



Decision and Reasons for Decision

Citation:	<i>Turner and Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence [2024] QICmr 1 (11 January 2024)</i>
Application Number:	317448
Applicant:	Turner
Respondent:	Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence
Decision Date:	11 January 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits respondent did not locate relevant documents - scope of access application - whether respondent has conducted all reasonable searches - whether access to documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the respondent under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents in the following terms:

This application is made to the Office of the Attorney-General. It seeks access to all information concerning the Attorney-General's five meetings with the Premier on 21/8/17, 22/8/17 (x2), 23/8/17 and 24/8/17 and what was discussed at those meetings. The information sought includes but is not limited to all diary entries/appointment details for the meetings, all notes made in preparation for the meetings, all notes made during the meetings, all notes made after the meetings and all related communications (eg emails, texts, voicemails etc). It is possible that some of the information captured by this application is known only to the Attorney-General. It is also possible that some of the information is not now held within the Office of the Attorney-General, but is still in the Attorney-General's possession or control. Exclusion: entries in the Attorney-General's published diary.

...

The time period / date range the applicant would like to search within: 15/8/17 - 30/8/17 (inclusive).

...

¹ Application emailed on 2 July 2023.

The applicant thinks the documents may be located: some information may be documented in the Attorney-General's personal diary for August 2017.

2. The application was processed by the Department of Justice and Attorney-General (**Department**) under direction from the Attorney-General.²
3. By letter dated 14 July 2023, the Department advised that searches were conducted at the office of the respondent (**Minister's Office**) and no documents responsive to the application were located that related to the Minister's ministerial responsibilities. The Department therefore decided to refuse access to the requested documents on the grounds that the documents were nonexistent pursuant to section 47(3)(e) and section 52(1)(a) of the RTI Act.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for review of the Department's decision.³
5. For the reasons explained below, I affirm the decision under review.

Background

6. The Attorney-General's published diary for 2017⁴ listed five meetings between the Premier and the Attorney-General occurring during the week beginning 21 August 2017. The meetings were listed in the diary as concerning '*Portfolio Matters*'. During the week in question, a controversial issue receiving attention and discussion in Parliament was associated with the passing of the '*no body, no parole*' legislation,⁵ and a media conference announcing that new legislation that had been attended by the Attorney-General, the (then) Minister for Police and Corrective Services (**Police Minister**), and family members of a murder victim. The Opposition brought a motion of '*no confidence*' against the Police Minister over his handling of the relevant matter, and his interactions with the victim's family members. The motion was defeated, with the Attorney-General being one of three Ministers who spoke in support of the Police Minister.
7. The applicant considered it likely that matters concerning the controversy would have been discussed between the Premier and the Attorney-General during the meetings held in the week in question. He sought access to documents concerning such meetings.
8. During the review, an issue arose regarding the scope of the applicant's access application. I will discuss that issue in more detail below.

Reviewable decision

9. The decision under review is the decision of the Department dated 14 July 2023.

² Section 31 of the RTI Act.

³ Application dated 23 July 2023.

⁴ <https://cabinet.qld.gov.au/ministers-portfolios/assets/diary/2017/august/yvette-dath.pdf>

⁵ The *Corrective Services (No Body, No Parole) Amendment Act 2017* (Qld) inserted Section 193A into the *Corrective Services Act 2006*. Under the 2017 amendment, the Parole Board must refuse to grant an application for parole to a prisoner serving a period of imprisonment for a 'homicide offence' where: (i) the body or remains of the victim of the offence have not been located; or (ii) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located.

Evidence considered

10. Evidence, submissions,⁶ legislation and other material that I have considered in reaching this decision are set out in these reasons (including footnotes and the Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁷ particularly the right to seek and receive information.⁸ I consider that, in observing and applying the law prescribed in the RTI Act, 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 RTI Act.⁹ 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:¹⁰ '*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*'.¹¹

Issue for determination

12. The issue for determination is whether access to the requested documents may be refused on the ground that they are nonexistent pursuant to section 47(3)(e) and section 52(1)(a) of the RTI Act.

