

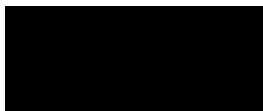


Decision and Reasons for Decision

Citation:	<i>D86 and Queensland Police Service [2026] QICmr 91 (3 June 2026)</i>
Application Number:	318828
Applicant:	D86
Respondent:	Queensland Police Service
Decision Date:	3 June 2026
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW – RIGHT TO INFORMATION – whether agency has conducted all reasonable searches – whether access may be refused on the basis further documents are nonexistent or unlocatable – sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)

DECISION

1. For the below reasons, I vary¹ the reviewable decision of the Queensland Police Service (**QPS**) and find that access to the Remaining Information² may be refused on the basis it comprises contrary to public interest information and QPS has conducted all reasonable searches and access to further recordings responding to the application may be refused on the basis they are nonexistent.
2. This means that no further information is to be released to the applicant.
3. My reasons for the decision follow.



Joanne Kummrow
Information Commissioner

Date: 3 June 2026

¹ Under section 123(1)(b) of the *Information Privacy Act 2009* (Qld) (**IP Act**).

² As defined at paragraph 6 of the Reasons.

REASONS FOR DECISION

Background

4. The applicant applied to QPS under the IP Act³ for access to ‘a copy of the police report and associated documents’ relating to a complaint he made.⁴
5. QPS did not make a decision within the processing period⁵ and was therefore deemed to have refused access to the requested documents.⁶
6. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS’s deemed decision.⁷ During the review:
 - QPS confirmed that it had located three pages comprising an occurrence report and two body worn camera (**BWC**) recordings and agreed to disclose parts of the three pages of the occurrence report to the applicant⁸
 - following a review of the occurrence report and submissions received from the applicant,⁹ OIC requested¹⁰ QPS undertake further searches for BWC recording/s of a call between the applicant and QPS which appeared to be missing
 - QPS submitted that further BWC recordings were nonexistent and that the reference in the occurrence report appeared to be to the two located BWC recordings, which comprise calls with other involved individuals¹¹
 - QPS disclosed parts of the occurrence report to the applicant¹²
 - OIC conveyed¹³ a view to the applicant that:
 - access to the remaining information within the occurrence report and the two located BWC recordings (**Remaining Information**) could be refused; and
 - QPS had conducted all reasonable searches and access to further documents responding to the application could be refused on the basis they are nonexistent; and
 - the applicant maintained that access to the Remaining Information should be granted and continued to raised concerns that further recordings should exist.¹⁴

³ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, affecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant’s application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts, which may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> respectively.

⁴ Access application dated 11 June 2025.

⁵ Section 22 of the IP Act.

⁶ Conveyed to the applicant by Notice of Deemed Decision dated 15 August 2025. The deemed decision is the *reviewable decision* for the purpose of this review.

⁷ External review application dated 8 August 2025.

⁸ Submission dated 16 September 2025.

⁹ External review application dated 8 August 2025.

¹⁰ Email dated 24 November 2025.

¹¹ Submission dated 8 January 2026.

¹² Confirmed by email dated 20 February 2026.

¹³ Letter dated 11 February 2026.

¹⁴ Submission dated 7 March 2026.

7. Accordingly, the issues for determination in this review are whether:
- access to the Remaining Information may be refused on the basis that disclosure is, on balance, contrary to the public interest; and
 - all reasonable searches have been conducted and access to further recordings may be refused on the basis they are nonexistent.
8. In making my decision, I have considered evidence, submissions, legislation and other material set out in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression,¹⁵ which includes the right to seek and receive information. I consider a decision-maker will be acting compatibly with this right when applying the law prescribed in the RTI Act and, therefore, I have acted in accordance with section 58(1) of the HR Act.

Issue – Remaining Information

Relevant law

9. Under the IP Act, an individual has a right to be given access to documents in the possession or under the control of an agency to the extent they contain their personal information.¹⁶ While the legislation is to be administered with a pro-disclosure bias,¹⁷ the right of access is subject to certain limitations, including grounds for refusing access, as set out in the IP Act and RTI Act.¹⁸
10. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁹ The term *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 matters that concern purely private or personal interests.
11. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.
12. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of public interest lies in a particular case I have considered these,²⁰ together with all other relevant information, in reaching my decision. I have also

¹⁵ Section 21 of the HR Act.

