



Decision and Reasons for Decision

Citation: *E82 and Queensland Police Service [2021] QICmr 31*
(22 June 2021)

Application Number: 315791

Applicant: E82

Respondent: Queensland Police Service

Decision Date: 22 June 2021

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - request for information concerning an incident involving the applicant - whether information may be excluded on the basis it is irrelevant to the scope of the application - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information of other individuals - accountability, transparency and administration of justice - personal information, privacy and prejudice to flow of information and agency's ability to obtain confidential information - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) section 47(3)(b) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - UNLOCATABLE OR NONEXISTENT DOCUMENTS - applicant contends that CCTV footage and audio recordings should exist - whether agency has taken all reasonable steps to locate the relevant documents - whether access may be refused on the basis the documents do not exist or are unlocatable - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant was injured during an incident in November 2011 (**Incident**). In July 2012, the applicant applied to the Queensland Police Service (**QPS**) under the *Information*

Privacy Act 2009 (Qld) (**IP Act**) to access certain information relating to a charge that arose from the Incident.¹

2. In 2020, the applicant applied again to QPS under the IP Act to access information about the Incident (**Incident**).² Although the applicant sought some of the same information requested in his previous access application,³ QPS chose to deal with the 2020 access applications. QPS located 40 pages, disclosed 5 full pages and parts of 28 pages to the applicant, and decided⁴ to refuse access to the remaining information. QPS also deleted irrelevant information from the disclosed documents.
3. The applicant sought internal review of QPS' decision. As QPS did not make an internal review decision within the statutory timeframe, it was taken to have affirmed its original decision.⁵
4. The applicant then applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision to refuse or delete information and raised concerns that QPS had not located all requested documents. During the external review, QPS disclosed a small amount of additional written information to the applicant.
5. The applicant remains dissatisfied with the information which has been disclosed to him and continues to seek access to unredacted copies of the located information, together with CCTV footage and electronic recordings which he believes exist.
6. For the reasons set out below, I affirm QPS' decision to delete irrelevant information and refuse access to information on the ground disclosure would, on balance, be contrary to the public interest. I also find that access to any further documents may be refused on the basis they do not exist or cannot be located.

Reviewable decision and evidence considered

7. The decision under review is QPS' decision dated 15 October 2020, which QPS is deemed to have affirmed on internal review.
8. Significant procedural steps taken in the external review are set out in the Appendix. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying

¹ The applicant's external review application included a copy of a QPS decision, dated 31 August 2012, in respect of this previous application. However, a copy of the 2012 access application, and the documents which the applicant received from QPS in response, are not before me.

² The applicant made two access applications to QPS on 26 August 2020. Each application requested any information held by QPS in relation to the Incident for the period 14 October 2011 to March 2012 (including CCTV footage, electronic recordings, photographs, statements of witnesses and involved persons, police reports and police emails, memos and messages) but referenced different QPS investigation numbers. As the scope of each application was identical, QPS dealt with both applications together.

³ Potentially enlivening section 62 of the IP Act.

⁴ On 15 October 2020.

⁵ Under section 97(2) of the IP Act. QPS confirmed this to the applicant by letter dated 23 December 2020.

⁶ On 14 December 2020.

⁷ Section 21 of the HR Act.

the law prescribed in the IP Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁹

Information in issue

10. The information in issue appears on 37 pages (**Information in Issue**) and comprises:
- portions of information which QPS deleted from four disclosed pages¹⁰ on the basis it was irrelevant to the application (**Irrelevant Information**); and
 - portions of information to which QPS refused access on 36 pages¹¹ (**CTPI Information**).
11. I am constrained in how I may describe the CTPI Information¹² however, I can confirm that it comprises the personal information¹³ of individuals other than the applicant (such as their names, contact details, dates of birth, signatures and information they provided to the QPS investigation of the Incident).

Issues for determination

12. The issues for determination are whether:
- the applicant is entitled to access the Irrelevant Information
 - access may be refused to the CTPI Information on the ground disclosure would, on balance, be contrary to the public interest; and
 - access to further documents may be refused on the basis they do not exist or cannot be located.