Relevant law

13. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.¹² The Act must be applied and interpreted to further this primary object,¹³ and is to be administered with a pro-disclosure bias.¹⁴
14. Section 23(1)(b) of the RTI Act gives effect to the Act's primary objective by conferring a right to be given access to '*documents of a Minister*'. This right is subject to other provisions of the RTI Act,¹⁵ including grounds on which access may be refused.¹⁶ These grounds are to be interpreted narrowly.¹⁷
15. '*Document of a Minister*' is defined in section 13 of the RTI Act as (relevantly) meaning a document '*other than a document of an agency or a document to which this Act does not apply, in the possession, or under the control, of the Minister that relates to the affairs of an agency ...*'.
16. If a document does not relate to the affairs of an agency, it will not be a document of a Minister, even if it is in the possession or control of the Minister or the Minister is entitled to access it. Examples include party political matters, matters related to the

⁶ Including the Department's submissions dated 6 September 2023 and 13 November 2023, and the applicant's submissions contained in his external review application, as well as in letters/emails dated 19 September 2023, 13 November 2023, 14 November 2023, 15 November 2023, and 14 December 2023.

⁷ Relevant provisions of which commenced on 1 January 2020.

⁸ Section 21(2) of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ **XYZ** at [573].

¹² Section 3(1) of the RTI Act.

¹³ Section 3(2) of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ Section 23(1) of the RTI Act.

¹⁶ Section 47 of the RTI Act.

¹⁷ Section 47(2)(a) of the RTI Act.

Minister's electorate, information relating to the Minister's activities as a Member of Parliament, and details relating to the Minister's personal life or activities.

17. The RTI Act permits an agency or Minister to refuse access to information where the requested information is nonexistent or unlocatable.¹⁸
18. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.¹⁹ 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).²⁰ 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.
19. 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*'.²¹ 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 circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.²²
20. 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 it, but it cannot be found. In determining whether a document is unlocatable, it is necessary to consider the specific circumstances of each case,²³ and in particular whether:
 - there are reasonable grounds for the agency to be satisfied that the requested documents have been or should be in the agency's possession; and
 - the agency has taken all reasonable steps to find the document.²⁴
21. 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.²⁵ Where the issue of missing documents is raised on external review, the agency must demonstrate that all reasonable steps have been taken to identify and locate relevant documents.²⁶ 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.²⁷

¹⁸ Sections 47(3)(e) and 52(1) of the RTI Act.

¹⁹ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

²⁰ *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 FOI Act. 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.

²¹ As set out in *PDE* at [49].

²² As set out in *PDE* at [38].

²³ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

²⁴ Section 52(1)(b) of the RTI Act.

²⁵ Section 87 of the RTI Act.

²⁶ Section 130(2) of the RTI Act.

²⁷ *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

Submissions of the parties

22. In his application for external review,²⁸ the applicant submitted relevantly as follows:

The Queensland Ministerial Handbook states that ministers are responsible for creating, managing and keeping full and accurate public records of their ministerial portfolio responsibilities. (2.2)

It also states that ministerial diaries are public records under the Public Records Act 2002 and as such should [be] retained and managed in accordance with the Retention & Disposal Schedule. (3.12)

...

In this case my application relates to five meetings disclosed in the Attorney-General's published diary.

(<https://cabinet.qld.gov.au/ministers-portfolios/assets/diary/2017/august/yvette-dath.pdf>)

It seems unlikely the Attorney-General would rely on memory alone for the purpose of those official disclosures. That suggests a written record, at least at the time. The most likely location of such a record is an electronic or hard copy diary. Diaries are rarely discarded, particularly when required to inform and potentially substantiate ministerial declarations.

It has also been established that QSA (Queensland State Archives) does not have a copy of the Attorney-General's diary or any other information relating to her meetings with the Premier during the week in issue.

