



Decision and Reasons for Decision

Citation:	I18 and Queensland Police Service [2021] QICmr 44 (19 August 2021)
Application Number:	316114
Applicant:	I18
Respondent:	Queensland Police Service
Decision Date:	19 August 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENT NONEXISTENT OR UNLOCATABLE - request for a police report made by applicant's former employer - whether agency has taken all reasonable steps to locate the requested document - whether access may be refused on the basis the document sought does not exist - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and 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 Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for a copy of a report he believed had been made to police about him by his former employer.
2. Searches conducted by QPS did not locate any documents fitting the description provided by the applicant in his access application.²
3. The applicant applied³ for external review of QPS's decision, submitting that police officers attending his home, and others, had told him the report had been made or had otherwise confirmed the existence of what he described as '*the Police Report against me*'.
4. For the reasons set out below I affirm QPS's decision that access to the requested report can be refused on the basis that it does not exist.

Reviewable decision and evidence considered

5. The decision under review is QPS's decision dated 4 June 2021.

¹ Access application dated 20 March 2021.

² Decision dated 4 June 2021.

³ External review application made on 8 June 2021.

6. Significant procedural steps relating to the external review are set out in the Appendix, and the evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁴ In making this decision I have respected, and my actions and considerations have taken account of, that right and others prescribed in the HR Act.⁵

Issue for determination

8. The issue for determination is whether access to the requested report can be refused on the basis that it is nonexistent.

Relevant law

9. On external review, the functions of the Information Commissioner include investigating and reviewing whether an agency has taken all reasonable steps to identify and locate documents applied for by an applicant.⁶ However, access to a document may be refused if it is nonexistent.⁷ A document is nonexistent⁸ if there are reasonable grounds to be satisfied that the document does not exist, for example, it is not a document that was created or received by the agency to which the application was made.
10. To be satisfied that a requested document is nonexistent, a decision maker must consider any relevant key factors.⁹ If searches are relied on to justify a decision that a requested document does not exist, all reasonable steps must be taken to locate the document. What constitutes all reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

Findings

11. The applicant's access application¹⁰ stated:

On the 14/07/2017 I received a visit from the police and 2 mental health representatives telling me that [the applicant's former employer] had made an official report to the Police... I was told that it is on official Police records against me...

⁴ Section 21 of the HR Act.

⁵ In accordance with section 58(1) of the HR Act. See also *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]. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation (*Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic): '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': *XYZ* at [573].

⁶ Section 137(2) of the IP Act.

⁷ Sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

⁸ Section 52(1)(a) of the RTI Act.

⁹ See *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11] and *Van Veendendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [23], which adopt the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (**PDE**) at [37]-[38]. *PDE* concerned 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. The key factors include: the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); the agency's practices and procedures (including but not exclusive to its information management approach) and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

¹⁰ Dated 20 March 2021.

12. The QPS decision letter¹¹ advised that searches of QPS databases were undertaken (using the information provided by the applicant) for records of police attendance and/or an incident on the nominated date and no documents were located.
13. On external review, the applicant expressed ongoing concerns about his former employer. He submitted¹² that, further to the information provided at paragraph 11 above, his complaints to the Ombudsman and the police about the requested report resulted in the report being withdrawn. The applicant also submitted that his Case Manager from Forensic Mental Health told him that he had seen the Report.¹³ The applicant's concerns about his former employer were conveyed in numerous emails sent to our office between 8 June 2021 and 28 June 2021.
14. I acknowledge that the applicant considers the content of the emails relevant to the issues in the review. While I consider most of this email content is not relevant to the issue for determination, I have addressed the email content which I have identified as relevant in this decision. In effect, I understand the applicant contends that, consistent with his concerns relating to his former employer, a number of people have confirmed to him that his former employer made a report to QPS, and therefore QPS must hold such a report.
15. My considerations in this review are confined to considering whether QPS has taken all reasonable steps to identify any QPS document that fits the applicant's description of the requested report.
16. In response to OIC enquiries, QPS provided search certifications for the searches undertaken and submitted:¹⁴

Searches of QPRIME were conducted and there is no QPRIME entry (report) for on or around 14/07/2017 regarding Police and Mental Health attending the applicant's residence regarding a complaint from [the applicant's former employer] or any other complaint in nature as outlined in the application [my underlining].
17. QPS also provided copies of the results of searches from its Electronic Log – QCAD which showed no results for police attendance at the applicant's property on the stated date, 14 July 2017 and supported QPS's position that no report as described by the applicant was received by QPS.
18. In considering the question of whether QPS has taken all reasonable steps in the search process, I note that the applicant has requested a very specific report and provides a date as an approximate guide as to when he believes such a report would have been received or created by QPS. QPS has, in response to the request, conducted targeted searches of the locations where a report of this type would have been stored (QPRIME and QCAD). There is no question as to the appropriate locations that should be searched in this case.
19. I accept that the applicant holds a strong view that a report, as described in his access application, must exist. However, I am satisfied that QPS has conducted appropriate and targeted searches of the locations where such a document (or information evidencing its existence) would reasonably be expected to be held.

¹¹ Decision letter dated 4 June 2021.

¹² External review application dated 8 June 2021.

¹³ Applicant's submissions dated 28 June 2021.

¹⁴ QPS submissions dated 23 June 2021.

20. Notwithstanding the applicant's submissions, there is no evidence before me to suggest that any further searches or steps can be taken by QPS to locate a report of the nature described by the applicant.
21. On the basis of the above, I am satisfied that:
- QPS has taken all reasonable steps to locate the requested report; and
 - access may be refused to the requested report on the basis it is nonexistent.¹⁵

DECISION

22. As a delegate of the Information Commissioner,¹⁶ I affirm the QPS decision and find that access to the requested report 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 basis that it does not exist.

Suzette Jefferies
Assistant Information Commissioner

Date: 19 August 2021

¹⁵ For completeness, I note that searches of the backup system, as contemplated by section 52(2) of the RTI Act, are not required as there is no evidence before me to indicate QPS received or created the requested document, and therefore, no basis to consider it has been held on that system.

¹⁶ Under section 139 of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
8 June 2021	OIC received the application for external review.
9 June 2021	OIC requested preliminary documents from QPS.
10 June 2021	QPS provided the preliminary documents to OIC.
23 June 2021	OIC notified the applicant and QPS that the application for external review had been accepted. OIC requested and received search information from QPS.
28 June 2021	OIC conveyed a preliminary view to the applicant that QPS's decision was correct. The applicant responded, contesting the preliminary view.