



Decision and Reasons for Decision

Citation:	<i>B14 and Legal Services Commission</i> [2024] QICmr 64 (20 November 2024)
Application Number:	317485
Applicant:	B14
Respondent:	Legal Services Commission
Decision Date:	20 November 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - request for information about a complaint made by the applicant about legal practitioners - whether all reasonable steps taken to locate responsive documents - whether access to further documents and metadata may be refused on the basis they do not exist - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Legal Services Commission (**LSC**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all information (including metadata)² relating to a complaint she had made in 2019, to the LSC, about three legal practitioners.
2. The LSC located over 1500 pages in response to the application and granted the applicant full access to the majority of the located information.³ The LSC decided⁴ to refuse access to parts of 27 pages on the basis that the information, direct contact details of LSC staff, would, on balance, be contrary to the public interest to disclose. The LSC also decided not to provide metadata on the basis it was '*not reasonably practicable to do so on the basis that the exercise would be too resource intensive and costly.*'⁵

¹ Access application dated 18 June 2023.

² While not originally requested in the access application, the applicant's letter confirming scope of the access application to the LSC on 6 July 2023 clarified that she was seeking metadata.

³ 1569 pages were located with full access granted to 1542 pages and partial access to 27 pages.

⁴ Decision dated 4 August 2023.

⁵ Relying on section 48(2) of the IP Act.

3. The applicant applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of the LSC's decision on '*sufficiency of search grounds*' also stating that she was '*concerned that information has deliberately withheld, concealed or removed*' [sic]. The applicant also raised concerns that the '*requested metadata ... was declined on a completely spurious basis*'.
4. During the external review, while the applicant did not continue to seek access to the direct contact details of LSC staff, she made extensive submissions in support of her position that further documents should exist to show the actions taken by the LSC on her complaints. The applicant also argued that unsatisfactory explanations had been provided by the LSC regarding metadata.⁷ Towards the end of the review, copies of metadata for letters generated by the LSC on the applicant's complaints were located and identified for disclosure to the applicant.
5. For the reasons set out below, I find that the LSC has taken all reasonable steps to identify and locate responsive documents, and that access to further documents may be refused on the basis they do not exist.⁸

Background

6. In 2019, the applicant complained to the LSC about the conduct of three practitioners under the *Legal Profession Act 2017* (Qld) (**LP Act**). The information available to OIC confirms that the complaints were made in the context of estate planning, administration of the estate of the applicant's late mother, and the removal of the applicant's sibling as executor of the estate, with the subject legal practitioners retained to act for the executor of the estate.⁹
7. The information released to the applicant under the IP Act confirms that the applicant's complaints were summarily dismissed¹⁰ as the Legal Services Commissioner was satisfied that the complaints did not disclose conduct to which Chapter 4 of the LP Act applies, being '*unsatisfactory professional conduct*' or '*professional misconduct*'.¹¹ The applicant sought reconsideration of the decision to dismiss the complaint about the three legal practitioners—the Legal Services Commissioner affirmed her decision that the conduct complained of would not amount to conduct to which the LP Act applies as there was insufficient evidence to support the allegations made by the applicant.¹²

Evidence considered

8. The significant procedural steps are set out in the Appendix.
9. Evidence, submissions, legislation and other material I have considered in reaching this decision are included in these reasons (including footnotes and the Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹³ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when

⁶ By email dated 4 August 2023.

⁷ Submissions to OIC dated 4 December 2023, 11 and 26 April 2024.

⁸ Section 67 of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁹ LSC decision dated 4 August 2023.

¹⁰ Pursuant to section 432(1)(b)(i) of the LP Act.

¹¹ Letter from the LSC to the applicant dated 19 December 2019.

¹² Letter from the LSC to the applicant dated 13 March 2020.

