



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>D65 and Department of the Environment, Tourism, Science and Innovation [2026] QICmr 59 (16 April 2026)</i></b>
<b>Application Number:</b>	<b>318631</b>
<b>Applicant:</b>	<b>D65</b>
<b>Respondent:</b>	<b>Department of the Environment, Tourism, Science and Innovation</b>
<b>Decision Date:</b>	<b>16 April 2026</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - applicant seeking information about their employment - reasonableness of agency searches - nonexistent documents - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Background

1. The applicant applied to the Department of the Environment, Tourism, Science and Innovation (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>1</sup> for access to information about her employment within a specified timeframe.<sup>2</sup>
2. The Department did not make a decision within the required timeframe under the RTI Act and was therefore, deemed to have refused access to all requested information (**deemed decision**).<sup>3</sup>
3. The applicant applied to OIC for external review of the deemed decision.<sup>4</sup> On external review, the Department located 135 pages and released those to the applicant subject only to the removal of signatures.<sup>5</sup> The applicant did not accept resolution of the review on the basis of the released documents and submitted to OIC that the Department should have located more documents.
4. For the reasons set out below, I am satisfied the Department has taken reasonable steps to locate documents responding to the scope of the application and that access to further documents may be refused on the basis that they do not exist in accordance with section 47(3)(e) and 52(1)(a) of the RTI Act.

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<sup>1</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) commenced, effecting significant changes to the RTI Act. As the access application was made prior to 1 July 2025, references in this decision are to the RTI Act as in force prior to 1 July 2025 in accordance with the transitional provisions in Chapter 7, Part 9 of the RTI Act.

<sup>2</sup> Access application dated 25 February 2025.

<sup>3</sup> Notified by letter dated 14 May 2025 in accordance with section 46 of the RTI Act.

<sup>4</sup> External review application dated 15 May 2025.

<sup>5</sup> Initially on 25 September 2025 and further information was released on 21 November 2025. The applicant did not contest redaction of signatures.

5. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as referred to in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information<sup>6</sup> and in doing so, have acted in accordance with section 58(1) of the HR Act.<sup>7</sup>

### Relevant law

6. The right of access to documents of an agency provided for by the RTI Act<sup>8</sup> is subject to certain limitations including grounds for refusing access. Relevantly, access to a document may be refused if it is nonexistent or unlocatable.<sup>9</sup> A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>10</sup> A document will be unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.<sup>11</sup>
7. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures, and the nature and age of requested documents.<sup>12</sup> By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such a case, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are explained. Where searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
8. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.<sup>13</sup> The Information Commissioner also has the power to require additional searches be conducted on an external review.<sup>14</sup> However, the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*', rather, the Information Commissioner relies on the agency's officers to search for relevant documents.<sup>15</sup>
9. On an external review, the agency or Minister who 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.<sup>16</sup> However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.<sup>17</sup> Suspicion and mere assertion will not satisfy this onus.<sup>18</sup>

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<sup>6</sup> Section 21 of the HR Act.

<sup>7</sup> OIC's approach to the HR Act set out in this paragraph has been endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

<sup>8</sup> Section 23 of the RTI Act.

<sup>9</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>10</sup> Section 52(1)(a) of the RTI Act.

<sup>11</sup> Section 52(1)(b) of the RTI Act.

<sup>12</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38].

<sup>13</sup> Section 130(2) of the RTI Act.

<sup>14</sup> Under section 102 of the RTI Act

<sup>15</sup> *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6].

<sup>16</sup> Section 87(1) of the RTI Act.

<sup>17</sup> *Mewburn and Department Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

<sup>18</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23] and *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

## Searches, evidence and submissions

10. The scope of the access application is set out below:

1. All date-stamped psychosocial risk assessments conducted by DETSI prior to or during a process referred to as an "investigation" initiated against me in July 2024 and the subsequent disciplinary process initiated in October 2024, which relate to my case.

2. All date-stamped internal and external reports, briefs, internal memos, meeting minutes, emails and official correspondence regarding the assessment of psychosocial risks in relation to a process referred to as an "investigation" and disciplinary process affecting my employment.

3. Copies of all policies, procedures, or directives that DETSI relied upon when determining whether a psychosocial risk assessment was necessary in my case.