That suggests the Attorney-General retained possession of her ministerial diary and possibly other responsive documentation. Given her movements between portfolios and the corresponding passage of time, it seems quite likely she has since stored such information privately.

That is why my application acknowledged the possibility "that some of the information is not now held within the Office of the Attorney-General, but is still in the Attorney-General's possession or control". It is not at all clear, at least to me, that [the Department] has actually explored that possibility or that the Attorney-General herself has explicitly excluded it.

Five one-on-one meetings in just four days also suggests a degree of significance consistent with other records of the kind to which access is sought, including preparatory, contemporaneous and subsequent notes, as well as related communications.

...

[The Department] says "no responsive documents to your application were located that relate to the Attorney-General's ministerial responsibilities" (emphasis added).

It seems to me that the underlined element of this advice would be superfluous if no responsive documents at all were located. This suggests the possibility that certain responsive documents were found, but are being withheld for reasons yet to be disclosed with any specificity.

The Attorney-General listed the purpose of all five meetings as "Portfolio Matters". It is hard to see how such matters would not "relate to the Attorney-General's ministerial responsibilities".

23. OIC advised the Department of the applicant's submissions on external review and requested that the Department provide:²⁹

²⁸ Dated 23 July 2023.

²⁹ Letter dated 24 August 2023.

- details of searches which had been conducted, including the response from the Minister's Office
 - copies of any documents located within the scope of the application for assessment (even if it was contended the documents did not relate to the Attorney-General's ministerial responsibilities)
 - a submission addressing the location of the documents, if they did exist but were not currently held by the Attorney-General; or, in the alternative
 - if it was the Attorney-General's position that documents did not exist or were unlocatable, then a submission explaining why that was the case.
24. The Department responded³⁰ by providing a copy of the relevant Outlook entries (meeting makers) from the Attorney-General's diary for the five meetings in question, as well as a copy of the search record completed by the Attorney-General's Chief of Staff. The meeting makers indicated that the five meetings were described as 'Parliament Strategy Meetings', with the Premier listed as the 'Organizer' (sic), and the 'Required Attendees' listed as the (then) government ministers and their (then) staff.³¹ The venue for each meeting was stated to be 'Minister's Room, Parliament House'.
25. The search certification provided by the Department indicated that the Chief of Staff had spent 30 minutes on 6 July 2023 searching 'diary/notebooks' without success. He ticked the box on the search record stating that 'no documents are in our possession' and added the following comment:
- No documents/records found & it was identified that the entries in Question were Party Political & shouldn't have been included in the published diary at the time.*
26. OIC advised the applicant of the Department's submission and communicated a preliminary view to the applicant that the information provided by the Department reasonably supported the conclusion that the meetings listed in the published diary related to party political matters, and not to the business or activities of any agency.³² As such, even if documents concerning those meetings were to exist, they would not be regarded as documents of the Minister under the RTI Act in any event. As to the apparent error in listing the meetings in the Attorney-General's published diary as portfolio-related, OIC stated:
- [We] acknowledge that the Attorney-General's official diary listed the meetings and that you made your access application in reliance upon that. As noted above, the current Chief of Staff has stated that this was an error and that the meetings should not have been listed in the published diary at the time. To the extent that you have concerns about this, it is unfortunately not an issue with which OIC can assist you under the RTI Act.*
27. The applicant did not accept OIC's preliminary view and provided a detailed submission³³ in support of his position that the Minister's Office had not discharged its obligation to make all reasonable inquiries and conduct all reasonable searches in an effort to locate any responsive documents. The arguments raised by the applicant were as follows:
- the Attorney-General's published diary recorded the meetings as portfolio meetings
 - the diary explicitly stated that it did not include party political meetings

³⁰ Email of 6 September 2023.

³¹ The Premier's electorate office and the Premier's security were also listed as attendees for information purposes only.

³² Letter dated 7 September 2023.