¹³ Section 21 of the HR Act.

applying the law prescribed in the RTI Act and IP Act.¹⁴ 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:¹⁵ *‘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.’*¹⁶

Reviewable decision

11. The decision under review is the LSC’s decision dated 4 August 2023.

Issues for determination

12. The issue for determination in this review is whether access to further documents (including metadata) may be refused on the basis they do not exist.¹⁷
13. During the external review, there was some dispute as to the applicant’s position on obtaining metadata. The applicant was asked¹⁸ to confirm her interest in accessing the specific metadata of the three LSC generated letters and in the absence of a response on this issue, OIC had proceeded on the basis that it was no longer an issue of concern to the applicant. However, the applicant ultimately did not agree that the issue had been dispensed with and accordingly, it remains for determination. In the circumstances of this case, it is relevant to deal with the issue of metadata in the context of whether all reasonable steps have been taken under section 52(1) of the RTI Act.¹⁹

Relevant law

14. Under the IP Act, an individual has a right to be given access to documents to the extent they contain their personal information²⁰ subject to certain limitations, including grounds for refusing access, which are set out in the IP Act and RTI Act.²¹ Relevantly, access to a document may be refused if the document is nonexistent.²²
15. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.²³ 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).²⁴ 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,

¹⁴ *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].

¹⁵ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁶ *XYZ* at [573]. 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] (noting that Judicial Member McGill saw ‘no reason to differ’ from our position).

¹⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁸ In the context of OIC’s informal resolution processes under section 103(1) of the IP Act.

¹⁹ Noting that metadata that was located for Word and PDF versions of the letters generated by the LSC was released to the applicant upon finalisation of this review process.

²⁰ Section 40 of the IP Act.

²¹ Section 67(1) of the IP Act and section 47 of the RTI Act.

²² Sections 47(3)(e) and 52(1)(a) of the RTI Act.

²³ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

²⁴ *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 University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* addresses the application of section 28A of the 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.

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.²⁵

16. In determining whether a document is nonexistent, the Information Commissioner may also take into account the searches and inquiries conducted by an agency. The key question then is whether those searches and inquiries amount to 'all reasonable steps'.²⁶ 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.²⁷
17. The functions of the Information Commissioner on external review include investigating and reviewing whether an agency has taken reasonable steps to identify and locate documents applied for by applicants.²⁸ While the agency bears an onus to justify an adverse decision against an applicant,²⁹ if the applicant maintains further documents exist, the Information Commissioner has recognised there is a practical onus placed on the applicant to demonstrate that the agency has not discharged its obligation.³⁰ Suspicion and mere assertion will not satisfy this onus.³¹
18. In assessing an agency's searches, the Information Commissioner has previously confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.³² This follows the approach taken by the Queensland Civil and Administrative Tribunal where His Honour Judge McGill reasoned that it is open to reach a finding that an agency has taken all reasonable steps '*even if, at least in theory, further and better searches might possibly disclose additional documents.*'³³
19. Section 48 of the IP Act deals with the issue of metadata requests as follows:

48 Application for metadata

- (1) An access application for a document is taken not to include an application for access to metadata about the document unless the access application expressly states that it does.
- (2) If an access application for a document expressly states that access to metadata about the document is sought, access to the metadata does not need to be given unless access is reasonably practicable.
- (3) In this section—
metadata, about a document, includes information about the document's content, author, publication date and physical location.

Submissions

20. The applicant made submissions about missing '*stapled*' documents, insufficient explanations regarding metadata and the absence of documents evidencing an

²⁵ *Mewburn and Department of State Development* [2015] QICmr 9 (21 April 2015) at [19].

²⁶ As set out in *PDE* at [49].

²⁷ As set out in *PDE* at [38].

²⁸ Section 137(2) of the IP Act.

²⁹ Section 100(1) of the IP Act.

³⁰ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

³¹ *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

³² *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23].

³³ *Webb v Information Commissioner* [2021] QCATA 116 at [5]-[6].

investigation.³⁴ The applicant acknowledged that a ‘large number of documents’ had been located by the LSC but described them as:

‘...mainly of the documents with which I had already provided the LSC and hardly anything of the information that the LSC was required to disclose to me under their legal obligations when I made my request for information ... The very limited information that the LSC has actually provided of its own is obviously not a complete record ...’ [sic].³⁵

21. The LSC provided OIC with a submission explaining the LSC’s general recordkeeping systems and outlining the locations that were searched, keywords used, time taken and staff who completed the searches:³⁶

... searches were conducted of the [LSC’s] electronic complaint handling system, LP Central [LP Central], which has recording keeping and document generation capabilities. The system provides for all template letters and documents, in addition to all stored documents, communications, including emails and call notes as well as scanned copies of physical documents received by the Commission, for each file.