¹⁶ Section 40 of the IP Act.

¹⁷ Section 64 of the IP Act.

¹⁸ Section 67(1) of the IP Act and section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: section 67(2) of the IP Act.

¹⁹ Sections 47(3)(b) and 49 of the RTI Act.

²⁰ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning innovation and the facilitation of research.

applied the IP Act's pro-disclosure bias²¹ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²²

Submissions

13. In summary, the applicant submits:²³

- he seeks access to his own statement and report documenting his complaint
- no explanation has been provided for why partial disclosure of the BWC recordings is not reasonably practicable when QPS has released partially redacted recordings in response to another access application
- access to his personal information is a significant factor favouring disclosure
- identifying details can be redacted whilst maintaining the substance of the narrative and QPS's maintained refusal of access to the two BWC recordings is inconsistent with this reasoning
- QPS has previously disclosed further information within the occurrence report in response to a previous access application and the *'same document cannot simultaneously be capable and incapable of redacted disclosure absent articulated distinguishing factors'*
- the balancing test does *'not create a general immunity from scrutiny of complaint handling'* and *'Police interactions and decision making with regard to ... complainants is directly relevant to'* contributing to positive and informed debate.

Findings

14. The Remaining Information can generally be described as:

- the occurrence categorisation and other terms used in reports concerning the particular type of matter; and
- personal information of other involved individuals, including names, addresses, drivers licence details, other personal details and BWC recordings of telephone conversations with them.

Irrelevant factors

15. I have not taken any irrelevant public interest factors into account in making this decision.

Factors favouring disclosure

16. The RTI Act recognises that public interest factors favouring disclosure will arise where the information is the applicant's personal information²⁴ and also if disclosing the information could reasonably be expected to:

²¹ Section 64 of the IP Act.

²² Section 67(2) of the IP Act.

²³ External review application dated 8 August 2025 and submission dated 7 March 2026.

²⁴ Schedule 4, part 2, item 7 of the RTI Act.

- promote open discussion of public affairs and enhance the Government's accountability²⁵
 - 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;²⁶ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²⁷
17. To the extent that the Remaining Information contains the applicant's personal information, I afford significant weight to this factor favouring disclosure. However, due to the nature of the applicant's complaint, the applicant's personal information is intertwined with the personal information of other involved individuals. Having considered the Remaining Information, I am satisfied that it is not possible to disclose the applicant's personal information without also disclosing the personal information of the other involved individuals, giving rise to public interest factors favouring nondisclosure, which I discuss below at paragraph 19.
18. I am satisfied transparency and accountability in agency operations and decision making extends to decisions made by QPS when determining what action to take following receipt of a complaint.²⁸ I accept that if the Remaining Information was disclosed, this would provide further context to the information relied upon by QPS when determining to take no further action in relation to the applicant's complaint. However, considering the information which has been disclosed to the applicant in response to this and previous access applications, I consider that disclosure of the Remaining Information under the RTI Act would not advance these factors to any significant degree. Accordingly, I afford these factors favouring disclosure low weight.

Factors favouring nondisclosure

19. The RTI Act seeks to safeguard other individuals' right to privacy and recognises a public interest harm in disclosing the personal information of other individuals.²⁹ Whilst the Remaining Information contains the applicant's personal information, it also contains the personal information of other individuals involved in the matter. As noted at paragraph 13, the applicant submits that identifying information of other individuals should be redacted to enable disclosure of his personal information. However, due to the nature of the Remaining Information, which includes information provided to QPS by other individuals as detailed in the occurrence report and BWC recordings of conversations with them, it is not possible to give access to any further information within the Remaining Information without also disclosing the personal information of the other individuals, and therefore disclosing their personal information and prejudicing their right to privacy. Given the nature of the information contained within the Remaining Information, and the sensitive context in which it appears and the weight of the public interest harm considerations, I am satisfied that the two factors favouring nondisclosure relating to safeguarding personal