³³ Dated 19 September 2023.

- there were 16 Parliamentary sitting weeks during 2017, including Estimates, but this was the only week during which, on the submission of the Chief of Staff, routine party-political meetings that recurred weekly were confused with private portfolio meetings
 - the week in question coincided with the 'no body, no parole' issue being discussed in Parliament, with the Attorney-General being one of three government speakers to defend the Police Minister during a 'no confidence' debate
 - on 21 August 2017, the Attorney-General, supported by Crown Law, blocked the Parole Board President's request to brief the Solicitor-General on a relevant matter
 - the Attorney-General had lead carriage of the 'no body, no parole' laws; and
 - it would have been extraordinary if the Attorney-General and the Premier had not met to discuss these significant and highly sensitive portfolio matters that week (and it would have been even more surprising if they had done so in open meetings with other ministers and staff).
28. The applicant submitted that the responsibility for the accuracy of a Minister's published diary resides with each Minister personally, and not with their staff. Accordingly, he argued that it could not be assumed that the diary was inaccurate on the basis of statements by the Attorney-General's current Chief of Staff, who did not work in the Minister's Office at the relevant time, and who had no direct knowledge of what transpired between the Attorney-General and the Premier during the four days in question and the nature of the meetings that were attended.
29. The applicant contended that the Chief of Staff cited a 30-minute search for responsive documents but did not indicate that he had made any inquiries of the Attorney-General herself regarding any knowledge or recollection she may have had about the meetings, and the possibility of the existence of responsive documents. He argued that the scope of his access application made such inquiries reasonable in the circumstances, particularly given that the Attorney-General moved portfolios in the relevant time period, and noted the following observation that he had made in his access application:
- It is possible that some of the information captured by this application is known only to the Attorney-General. It is also possible that some of the information is not now held within the Office of the Attorney-General, but is still in the Attorney-General's possession or control.*
30. The applicant argued that the Minister's Office has not excluded the possibility, given the relevant circumstances (including the passage of time and the Attorney-General's movement between portfolios) that she may have stored responsive information privately. He requested that the Attorney-General be asked to clarify whether she had any portfolio-related meetings during the week in question and, if so, whether she had any related documents in her possession or under her control.
31. After considering the issues raised by the applicant in his submission, as well as the terms of the access application, OIC asked the Department to arrange for inquiries to be made of the Attorney-General to ascertain her response to the following two issues:³⁴
- whether she had any knowledge or recollection of the meetings with the Premier that she attended in the week in question and whether they were in fact portfolio-related, as was recorded in her diary; and

³⁴ Letter dated 31 October 2023.

- if the meetings that occurred were portfolio-related, whether the Attorney-General was aware of, or could recall, the existence or location of any documents relating to these meetings that would respond to the terms of the access application.
32. The Department responded by email on 13 November 2023 by advising that the Attorney-General's recollection was that the meetings in question were parliamentary strategy meetings and were appropriately reflected as such in Outlook: *'As previously expressed by the Chief of Staff, it appears that the meetings were erroneously entered in the published diary as portfolio-related matters'*.
33. The Department's response was communicated to the applicant³⁵ who advised that he continued to have concerns about the nature of the Attorney-General's response. The applicant stated that he had concluded that his concerns might better be pursued by means of a separate access application made to the Minister. He provided a copy of that application which he advised he had lodged earlier that day. The application sought access to all information concerning or relating to the *'no body, no parole scandal of 2017'*.³⁶ The applicant stated that he was concerned that the Minister's Office may refuse to process this new application because of his previous application.³⁷ He therefore asked that he be given an extension of time to advise of his position in this review, until the position of the Minister's Office in response to his second access application became clear, stating: *'In the event that there is no material dispute as to the legitimacy of my new application, I would agree to this review being finalised with no further action required'*.³⁸
34. However, the following day, the applicant emailed OIC to advise he had reconsidered his position from the previous day and was not satisfied that the Minister's Office had answered the questions that he had asked be put to the Attorney-General in his submission dated 19 September 2023.³⁹

...