Searches of LP Central subsequently identified electronic and physical files ... within scope of the terms of the application.

22. The LSC also explained that two officers undertook the ‘searches to identify and locate the electronic and physical files [taking] approximately three hours’ and that when conducting the searches of LP Central:³⁷

- keywords used included the applicant’s first name, last name and the reference numbers provided by the applicant which were cross referenced with the relevant date range of 2019 onwards; and
- the names of the practitioners the subject of the applicant’s complaints were also searched and cross referenced with the information located under the applicant’s name.³⁸

Findings

Further investigation documents

23. The applicant submitted that further documents should exist regarding what was done by the LSC in relation to her complaints, ie. evidencing LSC’s assessment and investigation process. The applicant argued that it ‘is reasonable to expect to see every item which relates to, and that has come into existence as a result of [her] contact with the LSC and the complaints that were subsequently made’ and complained that the released documents ‘consisted mainly of the documents with which [the applicant] had already provided the LSC, and hardly anything of the information that the LSC was required to disclose’.³⁹ The applicant also alleged that the LSC was using LP Central ‘as a smoke-screen, in an attempt to conceal’ further documents.⁴⁰
24. The applicant’s submissions indicate that in addition to being dissatisfied with the volume and type of documents located by the LSC, she also considers that her

³⁴ On 20 September 2023, 4 December 2023 and 26 April 2024.

³⁵ Submission to OIC dated 4 December 2023.

³⁶ Submission to OIC dated 27 September 2023.

³⁷ The LSC’s database for storing all records pertaining to complaint handling.

³⁸ Submission to OIC dated 27 September 2023.

³⁹ Submission to OIC dated 4 December 2023.

⁴⁰ Submission to OIC dated 4 December 2023.

complaints were not sufficiently investigated by the LSC and was unsatisfied with the final outcome she received on her complaints. To the extent the applicant is dissatisfied with the complaint handling process and/or outcome, I have not considered those submissions as they are outside the Information Commissioner's external review jurisdiction under the IP Act.

25. As detailed at paragraphs 21 and 22, searches conducted by the LSC of LP Central and the physical files located over 1500 pages. I accept the LSC's explanation that LP Central is the LSC's complaint handling system and that the search of LP Central led to the identification of the relevant physical files. I also accept that the locations searched were where the LSC could reasonably expect to locate documents responding to the scope of the access application by reference to the LSC's practice of maintaining electronic and hardcopy file records regarding complaints about legal practitioners.
26. While I accept that the physical files largely contained copies of what the applicant had provided the LSC, that alone does not in my view, indicate that further documents should be located elsewhere. Those physical files also contained copies of the documents that were *generated* by the LSC in dealing with the applicant's complaints, including formal correspondence, emails and file notes. I am satisfied that on the face of those physical file documents, there is no evidence to suggest that further documents exist.
27. The screen shots of LP Central⁴¹ provide some further insight into the records that were created in relation to each complaint. Those screenshots display information relevant to each complaint file that is created and stored within the electronic case management system, including a 'chronology' relevant to each file.⁴² The extracted 'chronology' below shows the type of information that was stored in LP Central on one complaint file:⁴³

<i>Date/Time</i>	<i>Category</i>	<i>Description</i>
04/02/2020 03:40	Email – Received	[Email from applicant]
04/02/2020 03:40	Email – Attachment	[attachment]
19/12/2019 11:34	Email – Sent	[Email to applicant]
19/12/2019 11:34	Email – Attachment	[attachment]
18/12/2019 10:05	Document	s.432 (Summary Dismissal) Letter
08/10/2019 15:12	Email – Sent	[Email to applicant]
08/10/2019 15:12	Email – Attachment	[attachment]
08/10/2019 15:03	Document	s. 429 Acknowledgement Letter
08/10/2019 14:29	Email – Received	[Applicant complaint to LSC]
08/10/2019 14:29	Email – Attachment	[attachment]
08/10/2019 14:29	Email – Attachment	[attachment]
08/10/2019 14:29	Email – Attachment	[attachment]
08/10/2019 14:29	Email – Attachment	[attachment]

[emphasis added]

28. I am satisfied that LP Central constitutes a comprehensive electronic log of the management and maintenance relevant to each LSC file, and that LP Central also provides a digital repository for storing records created and received by the LSC, eg. correspondence.