Irrelevant Information

13. Under the IP Act, an individual has the right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.¹⁴ However, section 88 of the IP Act permits an agency to delete information that is not relevant to an access application from a document before giving access to a copy of the document. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.¹⁵
14. Each of the applicant's access applications request '*any information*' held by QPS in relation to the Incident. Having carefully considered the Irrelevant Information and the terms of the access applications, I am satisfied that this information does not relate to the Incident or the applicant.

⁸ *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].

⁹ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *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*'.

¹⁰ Pages numbered 1, 2, 33 and 37. This information is identified with the code 's.88' on these pages.

¹¹ Pages numbered 2-16, 18-31, 33-35, 37-39 and 40.

¹² Section 121 of the IP Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

¹³ '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

¹⁴ Section 40 of the IP Act.

¹⁵ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

15. On this basis, I find that the Irrelevant Information was validly deleted¹⁶ from the documents that QPS has disclosed.

CTPI Information

16. The general right of access under the IP Act is subject to certain limitations, including grounds for refusal of access.¹⁷ One ground for refusal is where disclosure of information would, on balance, be contrary to the public interest.¹⁸
17. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁹
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

18. The applicant submits that a number of factors favour disclosure of the CTPI Information apply and these strongly outweigh the factors which favour nondisclosure.²⁰ More specifically, the applicant relies on the following public interest factors favouring disclosure, which arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability²¹
 - allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official²²
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct²³
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies²⁴
 - contribute to the maintenance of peace and order²⁵
 - contribute to the administration of justice for person;²⁶ and
 - contribute to the enforcement of the criminal law.²⁷
19. I have taken no irrelevant factors into account in making my decision and consider none apply.

¹⁶ Under section 88 of the IP Act.

¹⁷ Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

¹⁸ Section 47(3)(b) of the RTI Act. The phrase '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from merely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We know it's Important, But Do We Know What it Means' (2006) 48 *AIAL Forum* 12, 14.

¹⁹ Section 49(3) of the RTI Act.

²⁰ External review application and submissions dated 14 May 2021.

²¹ Schedule 4, part 2, item 1 of the RTI Act.

²² Schedule 4, part 2, item 5 of the RTI Act.

²³ Schedule 4, part 2, item 6 of the RTI Act.

²⁴ Schedule 4, part 2, item 10 of the RTI Act.

²⁵ Schedule 4, part 2, item 15 of the RTI Act.

²⁶ Schedule 4, part 2, item 17 of the RTI Act.

²⁷ Schedule 4, part 2, item 18 of the RTI Act.

Factors favouring disclosure

20. A minimal amount of the CTPI Information relates to the applicant and comprises his personal information. This gives rise to a factor favouring disclosure to which I afford high weight.²⁸ However, this information about the applicant is intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (which raises the nondisclosure factors discussed below).
21. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability²⁹
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;³⁰ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³¹
22. I acknowledge that QPS must be transparent and accountable about how it investigates, and deals with, assault incidents. The applicant submits that:
- ... the information disclosed to date does not reasonably assist [the applicant] in determining whether QPS conducted a competent investigation into the incident, free of any bias. Accordingly, the conclusions reached by QPS could only be challenged by [the applicant] following a careful, independent, re-examination of the available evidence, including, in particular, the evidence of any eye-witnesses to the incident). Evidently, these investigations cannot be reasonably carried out in circumstances where the names and contact details of such potential eyewitnesses are not known or disclosed to [the applicant].³²*
23. I accept that disclosing the CTPI Information would provide the applicant with a complete picture of the information that was available to QPS in its investigation of the Incident. However, while there is a public interest in affording assault complainants (and the public generally) with an understanding of the process and conclusions of such investigations, this does not extend to affording complainants a right to reinvestigate, particularly in circumstances where other avenues of redress for perceived investigative inadequacy are available.³³ QPS has disclosed a significant amount of information to the applicant and its disclosure has substantially advanced the accountability and transparency factors,³⁴ by enabling scrutiny of QPS' investigative actions³⁵ and providing contextual information about QPS' decision not to prosecute any individual in respect of the applicant's assault complaint. Given the particular nature of the CTPI Information, I do not consider its disclosure would further advance these accountability and transparency factors in any significant way. In these circumstances, I attribute minimal weight to these factors.