Instead, they seem to have answered three somewhat similar, but less clear and direct questions put to them by the OIC.

Can you advise if my understanding in that respect is right please, and if so, the reasons for changing my questions to less precise alternatives?

My concern is that the change of questions has allowed room for obfuscation and, I suspect, continued conflation with other meetings that also took place on the same four days.

On that basis, and contrary to my email below, I am now inclined to make a fresh submission to this review because it defies credibility that the Premier and her AG did not discuss matters pertaining to the NBNP [no body, no parole] scandal (that is, 'portfolio matters') from 21 to 24/8/17.

However, it might be easier to simply put my two questions to the Attorney-General, if that was an option the OIC is prepared to entertain.

I will await your advice before making a final decision and respectfully seek an extension of time to allow me 14 days clear to respond, from receipt of such advice.

³⁵ By email on 13 September 2023.

³⁶ The precise terms of the application were detailed in nature and are not reproduced in full here.

³⁷ Section 43 of the RTI Act provides, in effect, that an agency or Minister may refuse to deal with an application if it requests access to one or more of the same documents requested in an earlier application and the later application does not, on its face, disclose any reasonable basis for again seeking access to the document or documents.

³⁸ Email of 13 November 2023.

³⁹ Email of 14 November 2023.

In the meantime, it is my contention that the AG has not denied having any portfolio-related meetings during the four days in issue, nor having any related documents in her possession or under her control - even to the best of her knowledge or recollection.

35. OIC responded as follows:⁴⁰

As regards the questions that were put to the Attorney-General by OIC, these are reflective of the terms of your access application. The terms of your access application are restricted to seeking access to information concerning the Attorney-General's meetings with the Premier that are disclosed in the Attorney-General's published diary for the relevant week. The first question put to the Attorney-General was whether she had any knowledge or recollection of those meetings and, if so, whether they were portfolio-related, as was recorded in her diary. The Attorney-General answered by stating that her recollection is that the meetings recorded in her diary were parliamentary strategy meetings and were not portfolio related.

Accordingly, even if, as you suspect, there may have been other meetings that took place on the same four days, your access application is restricted to seeking access to information relating to the meetings listed in the diary. The Attorney-General has stated that she recalls those meetings as being parliamentary strategy meetings.

36. The applicant advised briefly in response⁴¹ that he did not accept that his access application was restricted to seeking documents concerning the five meetings listed in the Attorney-General's published diary and that the application's scope would 'certainly cover' any other meetings between the Premier and the Attorney-General that took place on the same four days. He provided a subsequent, detailed submission on this issue in which he argued relevantly as follows:⁴²

- while the wording of his access application was informed by the diary entries in the Attorney-General's published diary, it was not dependent on them
- it was unfair for OIC to rely on the statement contained in his external review application (i.e., that his application related to the five meetings disclosed in the Attorney-General's published diary) because:
 - it effectively punished him for believing that the records published by the State's first law officer would be accurate
 - it gave no weight to other parts of his submission in which he contended that such meetings would have taken place, independent of the diary
 - the words used in the application mean what they say on their face and OIC should not now seek to narrow the scope 'based on selective quoting from evolving arguments progressively informed and sometimes misinformed by the glacial seepage of information from the government and others over time'.
- the default position should be that the published diary is a true record until it is amended; and
- the questions put to the Attorney-General by OIC 'allow sufficient wriggle room to accommodate a potential conflation of the strategy meetings documented in Outlook and portfolio meetings documents in the published diary'.

37. The applicant argued that the possibility that the Attorney-General and Premier held portfolio-related meetings before or after the parliamentary strategy meetings had not been excluded. He requested that two further questions be put to the Attorney-General to clarify this issue, namely:

⁴⁰ Email of 15 November 2023.

⁴¹ Email of 15 November 2023.