⁴¹ The screen shots of LP Central appear at the start of each electronic file bundle released to the applicant: pages 1 to 10 of the electronic file related to each of the practitioners and pages 1 to 8 (first practitioner), 1 to 9 (second practitioner) and 1 to 7 (third practitioner) of the internal review electronic files.

⁴² For example, in the tab 'Chronology' on page 4 of the electronic file related to the first practitioner.

⁴³ Page 4 of the electronic file related to the first practitioner.

29. In determining whether the LSC has taken reasonable steps to locate all relevant documents, I have considered whether there is any evidence before me to reasonably support a conclusion that the LSC took additional steps/actions in handling the applicant's complaints, or generated further correspondence, in respect of which no documents have been located and as such, would warrant further searches.⁴⁴ For the reasons that follow and having had regard to the searches conducted and submissions from the LSC, copies of physical file documents and LP Central records, and the applicant's submissions, I am satisfied that there is no such evidence.
30. The located documents reveal that the LSC summarily dismissed the applicant's complaints within approximately two months of receipt⁴⁵ and during that time generated a limited amount of correspondence and internal records on the matters. The applicant was advised of the summary dismissal by letter from the LSC⁴⁶ and the only entry in the chronology in LP Central following that letter was an email sent to the LSC by the applicant approximately two months later; there is no recorded response to that letter by the LSC within LP Central. Given the short period of time in which the complaint files were actively managed by the LSC and the summary outcome on each of the complaints, I consider the limited number of documents located by the LSC is reasonable as it aligns with the limited extent of work that, on the face of the documents, was undertaken on each complaint file, as reflected in LP Central.
31. Based on the information available to me in this review, I am satisfied that:
- the LSC has taken all reasonable steps to locate documents regarding investigation of the complaints as requested by the applicant; and
 - access to further documents regarding investigation of the applicant's complaints may be refused under section 47(3)(e)⁴⁷ on the basis they do not exist in accordance with section 52(1)(a) of the RTI Act.

Missing pages

32. The applicant submitted as follows in regard to missing pages:⁴⁸

... the second page of the [PDF copies of the] physical files (x3) shows a staple through the top and the heading "NOTES:" at the bottom, but there are no further pages to that document (e.g. where handwritten notes) and nothing is attached to it (i.e. stapled). There is no reference to notes or information being stored elsewhere either.

33. Further:⁴⁹

The copy documents that were provided to me ... quite clearly had continuation paper/s stapled to them, as was evident from the wording on the documents and the staples that were quite visible, yet those continuation documents were completely missing.

34. On this point, the LSC submitted:⁵⁰

⁴⁴ Hypothetically, had I identified any such actions/steps for which there was no corresponding documentary evidence, I would have returned to LSC to request that further searches be undertaken.

⁴⁵ As demonstrated by the entries in bold font in the LP Central Chronology extract at paragraph 27 above.

⁴⁶ As evidenced by the entry on 18 December 2019 in the LP Central extract at paragraph 27 above. A copy of that summary dismissal letter appeared in the physical file documents at pages 49 to 53 (letter and email to applicant dated 19 December 2019) of the physical file and page 4 ("chronology" tab in LP Central) of the electronic file for the first practitioner.

⁴⁷ In conjunction with section 67 of the IP Act.

⁴⁸ As set out in the applicant's email to OIC dated 7 August 2023.

⁴⁹ Submission to OIC dated 20 September 2023.

⁵⁰ Submission to OIC dated 27 September 2023.

The second document entitled “Assessing a complaint under the Legal Profession Act 2007” located in each of the physical files provided to [the applicant], is a checklist which was used by staff members when assessing complaints at a time when the Commission had electronic and physical files for matters. The document was stapled to the reverse side of the front cover of each of the physical files for ease of reference. As it was used as a reference document only, no notes were written on the document, nor were any documents attached to it.