²⁸ Schedule 4, part 2, item 7 of the RTI Act.

²⁹ Schedule 4, part 2, item 1 of the RTI Act.

³⁰ Schedule 4, part 2, item 3 of the RTI Act.

³¹ Schedule 4, part 2, item 11 of the RTI Act.

³² Submissions dated 14 May 2021.

³³ In this regard, the applicant confirmed in the external review application that he has lodged complaints about QPS' investigation with the Crime and Corruption Commission and the Queensland Parliamentary Crime and Corruption Committee.

³⁴ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

³⁵ This disclosed material has provided the applicant with a substantial understanding of how the Incident investigation was conducted.

24. Public interest factors favouring disclosure also arise in circumstances where disclosing information could reasonably be expected to allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of QPS or its officers.³⁶
25. The applicant disagrees with the investigation outcome and asserts that these factors apply because disclosure of the CTPI Information may highlight '*significant flaws in the Police Investigation*'.³⁷ For these factors to be relevant, there must be a reasonable expectation that disclosing the CTPI Information (that is, the personal information of private individuals) would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. I have considered the CTPI Information, together with the information which has been released to the applicant. I am satisfied that there is nothing in the CTPI Information which gives rise to a reasonable expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, any deficiencies in the conduct of QPS or its officers. For this reason, I find to these factors favouring disclosure do not apply.
26. Where disclosing information could reasonably be expected to contribute to the administration of justice for a person, a public interest factor favouring disclosure arises.³⁸ The applicant submits that, without knowing the identity of the individual/s who injured him, he is unable to make any civil or criminal claim in respect of those injuries.³⁹ He contends that this factor deserves significant weight because:
- the CTPI Information would have '*circumstantial relevance*' to such a claim⁴⁰
 - the names and contact details of any witnesses to the Incident are '*central to [the applicant's] ability to commence civil or criminal proceedings against the responsible party*';⁴¹ and
 - the CTPI information may also be relevant to the complaints he has made concerning the QPS investigation of the Incident.⁴²
27. In determining whether this factor applies, I must consider whether:
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.⁴³
28. On external review, the applicant confirmed that he has already made complaints about the QPS investigation to relevant complaint bodies, based upon information he already possesses.⁴⁴ I also note that these complaint bodies are generally empowered to obtain information relevant to their investigatory processes.⁴⁵ Taking into account the nature of the CTPI Information, I am not satisfied that disclosing this information is required to enable the applicant to evaluate, pursue or assist those complaint processes.

³⁶ Schedule 4, part 2, items 5 and 6 of the RTI Act.

³⁷ External review application.

³⁸ Schedule 4, part 2, item 17 of the RTI Act.

³⁹ External review application and submissions dated 14 May 2021.

⁴⁰ External review application.

⁴¹ Submissions dated 14 May 2021.

⁴² External review application.

⁴³ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

⁴⁴ The applicant identified that one of these separate complaint processes has already been finalised.

⁴⁵ This was advised to the applicant on 29 April 2021.