⁴² Dated 14 December 2023.

1. Did the Attorney-General have any portfolio meetings with the Premier adjoining the strategy meetings?
2. If so, does the Attorney-General have any responsive information in her possession or under her control?

Findings

Scope of the access application

38. I have considered the applicant's detailed submissions about the intended scope of his access application; however, I maintain the view expressed to him during the course of the review. I do not accept that the scope of the access application can reasonably be interpreted as extending to documents relating to meetings between the Premier and the Attorney-General other than those five meetings listed in the Attorney-General's published diary for the four days in question. Even if it could reasonably be interpreted as covering documents concerning any other meetings that may have been held between the Premier and the Attorney-General on the four days in question (and I do not consider it can), the applicant effectively narrowed the scope to cover only the meetings listed in the published diary when, in his application for external review, he clearly stated that his access application related to the five meetings listed in the Attorney-General's published diary, and provided a link to the diary (see the third paragraph of the extract from the external review application set out at paragraph 22 above). OIC was entitled to rely upon that statement as indicative of the applicant's intended scope, and to conduct the external review on that basis.
39. It is clear that the applicant became aware of the dates and number of meetings between the Premier and the Attorney-General during the week in question through accessing the Attorney-General's published diary, including the fact that two meetings were listed as occurring on 22 August 2017. He then used that specific information to list the relevant dates and number of meetings in his access application and to request access to all documents concerning what was discussed at *'those meetings'*. The Department was obliged to give the words used in the application their plain meaning and to conduct its searches accordingly, and I am satisfied it did so. Given the applicant's description of the meetings (through the use of precise dates and number), which description could only have been obtained by the applicant from the Attorney-General's published diary, I consider it was reasonable for the Department to proceed on the basis that the meetings to which the applicant was referring in his application were those listed in the diary. As the Information Commissioner has noted:⁴³

The terms in which an ... [RTI] access application is framed set the parameters for an agency's response under ... [the Right to Information Act 2009 (Qld) (RTI Act)], and in particular set the direction of the agency's search efforts to locate all documents of the agency which fall within the terms of the ... [RTI] access request. The search for relevant documents is frequently difficult, and has to be conducted under tight time constraints. Applicants should assist the process by describing with precision the document or documents to which they seek access.

40. As I have noted, the applicant himself confirmed that this was the correct interpretation to be given to his access application upon the commencement of the external review.

⁴³ Cannon and Australian Quality Egg Farms Ltd (1994) 1 QAR 491 at [8].

41. However, upon receiving responses during the external review from the Department and the Attorney-General to the effect that the entries in the diary were incorrect and the listed meetings were party political and not portfolio-related, the applicant then sought to argue that his application covered documents relating to any other meetings between the Premier and the Attorney-General that may have occurred on the days in question. He sought to question the Attorney-General as to whether she attended any other meetings with the Premier on these days that were not listed in her diary and that were portfolio-related, and whether she held any documents in relation to such meetings.
42. When considering a sufficiency of search issue, OIC will consider whether the searches and inquiries conducted by the relevant agency in an effort to locate responsive documents have been reasonable in all the circumstances. An assessment of the reasonableness of the searches and inquiries will necessarily be based upon the scope of the access application. OIC will, for example, direct that further inquiries be made if it appears from the scope of an access application, or from located documents, that a specific individual may have knowledge of the existence or whereabouts of additional documents that respond to the scope. It was on this basis that OIC decided it was reasonable to request that inquiries be made of the Attorney-General as to her recollection of the nature of the meetings listed in her diary; whether they were portfolio-related; and, if so, whether she had knowledge of the existence or location of any responsive documents.
43. Having received the Attorney-General's response to those inquiries, the applicant contended that further inquiries should be made of the Attorney-General to ascertain whether she attended any other meetings with the Premier on the days in question that were portfolio-related. Based on the scope of the access application (which, for the reasons explained above, I am satisfied is limited to documents concerning the five meetings listed in the Attorney-General's published diary), I do not accept that such inquiries are reasonable. The applicant is, in effect, seeking to interrogate the Attorney-General about the possible existence of documents falling outside the scope of his access application. The RTI Act entitles an individual to apply for access to documents of an agency or Minister. It does not create a right to have questions answered, or to have answers to questions extracted from documents.⁴⁴
44. The applicant has complained that it is unfair for OIC to rely on the clear statement in his external review application (that his application related to the five meetings disclosed in the Attorney-General's published diary) because it does not take account of the events that have unfolded during the course of the review, and the fact that the Attorney-General has advised that the diary entries were made in error. The error is indeed unfortunate, and I acknowledge the applicant's frustration over this issue. It is clear that he based his access application on the reasonable assumption that the Attorney-General's diary was accurate in listing the relevant meetings as portfolio-related. However, it is not uncommon during the course of an external review for information to come to light which indicates to an applicant that the terms of their access application do not capture the documents they wish to access. In such circumstances, the applicant is required to make a fresh access application to capture such documents because the terms of an access application cannot be broadened during the course of a review. I would simply note that the applicant has already done this with the second access application he has made to the Minister, a copy of which he provided to OIC.