35. However, the applicant remained concerned that ‘documents which formed part of a file relating to [her were] singled out and removed’ from the physical files.⁵¹
36. I have considered the PDF copies that were made of each physical file relating to the applicant’s complaint, noting that the LSC created three complaint files; one in respect of each practitioner named in the applicant’s complaint. I am satisfied that the first page is a copy of the front cover of the physical file, and the second page is a copy of a checklist document which was stapled to the inside of the front cover of the physical file (**Checklist**).
37. To my mind, it is not unreasonable to expect that each Checklist was affixed to the inside of the front cover of each physical file with a staple to serve *exclusively* as a single page reference document. In this regard, I accept the LSC’s submission that the checklist was stapled to the ‘reverse side of the front cover of each of the physical files for ease of reference’. I am further satisfied that given the content and purpose of the Checklist and their location inside the front cover of each physical file, the appearance of the staple on the photocopy does not establish reasonable grounds to believe further documents exist, nor that documents were removed or attached as the applicant submits. Rather, I accept the LSC’s submission that ‘as a reference document only, no notes were written on the document, nor were any documents attached to it’.
38. In view of the above, I am satisfied that the LSC has provided a reasonable explanation as to the composition of its physical files and I find that access to the pages the applicant contends are missing may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the ground they do not exist.

Metadata

39. The applicant submits that ‘metadata has been omitted’, metadata ‘should have been provided as a matter of course’ and argues that ‘metadata is the raw, background data to a document’ and that the ‘raw data does **not** appear in the documents that have been released’ [sic].⁵²
40. As set out in paragraph 2, the LSC originally decided not to provide metadata in response to the access application on the basis that ‘it is not reasonably practicable to do so on the basis that the exercise would be too resource intensive and costly.’⁵³ However, on external review, the LSC provided further information regarding the inquiries it had undertaken in relation to the applicant’s request for metadata.⁵⁴

Checks of the relevant stored emails revealed that at the time the emails dated 8 October 2019, 4 February 2020 and 5 February 2020 were saved onto LP Central, the system did not have the capability of saving them in the standard form, nor do they contain fields such as

⁵¹ Submission to OIC dated 4 December 2023.

⁵² Submissions to OIC dated 11 and 26 April 2024. The applicant also referred to various attributes which in her view, comprise metadata, including descriptive, administrative, structural, technical, preservation and rights.

⁵³ In accordance with section 48(2) of the IP Act which provides that access to metadata does not need to be given unless access is reasonably practicable.

⁵⁴ Submission to OIC dated 27 September 2023.

email headers which provide for metadata of emails. As such the metadata cannot be extracted from such emails.

LP Central does not have the capability to identify when a particular file is accessed, or by whom.

The “Chronology” function on LP Central includes the date and time a document is created, such as when an email was received and a new word document was created, the category of document and a description of the document. Such information was provided in the access documents [released to the applicant].

The information contained on the “Interactions” functions contained on the database was also [released to the applicant]. That function provides for saved call notes, emails, document template drafted on the file, in addition to any PDF documents saved under external documents and any relevant calendar items. The interactions function also provides information such as the date and time a document was created or email was sent or received.

41. I am satisfied that the LSC will only hold metadata for documents which were generated by the LSC and not for any documents that were externally provided to the LSC. As noted in paragraph 30 above, the applicant’s complaint about three legal practitioners was summarily dismissed within approximately two months, involved few actions by the LSC and generated limited documentation. It follows in my view, that the amount of metadata will also be limited.
42. Based on the LSC submissions in paragraph 40 above and my assessment of the screenshots generated through LP Central, I am satisfied that the applicant has been given access to the metadata that is stored within LP Central, eg. in the form of *date/time*, *category* and *description*, as this information appears within the chronology tab for each complaint file.⁵⁵
43. In relation to emails, metadata appears in the *from*, *sent*, *to*, *subject* and *attachments* fields within the header of each email. I am satisfied that this is ordinarily how email metadata is presented and there is no reason to expect that any further metadata would exist for emails. In relation to the call records, I find that the metadata has also been released to the applicant⁵⁶ as the LP Central call records contain details of the date/time, employee, other party and comments relevant to each call.
44. Three letters were communicated to the applicant by the LSC⁵⁷ and the information available to OIC demonstrates these letters were generated in Microsoft Word and converted to Adobe PDF. Metadata for Word and Adobe PDF documents can be located by accessing the document ‘properties’ within the relevant software. While the metadata associated with those letters was not originally identified by the LSC, it was located at a late stage of the review process⁵⁸ with the LSC raising no objections to its disclosure to the applicant.⁵⁹ The metadata for those three letters reveals information such as the time taken by LSC to edit the documents, authors of letters and document size.
45. While section 48 of the IP Act provides a mechanism for applicants to seek metadata ‘*about the document*’, it goes on to define metadata as ‘*information about the*