29. I acknowledge that the applicant suffered injuries during the Incident and that he has identified there may be a civil or criminal remedy available to him in that regard. On completion of the Incident investigation, QPS decided that there was insufficient evidence to proceed with the applicant's assault complaint. I also note that the information which has been disclosed to the applicant includes the substance of obtained witness statements; confirms that these statements provided conflicting versions of what had occurred during the Incident; and concluded that the version of events supplied by the only independent witness did not support the applicant's statement. The applicant submits that QPS' investigation conclusion does not '*diminish the evidentiary value*' of the CTPI Information.⁴⁶ In these circumstances, while it is unclear whether the applicant has a reasonable basis for pursuing his identified criminal remedy, I accept there may be a basis for him to pursue a civil remedy. For these reasons, I find that the requirements set out above are met and this administration of justice factor applies.
30. In terms of the weight to be attributed to this factor, I am not satisfied that the CTPI Information possesses the '*high evidentiary value*' submitted by the applicant.⁴⁷ Taking into consideration the nature of the CTPI Information and the information which has been disclosed to the applicant, I attribute this administration of justice factor moderate weight. I also note that, as the disclosed information generally identifies the residential/work location of involved individuals at the time of the Incident,⁴⁸ there may be other avenues of enquiry or processes available to the applicant for obtaining the identities of the involved individuals.
31. Public interest factors favouring disclosure will also arise where disclosing information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies⁴⁹ and contribute to the administration of justice generally, including procedural fairness.⁵⁰ Although the applicant has raised concerns about the QPS investigation and submits the disclosure factor concerning fair treatment applies,⁵¹ he has not detailed how disclosure of the CTPI Information would advance his fair treatment. I note that the applicant was given the opportunity to participate in the QPS investigation process and that he is aware of the investigation outcome. In these circumstances, and taking the particular nature of the CTPI Information into account, I am not satisfied that that there is a reasonable expectation its disclosure would advance the applicant's fair treatment or contribute to the administration of justice generally. Accordingly, to the extent these disclosure factors⁵² apply, I afford them only low weight.
32. The RTI Act also recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to contribute to the maintenance of peace and order or the enforcement of the criminal law.⁵³ Although the applicant submits that these factors apply, he has not explained how disclosure of this particular CTPI Information could reasonably be expected to have these outcomes. Given the nature of the CTPI Information, I do not consider these factors favouring disclosure apply.

⁴⁶ Submissions dated 14 May 2021.

⁴⁷ External review application.

⁴⁸ I cannot provide a further description of this information in this decision.

⁴⁹ Schedule 4, part 2, item 10 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 16 of the RTI Act.

⁵¹ External review application.

⁵² Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁵³ Schedule 4, part 2, items 15 and 18 of the RTI Act.

33. Taking into account the particular nature of the CTPI Information, I cannot identify any other public interest considerations favouring its disclosure.⁵⁴

Factors favouring nondisclosure

34. As noted above, the applicant generally submits that any factors supporting nondisclosure are strongly outweighed by the factors favouring disclosure.⁵⁵
35. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁵⁶ and also that disclosing information that could reasonably be expected to prejudice the protection of an individual's right to privacy, will favour nondisclosure.⁵⁷ The concept of 'privacy' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁵⁸
36. Having carefully reviewed the CTPI Information, I am satisfied that it comprises the personal information of private individuals appearing in the context of a police investigation into an incident where individuals were injured.⁵⁹ Some of the CTPI Information is sensitive in nature. Given this, I am satisfied that disclosure of the CTPI Information would interfere with the personal sphere of these private individuals and could reasonably be expected to prejudice the protection of their privacy and cause a public interest harm. It is relevant then to consider the extent of the prejudice and harm that could result from disclosing the personal information of these other individuals under the IP Act.
37. Given the sensitive and personal nature of the other individuals' personal information and the context in which it appears, I consider that its disclosure would be a significant intrusion into the privacy of these individuals. I also consider that the extent of the harm that could be anticipated from disclosing information which includes the names, contact details, personal circumstances, observations and opinions of (or about) these individuals under the IP Act would be significant. Accordingly, I afford significant weight to these factors favouring nondisclosure.
38. I acknowledge that the applicant will be aware of some of the CTPI Information by reason of his involvement in the Incident investigation. However, I do not consider that reduces the weight of these nondisclosure factors to any significant degree, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.
39. A public interest factor favouring nondisclosure will also arise if disclosing information could reasonably be expected to prejudice the flow of information to law enforcement agencies.⁶⁰

⁵⁴ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the CTPI Information could, for example, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); or reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the CTPI Information.