⁴⁴ *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at [30].

45. Where, as here, an applicant has described in clear terms the documents to which they seek access, they will be bound by the terms of their request.⁴⁵ Had the applicant wished to seek access to documents concerning any meetings held between the Premier and the Attorney-General that discussed the 'no body, no parole' issue, it was a simple matter to have framed an access application in those terms.
46. I therefore find, as a matter of fact, that the access application covers any documents concerning the five meetings between the Premier and the Attorney-General listed in the Attorney-General's published diary as occurring on 21 August 2017, 22 August 2017 (two meetings), 23 August 2017, and 24 August 2017. To the extent that the applicant seeks to access documents that do not concern those listed meetings, I find that they do not fall within the scope of the access application.

Sufficiency of search

47. Based on the information provided by both the Minister's Office and the Attorney-General herself regarding the searches and inquiries conducted in an effort to locate documents responding to the terms of the access application, I am satisfied that those searches and inquiries have been reasonable in all the circumstances. They indicate that it is reasonable to conclude that the listed meetings were Parliamentary strategy meetings and did not concern portfolio-related matters. As such, there is nothing in the material before OIC to indicate that the listed meetings concerned the business and activities of any agency, or to dispute the Attorney-General's statement that it appears that the meetings were erroneously entered in her published diary as portfolio-related matters. While the applicant clearly suspects otherwise, suspicion alone is not sufficient to discharge the practical onus on the applicant to demonstrate that the Minister's Office has not discharged its obligation to conduct all reasonable searches and inquiries in an effort to locate responsive documents.

DECISION

48. I affirm the decision under review by finding that access to the requested information may be refused on the grounds that it is nonexistent pursuant to sections 47(3)(e) and 52(1)(a) of the RTI Act.
49. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Suzette Jefferies
Acting Right to Information Commissioner

Date: 11 January 2024

⁴⁵ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30.

APPENDIX

Significant procedural steps

Date	Event
23 July 2023	OIC received the application for external review
24 July 2023	OIC requested that the Department provide preliminary documents
26 July 2023	OIC received the preliminary documents from the Department
24 August 2023	OIC advised the parties that the application for review had been accepted OIC requested that the Department provide additional information, including search information
6 September 2023	OIC received additional information from the Department
7 September 2023	OIC communicated a preliminary view to the applicant
19 September 2023	OIC received a submission from the applicant
31 October 2023	OIC requested that the Department provide additional information
13 November 2023	OIC received additional information from the Department OIC communicated the additional information to the applicant OIC received a response from the applicant
14 November 2023	OIC received an email from the applicant raising a number of issues
15 November 2023	OIC responded to the issues raised by the applicant OIC received an email from the applicant
14 December 2023	OIC received a submission from the applicant