4. Copies of date-stamped internal and external briefs, memos, meeting minutes, emails and official correspondence between DETSI's Corporate Services, DETSI's workplace health and safety team, or any third-party consultants regarding the management of psychosocial risks relevant to the process referred to as an "investigation" initiated against me in July 2024 and the subsequent disciplinary process initiated against me in October 2024, including all referrals made to Strive Occupational Rehabilitation.

5. Copies of date-stamped internal and external briefs, memos, meeting minutes, emails and official correspondence between DETSI and Queensland Shared Services (QSS), including date-stamped case referral forms as per CHC/2018/4420 Injury and Illness Case Management Procedure v1.04.

Time period: 1 July 2024 to 25 February 2025.

11. The documents located and released to the applicant during the external review process responded to items 3 and 5 and included:

- Work capacity certificates
- WHS procedure and Wellbeing policy
- Return to work plans, forms and checklists
- Case notes and communications with QSS<sup>19</sup>
- Records of communications, including emails, involving the Department's Work Safety and Wellbeing branch and the Rehabilitation and Return to Work Unit (Qld Shared Services).

12. The Department provided OIC with records of searches it had undertaken in the following areas: Workforce Safety and Wellbeing files and emails, and the Intranet for that unit. Those search records confirm that:<sup>20</sup>

- searches were conducted by officers from the Workforce Safety and Wellbeing unit with knowledge of the applicant's matter; and
- in undertaking the searches, the Department used the applicant's name and key words, including 'psychosocial'.

13. The Department also provided OIC with email correspondence between the RTI Unit and the Workforce Relations and Integrity Unit confirming that no documents were held in response to items 1, 2 and 4 of the application.

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<sup>19</sup> File B pages 2-10. The location of these pages is relevant to a sufficiency of search submission made by the applicant, see paragraph 21 below.

<sup>20</sup> Provided to OIC on 27 June 2025.

14. Throughout the review process, the applicant made extensive submissions to OIC.<sup>21</sup> Due to the number and length of the submissions and breadth of issues they address (including many beyond the scope of OIC's external review jurisdiction), I have not explicitly referred to each of them in these reasons. However, for the purpose of making my findings, I have read and considered the applicant's submissions to the extent they are relevant to the issue of whether the Department has undertaken all reasonable searches. I note that a significant portion of the attachments to the applicant's submissions to OIC comprise her correspondence and submissions to other government agencies she engaged with in relation to her workplace health and safety matter.
15. In response to the preliminary view expressed by OIC to the applicant on the reasonableness of the Department's searches, the applicant outlined her concerns<sup>22</sup>, as summarised below:
- The searches should not have been confined to the Workforce Safety and Wellbeing and Workforce Relations and Integrity units.
  - Searches should have been conducted of numerous other locations including case management platforms, Corporate Services, senior executive officers, management email repositories, network drives.
  - The absence of psychosocial risk documentation specific to the applicant is "*difficult to reconcile with standard governance practice in a public sector department*".
  - It is reasonable to infer that documents evidencing the Department's cooperation with Workplace Health and Safety Queensland should exist.
  - Using the search term 'psychosocial' was insufficient and numerous other search terms should have been used including "*psych risk*", "*WHS risk*", "*risk assessment*" "*wellbeing*", "*mental health*", "*hazard*" because "*reasonable searches ordinarily require variation in terminology reflecting practical drafting habits of officers.*"
  - Referrals to Strive Occupational Rehabilitation should have been located, if they were undertaken and if not, a further explanation is warranted.
  - Correspondence between the Department and Queensland Shared Services (QSS), including case referral forms under the relevant reference number should exist, if engagement occurred.

