events, complications, or related incident reports were generated, reviewed, or discussed during the study period.

16. The information provided by MNHHS at paragraphs 14 and 15 was relayed in full to the applicant, along with the Assistant Information Commissioner's (**AIC**) preliminary view that MNHHS may refuse access to the requested documents on the basis they were not

[19] Including whether the officers know of any adverse events, complications or related incident reports that were generated, reviewed or discussed during the Study report.

created and do not exist.[20] The AIC noted[21] that OIC's external review jurisdiction did not extend to the question of whether an agency *should* have created records - only whether it *could* refuse access to the requested documents on the basis they did not exist.[22]

17. The applicant contested this view and provided further submissions outlining her position:[23]

> *Since the preliminary view was issued,* ***the University of Queensland has located and released study-related documentation for HREC/2021/QRBW/78988/9****, including tabulated sample logs and explanatory records associated with the diagnostic research study. These documents* ***directly contradict Metro North's position*** *that no records, logs, summaries or related study documentation were created for this project. Their existence indicates that Metro North's searches may not have been complete or may not have extended to all relevant custodians or record-holders.*
> *……..*
>
> *My application seeks Adverse Event (AE) and Serious Adverse Event (SAE) records, together with any related incident reports, correspondence, monitoring logs, or governance documentation generated during the study period.*
>
> *Metro North continues to assert that such records were never created because the study was classified as "observational."*
> *The recent release of extended study data by the University of Queensland demonstrates that:*
> *study samples were collected, processed, stored, and later analysed;*
> *organisms were detected and logged across participants; and*
> *study-related data clearly existed beyond what Metro North initially claimed was held.*
> *Against that background, Metro North's assertion that no AE/SAE records, progress notes, or related governance documentation were created at all remains in dispute and is the basis of my ongoing external review.*
>
> [sic]

18. I have carefully considered the applicant's submissions. However, I am not persuaded that the submissions raise a reasonable basis to consider that the Adverse Event Records exist and MNHHS should undertake further searches. Rather, I favour MNHHS's submission, based on the knowledge of officers responsible for the Study, that Adverse Event Records were not created.

19. The question of responsive documents and the searches of an agency are determined by reference to the scope of the access application, which sets the parameters for an agency's searches.[24] With respect to the applicant's submissions, MNHHS has not stated that *'no records, logs, summaries or related study documentation'* were created for the project. Rather, it provided submissions that:[25]

- the University of Queensland (**UQ**) led the Study, and MNHHS was a collaborating site
- UQ hold *'all study-related research laboratory results and/or clinical study reports'*

[20] By email dated 16 October 2025, 7 November 2025 and 7 January 2026.
[21] Letter dated 16 October 2025.
[22] Agencies may also refuse access to documents on the basis they are unlocatable (section 47(3)(e) and 52(1)(b) of the RTI Act).
[23] Email dated 1 December 2025.
[24] *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] considering equivalent provisions in the now repealed *Freedom of Information Act 1992* (Qld); *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010); *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [15] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].
[25] See paragraph 14 above.

- the *'Metro North Office of Research only holds records relating to the ethics and governance approval for the study and does not hold any research records pertaining to individual studies';* and
- *'no adverse events, complications, or related incident reports were generated, reviewed, or discussed during the study period.'*

20. Importantly, the applicant's RTI access application was limited in its scope, expressly framed so as to request access to two categories of documents, being the Adverse Event Records and Organism Results.[26] The applicant's submission above, however, refers more generally to '*incident reports, correspondence, monitoring logs, or governance documentation generated during the study period.*' General information of this kind was not targeted in the access application.

21. The scope of the access application cannot be unilaterally broadened on external review, and as a result, this decision is limited to assessing whether all reasonable steps have been taken to locate the Adverse Event Records only.[27] It is open to the applicant to lodge a fresh access application for information not covered by the scope of this access application.

22. Finally, the applicant submits that *'Metro North's searches may not have…extended to all relevant custodians or record-holders'.* It appears from this submission that the applicant considers documents may be held by UQ as the Study lead. While MNHHS submitted that Adverse Event Records were not created, to the extent the applicant suggests that UQ may hold the requested documents, they would not comprise documents in the possession or under the control[28] of MNHHS, but UQ - a distinct agency for the purposes of the RTI Act. The applicant would need to pursue access by way of an access application to UQ.

23. On the material before me, I am satisfied that MNHHS may refuse access to the requested documents - that is, the Adverse Event Records - on the basis these documents do not exist. As I am satisfied that the Adverse Event Records were never created, I do not consider it reasonable to anticipate that a copy would be kept in, or retrievable from a backup system.[29]

DECISION

24. For the reasons set out above, I affirm the reviewable decision[30] and find that MNHHS may refuse access to the requested documents under sections 47(3)(e) and 52(1)(a) of the RTI Act, on the basis the documents do not exist.

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[26] Including '*tables/appendices from the Clinical Study Report listing organisms detected in participants*.' On 7 January 2026, the applicant confirmed that they did not, as noted above, seek a further copy of the Organism Results in this review.
[27] *Simpson MP and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 29 July 2011) at [11] to [22]; and *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].
[28] Section 12 of the RTI Act. The issue of whether documents are '*in the control of*' an agency was considered in *Carmody v Information Commissioner & Ors* [2018] QCATA 14 at [67] and *O37 and Department of Justice* [2025] QICmr 40 (19 June 2025).
[29] Section 52(2) of the RTI Act.
[30] Under section 110(1)(a) of the RTI Act.

25. 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.

Brianna Luhrs
Manager, Right to Information

Date: 3 March 2026