⁵⁵ Submissions dated 14 May 2021.

⁵⁶ Schedule 4, part 4, section 6(1) of the RTI Act.

⁵⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁸ Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

⁵⁹ As noted above, a small amount of this information is intertwined with the applicant's personal information.

⁶⁰ Schedule 4, part 3, item 13 of the RTI Act.

40. It is generally recognised that there is a very strong public interest in protecting the ability of QPS to obtain information which is relevant to its investigations.⁶¹ Although the police possess certain coercive powers when investigating criminal matters such as assault incidents, the efficient and effective use of public resources is facilitated by police being able to cooperatively seek and obtain information, including from complainants, witnesses, the subjects of a complaint or other involved individuals. I consider that routinely disclosing information which QPS obtains or receives in this context would tend to discourage individuals from coming forward with relevant information or participating openly in future QPS investigations, particularly where information is of a sensitive nature. Accordingly, I find the nondisclosure factor relating to the flow of information to QPS deserving of significant weight.
41. The RTI Act recognises that there is a public interest harm in disclosing information of a confidential nature that was communicated in confidence where its disclosure could reasonably be expected to prejudice the future supply of information of that type.⁶² A public interest factor favouring nondisclosure also arises where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information.⁶³
42. Some of the CTPI Information is inherently confidential in nature. I consider that routinely disclosing information of this nature would tend to discourage individuals from coming forward with relevant information in the future and that it is reasonable to expect that this would, in turn, detrimentally effect QPS' ability to effectively discharge its regulatory functions. On this basis, to the extent the CTPI Information comprises information of a confidential nature, I afford significant weight to these nondisclosure factors.

Balancing the public interest

43. I acknowledge the pro-disclosure bias in deciding access to documents under the IP Act.⁶⁴ I have afforded high weight to the factor favouring disclosure of the applicant's personal information within the CTPI Information, however, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. Although I also accept that the public interest factor concerning administration of justice for the applicant applies, I consider it is deserving of moderate weight in the circumstances of this matter. Taking into account the nature of the CTPI Information, I also afford minimal or low weight to additional factors which favour disclosure of the CTPI Information (including those relating to QPS' transparency and accountability, fair treatment and administration of justice generally).
44. On the other hand, I have afforded significant weight to the nondisclosure factors which relate to protecting the personal information and right to privacy of other individuals, the flow of information to QPS and the ability of QPS to obtain confidential information.
45. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the CTPI Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁶⁵

⁶¹ See for example: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), and *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016) and *Marshall and Department of the Police* (Unreported, Queensland Information Commissioner, 25 February 2011).

⁶² Schedule 4, part 4, section 8(1) of the RTI Act.

⁶³ Schedule 4, part 3, item 16 of the RTI Act.

⁶⁴ Section 64 of the IP Act.

⁶⁵ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

Nonexistent or unlocatable documents

46. On external review, the functions of the Information Commissioner include investigating and reviewing whether an agency has taken reasonable steps to identify and locate documents applied for by applicants.⁶⁶ However, access to a document may be refused if it is nonexistent or unlocatable.⁶⁷
47. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience of the agency's operations and have regard to a number of key factors⁶⁸, including the recordkeeping practices and procedures of the agency, and the nature and age of the requested documents. An agency may also rely on searches to justify a decision that documents do not exist, and in such a case, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on the particular circumstances.
48. To substantiate a finding that a document is unlocatable, the agency must be satisfied that the requested document *has been or should be* in the agency's possession; and that all reasonable steps have been taken to find the document, but the document cannot be found. In determining whether all reasonable steps have been taken, regard should again be had to the circumstances of the case and key factors previously identified by the Information Commissioner.⁶⁹

Findings

49. The applicant contends that:⁷⁰
 - at the time of the Incident investigation, Officer C informed him that CCTV footage existed, however, it did not capture the assault that caused the applicant's injuries and did not identify the perpetrator; and
 - he was advised by Officer G (from a specified police station) on 21 August 2020 that footage '*clearly depicting his assault*' was located in the Incident investigation records relating to the applicant's assault complaint.
50. As noted above, QPS conducted further searches and enquiries on external review but did not locate the requested CCTV footage or electronic recordings. QPS relied on searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents responsive to the applications and provided information about its recordkeeping system and searches, as set out below.
51. QPS submitted⁷¹ that it conducted the following searches and enquiries:
 - in processing the applications, QPS conducted searches of its electronic records (including QPRIME) and officer notebooks and diaries and no audio or video records were found

⁶⁶ Section 137(2) of the IP Act.