⁵⁵ See the example in paragraph 27 above.

⁵⁶ At pages 5, 5 and 4 respectively for each of the complaint files.

⁵⁷ Dated 8 October 2019, 19 December 2019 and 13 March 2020.

⁵⁸ The LSC provided 32 pages of metadata to OIC on 18 November 2024 and agreed to disclose it in full to the applicant.

⁵⁹ I have asked the LSC to release that metadata concurrent with the issuance of this decision. Accordingly, as it has been located, the issue of its existence does not require determination.

document's content, author, publication date and physical location'.⁶⁰ I am satisfied that the metadata *'about'* the relevant documents has been located in the format described in paragraphs 42 to 44 above.

46. In view of the above, including the content of the metadata located by LSC and the information in paragraph 40 about the capabilities of LP Central, I am satisfied that the LSC has taken all reasonable steps to locate metadata *about the documents* located in response to the applicant's IP Act application and I am further satisfied that access to any further metadata (falling within the scope of the IP Act application) may be refused on the basis that it does not exist.⁶¹

DECISION

47. For the reasons set out above, I vary⁶² the decision under review and find that the LSC may refuse access to further documents (including metadata) under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.
48. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Katie Shepherd
Assistant Information Commissioner

Date: 20 November 2024

⁶⁰ Section 48(3) of the IP Act.

⁶¹ I also note that the LSC is not required to search its backup systems for further documents, in accordance with section 49 of the IP Act.

⁶² Section 123(1)(b) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
4 August 2023	OIC received the application for external review.
8 August 2023	OIC requested the LSC provide preliminary information.
11 August 2023	OIC received the preliminary information from the LSC.
14 September 2023	OIC advised the applicant and the LSC that the application for external review had been accepted and requested information and documents from the LSC, and information from the applicant. OIC received a submission from the applicant.
20 September 2023	OIC wrote to the applicant to clarify issues in the review. OIC received a submission from the applicant.
27 September 2023	OIC received from the LSC a copy of the documents located in response to the access application, search records and submission.
5 October 2023	OIC requested further information from the LSC.
17 October 2023	OIC received a marked up copy of the documents located and a submission from the LSC.
26 October 2023	OIC received a further submission from the LSC.
2 November 2023	OIC conveyed a preliminary view to the applicant, advising that if no response was received by 16 November 2023, OIC would finalise the review under section 103(4) of the IP Act.
22 November 2023	As no response had been received from the applicant, OIC advised the applicant and the LSC that the external review had been finalised under section 103(4) of the IP Act.
4 December 2023	OIC received a submission from the applicant.
2 January 2024	OIC advised the applicant and the LSC that in the interests of procedural fairness, discretion had been exercised to reopen the external review.
17 January 2024	OIC wrote to the applicant to clarify issues in the review.
23 February 2024	OIC conveyed a further preliminary view to the applicant. OIC received correspondence from the applicant.
20 March 2024	OIC confirmed the preliminary view to the applicant.
11 April 2024	OIC confirmed the preliminary view to the applicant. OIC received a submission from the applicant.
26 April 2024	OIC received a submission from the applicant.
28 October 2024	OIC asked the LSC to provide metadata for LSC generated letters in and advise OIC of its position on disclosure of the metadata to the applicant.

Date	Event
18 November 2024	LSC advised OIC that it did not object to disclosing to the applicant the located metadata for LSC generated letters and provided OIC with a copy of the relevant metadata in 32 pages.