



## Decision and Reasons for Decision

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Citation:	<i>A26 and Queensland Police Service [2025] QICmr 94 (11 December 2025)</i>
Application Number:	319056
Applicant:	A26
Respondent:	Queensland Police Service
Decision Date:	11 December 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - EXEMPT INFORMATION - application for documents relating to a traffic incident involving the applicant - whether an agency may refuse to deal with the application - whether all documents to which the application relates comprise exempt information - section 40 and schedule 3, section 10(1)(a) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - RELEVANT DECISION - decision setting aside and directing agency to consider whether access is to be given to subject documents - section 110(1)(d) and 110A of the <i>Right to Information Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access documents relating to a traffic incident that the applicant was involved in (**Subject Documents**).
2. By decision dated 8 August 2025, QPS refused to deal with the access application<sup>2</sup> on the basis that all requested documents comprise exempt information under schedule 3, section 10(1)(a) of the RTI Act.<sup>3</sup>

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<sup>1</sup> Access application dated 21 July 2025.

<sup>2</sup> Under section 40 of the RTI Act.

<sup>3</sup> QPS's decision did not address the exception to the exemption, contained in schedule 3, section 10(2) of the RTI Act. As QPS refused to deal with the application on the basis all information is exempt, QPS has decided that no exceptions to this exemption apply.

3. The applicant applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.<sup>5</sup>
4. OIC conveyed a preliminary view to QPS<sup>6</sup> that the relevant investigation into the traffic incident is now finalised so disclosure of the Subject Documents would not prejudice the investigation. This means the requirement for refusing to deal with the access application was not established, as the Subject Documents are not entirely comprised of exempt information.
5. QPS did not contest OIC's preliminary view and agreed to informally resolve the review.<sup>7</sup> The substantive issue in this review – whether QPS was entitled to refuse to deal with the access application – has therefore been resolved in the applicant's favour.
6. The applicant did not, however, agree to informally resolve the external review<sup>8</sup> and requested that OIC finalise the review under sections 110(1)(d) and 110A of the RTI Act.<sup>9</sup>

## Findings

7. QPS bears the onus of justifying the decision under review.<sup>10</sup> As noted, however, it does not seek to justify that decision. In these circumstances, it is open to simply set aside the decision under review.
8. The key decision then to be made is whether to do so under section 110(1)(c) or 110(1)(d) of the RTI Act. The Right to Information Commissioner recently explained the distinction between each of these provisions, in the first OIC decision exercising the power conferred by the latter:<sup>11</sup>
  - *Section 110(1)(c) of the RTI Act relevantly empowers the Information Commissioner (or delegate) to set aside the decision under review, and make a decision in substitution.*
  - *Section 110(1)(d) also permits the Information Commissioner to set aside a reviewable decision, but rather than making a decision in substitution, to instead give a direction under, relevantly, section 110A of the RTI Act.*
  - *Section 110A of the RTI Act, in turn, essentially comprises a remittal power. Section 110A authorises the Information Commissioner to give a notice to an agency, stating that a 'relevant decision' is set aside and directing the agency to decide whether access is to be given to the 'Subject Documents', i.e the documents the subject of – requested in – the relevant access application.*

<sup>4</sup> The application for external review was received outside of the 20 business day timeframe to apply for review. The OIC allowed the applicant a longer period to seek review under section 88(1)(d) of the RTI Act.

<sup>5</sup> External review application dated 5 November 2025. In considering this matter, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information (section 21 of the HR 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 (*XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111], and *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23]).

<sup>6</sup> Dated 20 November 2025.

<sup>7</sup> Email dated 26 November 2025.

<sup>8</sup> Under section 90(4) of the RTI Act.

<sup>9</sup> Email received 8 December 2025.

<sup>10</sup> Under section 87 of the RTI Act.

<sup>11</sup> *B52 and Queensland Police Service* [2025] QICmr 86 (18 November 2025)) (Footnotes omitted).

9. In accordance with section 110A(1)(a) of the RTI Act, this remittal or referral power may be exercised where:
  - (a) *the information commissioner would, other than for this section, have decided to set aside the relevant decision and make a decision in substitution for the relevant decision under section 110(1)(c); and*
  - (b) *the commissioner believes it would be more efficient and effective for the agency or Minister to consider whether access is to be given to the subject documents than for the commissioner to make a decision in substitution for the relevant decision under section 110(1)(c); and*
  - (c) *the commissioner believes that if the agency or Minister were to consider whether access is to be given to the subject documents, it is reasonably likely the agency or Minister would be able to make a decision that is consistent with the primary object of this Act.*
10. Prior to giving a notice under section 110A(2) of the RTI Act, that provision requires the Information Commissioner to consult with the agency concerned about the matters prescribed in section 110A(1)(a)-(c) of the RTI Act (set out in the preceding paragraph).
11. The reviewable decision is a 'relevant decision'<sup>12</sup> for the purposes of section 110A of the RTI Act. QPS were consulted in relation to the matters prescribed in section 110A(1)(c) of the RTI Act and canvassed above by OIC's letter dated 20 November 2025. QPS's reply dated 26 November 2025 expressed agreement to the preliminary view, and to reprocessing the application.
12. In these circumstances, I consider that the appropriate course of action is to make a decision under section 110(1)(d) of the RTI Act: to set aside the decision under review,<sup>13</sup> and give a notice to QPS directing it to decide whether access is to be given to the Subject Documents<sup>14</sup>
13. In reaching this conclusion, I am satisfied that each of the matters mentioned in section 110A(1)(a)-(c) of the RTI Act – stated in paragraph 9 above – are met in this case.
14. But for section 110A of the RTI Act, I would have<sup>15</sup> made a decision under section 110(1)(c) of the RTI Act setting aside QPS's decision and substituting a decision that it was not entitled to refuse to deal with the access application.
15. I also believe that the most efficient and effective course of action is for QPS to consider whether access is to be given to the Subject Documents – ie, the documents requested in that application. In this regard, I note that section 110A(4) of the RTI Act provides a clear and unambiguous prescription for the manner in which that consideration should proceed.
16. Further, there is nothing at all before me to suggest that QPS would not be able to make a decision in relation to the requested Subject Documents consistent with the primary object of the RTI Act.

## DECISION AND DIRECTION

17. For the reasons set out above, I set aside the decision under review.<sup>16</sup> Under section 110A(2) of the RTI Act, I give notice directing QPS to decide whether access is to be given to the Subject Documents as if the ground for making the decision under review

<sup>12</sup> Defined in section 110A(5) of the RTI Act.

<sup>13</sup> Which is, as noted, a 'relevant decision' for the purposes of section 110A: section 110A(5) of the RTI Act.

<sup>14</sup> See section 110A(5) of the RTI Act for the definition of 'subject documents'.

<sup>15</sup> In view of QPS not contesting OIC's preliminary view that the decision under review could not be sustained.

<sup>16</sup> Under section 110(1)(d) of the RTI Act.

did not apply in relation to the Subject Documents, consistently with the conditions for a notice of this kind prescribed in sections 110A(3)-(4) of the RTI Act.

18. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**Brianna Luhrs**  
**Manager, Right to Information**

**Date: 11 December 2025**