⁶⁷ Sections 47(3)(e) and 52 of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. 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 the document but it cannot be found—section 52(1)(b) of the RTI Act.

⁶⁸ These factors are identified in *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 the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-38]. They were more recently considered in *Van Veendendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020).

⁶⁹ *Pryor* at [21].

⁷⁰ External review application.

⁷¹ Submissions received 17 March 2021 and 21 April 2021. Search records and certifications were provided with QPS' submission on 17 March 2021.

- QPS conducted further searches of records held by its District Office; and
 - enquiries made of Officer G confirmed that there is no record of CCTV footage being held at the specified police station and that the Incident investigation records confirm that CCTV footage was viewed at the scene; was unable to be played on QPS computers; and there is no record of any CCTV footage being logged as a property item.
52. I note that, in response to the applicant's prior access application in 2012, QPS confirmed that it had not located CCTV footage and electronic recordings relevant to the timeframe of the Incident. I further note that the information QPS has disclosed to the applicant in respect of his current access applications confirms that QPS:
- was unable to download CCTV footage from a street camera which depicted the applicant attacking other individuals; and
 - viewed CCTV footage from a private business, which was unable to be played on police computers.
53. Having reviewed the applicant's submissions and QPS' search submissions,⁷² I consider that QPS has conducted comprehensive searches of locations where it would be reasonable to expect the types of information requested in the access applications to be stored. I am also satisfied that enquiries have been made of staff who have relevant knowledge of the Investigation records.
54. In view of the above, and taking into account the documents that were located by QPS (including the Information in Issue), there is nothing before me, other than the applicant's assertions, to support an expectation that the requested CCTV footage and electronic recordings exist. Accordingly, I am satisfied that:
- QPS has taken reasonable steps to locate documents relevant to the access applications; and
 - access to further documents, including the requested CCTV footage and electronic recordings, may be refused on the basis they do not exist, or cannot be located.⁷³

DECISION

55. For the reasons set out above, I affirm QPS' decision to delete the Irrelevant Information under section 88 of the IP Act and refuse access to the CTPI Information as disclosure would, on balance, be contrary to the public interest.⁷⁴ In addition, I find that access to any further information may be refused on the basis it is nonexistent or unlocatable.⁷⁵
56. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner
Date: 22 June 2021

⁷² Including search records and certifications.

⁷³ Under 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

⁷⁴ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁷⁵ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

Appendix

Significant procedural steps

Date	Event
14 December 2020	OIC received the application for external review.
17 December 2020	OIC requested QPS provide initial procedural documents.
24 December 2020	OIC received the requested procedural documents.
11 February 2021	OIC requested certificated evidence of identity from the applicant's legal representative.
12 February 2021	OIC received the requested evidence of identity.
3 March 2021	OIC notified the applicant and QPS that it had accepted the external review application and asked QPS to provide information.
17 March 2021	OIC received the requested information from QPS.
25 March 2021	OIC requested further information from QPS.
7 April 2021	OIC provided an update to the applicant's legal representative.
21 April 2021	OIC received the requested information from QPS.
27 April 2021	OIC provided a further update to the applicant's legal representative.
28 April 2021	OIC received a further request from the applicant's legal representative for an update.
29 April 2021	OIC conveyed a preliminary view to the applicant and invited him to provide further submissions if he did not accept the preliminary view.
14 May 2021	OIC received the applicant's submissions, contesting the preliminary view and requesting that OIC proceed to issue a formal decision.