## Findings

16. As outlined above, where an agency has relied on searches to justify a decision to refuse access to documents on the basis that they do not exist, OIC is required to consider whether the agency has taken all reasonable steps to locate the documents. A finding that all reasonable steps have been taken by an agency is open to reach '*even if, at least in theory, further and better searches might possibly disclose additional documents.*'<sup>23</sup> Therefore, the issue upon which I must make a finding in this review is whether, based on the evidence available to me, the Department has taken all *reasonable* steps to identify documents, as opposed to all *possible* steps.
17. In making my findings, have examined the terms of the application, the documents that located by the Department, submissions made to OIC by the applicant (including attachments), information provided by the Department to OIC including records of its searches and evidence of the inquiries undertaken by the RTI Unit with the relevant

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<sup>21</sup> Comprising 16 emails and various attachments dated 16 May 2025, 18 June 2025, 2 on 30 June 2025, 15 July 2025, 2 on 26 September 2025, 14 October 2025, 10 November 2025, 2 on 18 November 2025, 20 November 2025, 2 on 24 November 2025, 22 January 2026 and 28 January 2026.

<sup>22</sup> Email to OIC dated 11 March 2026.

<sup>23</sup> *Webb* at [6].

business unit, Workforce Safety and Wellbeing. I have also taken into account the written confirmation received from that unit that it does not hold any documents responding to items 1, 2 and 4 of the application. In the circumstances, I do not consider it would be reasonable for the Department to undertake searches beyond that unit for documents responding to those items as in the circumstances, it is reasonable to expect such documents, if they existed, would be held in that unit given its responsibility to deal with workplace health and safety matters.

18. I have closely considered the applicant's comprehensive submissions she has made in support of her case. Those submissions demonstrate that the applicant firmly believes that far wider searches are necessary and that the recordkeeping practices and procedures of the Department should be interrogated to a greater degree.
19. Based on the information available to me, I am satisfied that in undertaking searches in response to the access application, the Department contacted officers with relevant knowledge and expertise and asked them to undertake searches in the key recordkeeping systems that the Department maintains in relation to workplace health and safety employment matters. The Department's search records also confirm that search terms used in searching those systems included relevant terms and reference numbers related to the applicant's workplace health and safety matter.
20. Taking into account that the application was made in connection with a specific workplace health and safety matter and the terms of the application were focused on '*psychosocial risk assessments*', I consider the relevant unit to undertake searches was the Workforce Safety and Wellbeing unit. I am satisfied that the search terms used by officers of that unit to search email records and files were reasonable in the circumstances as they included the applicant's name and the word '*psychosocial*'. To my mind, the fact that over 130 pages of relevant documents were located demonstrates that searches were conducted in the appropriate areas.
21. The located documents include extensive communication regarding management of the applicant's workplace health and safety matter, including QSS case notes, and communications regarding the applicant's return to work plans. While I acknowledge the applicant considers broader search terms should have been used and further interrogation of other business units should have been undertaken, the question is whether reasonable steps have been undertaken, not all *possible* steps. Based on the information available to me, I consider the steps taken by the Department to search for documents responding to the scope of the application have been reasonable.
22. I acknowledge that the extent of documentation located has not met the applicant's expectations. During the review, I observed that this may be attributable to the relatively short date range (July 2024 to February 2025) and focus on '*psychosocial risk assessments*' in the terms of her application. It is clear from the applicant's submission that matters pertaining to her workplace health and safety matter continued beyond February 2025 and throughout that year, and to that end, I indicated to the applicant that a fresh application seeking access to information about her employment more broadly, may result in the location of further documents from the Department. For the purpose of this review however, my assessment of the Department's searches and determination on whether it has undertaken all reasonable steps, is limited by the scope of the original application which effectively sets the parameters for searches.<sup>24</sup>

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<sup>24</sup> H40 and Queensland Police Service [2023] QICmr 30 (28 June 2023) at [13]; M34 and Sunshine Coast Hospital and Health Service [2023] QICmr 55 (5 October 2023) at [13].

23. In the circumstances of this case, I am unable to identify any further searches that would be reasonable for the Department to undertake. For the reasons set out above, I am satisfied that further documents falling within the scope of the application do not exist and that therefore, access to further documents may be refused under section 47(3)(e) and 52(1)(a) of the RTI Act.

## **DECISION**

24. For the reasons set out above, I vary the reviewable decision<sup>25</sup> and find that access to any further documents relevant to the scope of the access application may be refused under section 47(3)(e) and 52(1)(a) of the RTI Act on the basis they are nonexistent.
25. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**Katie Shepherd**  
**Assistant Information Commissioner**

**Date: 16 April 2026**

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<sup>25</sup> Under section 110(1)(b) of the RTI Act.