²⁵ Schedule 4, part 2, Item 1 of the RTI Act

²⁶ Schedule 4, part 2, item 3 of the RTI Act

²⁷ Schedule 4, part 2, item 11 of the RTI Act

²⁸ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²⁹ Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

information, and the protection of privacy of other individuals should be afforded significant weight. In affording weight to these factors, I have also taken into account that under the RTI Act, where information is disclosed, there can be no limitation or control over further dissemination.³⁰

20. I also consider that disclosing the Remaining Information could reasonably be expected to prejudice the flow of information to police which gives rise to another factor favouring nondisclosure.³¹ QPS investigators dealing with complaints of the nature made by the applicant rely on the free flow of information from other involved individuals. I consider that giving access to information they have provided under the RTI Act and outside of the investigation process would mean that other involved individuals would be less likely to provide that information to police in the future. This could reasonably impair the ability of the police to undertake their law enforcement duties in an efficient and effective manner. I afford this factor significant weight in these circumstances.

Balancing the public interest

21. For the reasons set out above, I am satisfied that the public interest considerations relating to privacy, the protection of other individuals' personal information and the flow of information to police warrant significant weight. On the other hand, I have afforded significant weight to the applicant gaining access to his own personal information and low weight to QPS being transparent and accountable in their operations and decision making.
22. On balance, I am satisfied that the factors favouring nondisclosure of the Remaining Information outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Remaining Information would, on balance, be contrary to the public interest and access may be refused on that basis.
23. I acknowledge the applicant's submission that QPS has previously given him access to further information within the occurrence report in response to a previous access application. External review by the Information Commissioner is a merits review.³² This process involves an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision maker to determine the correct and preferable decision³³ based on the information that is available, at the time of making a decision on review.³⁴ For the reasons set out at paragraphs 14 to 22, I consider the correct and preferable decision in the circumstances of this matter is that disclosure of the Remaining Information would, on balance, be contrary to the public interest and access may be refused on that basis.

³⁰ *FLK and Information Commissioner* [2021] QCATA 46 at [17].

³¹ Schedule 4, part 3, item 13 of the RTI Act.

³² *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2].

³³ *M39 and Queensland Police Service* [2023] QICmr 66 at [12].

³⁴ *Palmer and Townsville City Council* [2019] QICmr 43 at [21].

Issue – Further recordings

Relevant law

24. Access to a document may be refused if it is nonexistent or unlocatable.³⁵ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.³⁶ 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.³⁷
25. 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.³⁸ 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.
26. 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.³⁹ The Information Commissioner also has the power to require additional searches be conducted on an external review.⁴⁰ 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.⁴¹
27. On 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.⁴² However, where the issue of missing documents is raised, the applicant bears a practical onus of

³⁵ Sections 47(3)(e) and 52 of the RTI Act.

³⁶ Section 52(1)(a) of the RTI Act.

³⁷ Section 52(1)(b) of the RTI Act.

³⁸ 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].

³⁹ Section 137(2) of the IP Act.

⁴⁰ Under section 115 of the IP Act.

⁴¹ *Webb v Information Commissioner* [2021] QCATA 116 at [6].

⁴² Section 100(1) of the IP Act.

demonstrating that the agency has not discharged its obligation to locate all relevant documents.⁴³ Suspicion and mere assertion will not satisfy this onus.⁴⁴

Searches, evidence and submissions

28. As set out at paragraphs 4 and 6, the application seeks access to *‘a copy of the police report and associated documents’* relating to a complaint made by the applicant and, during the review, QPS located three pages comprising an occurrence report and two BWC recordings responding to that scope.
29. In seeking an external review, the applicant submitted, in summary:⁴⁵
 - he was seeking access to *‘my report, my mother’s statement, and any follow-up calls’*
 - when he attended the police station to make his complaint, his solicitor participated by phone
 - the applicant’s mother also attended in person and provided her own statement
 - the QPS officer confirmed his complaint was being recorded and sought his mother’s permission to record her account
 - after making his complaint, he received a telephone call from the QPS officer later that evening and he does *‘not know whether this call was recorded’*; and
 - the audio recordings sought are essential to ensure the accuracy and integrity of the official record.
30. Given the applicant’s submissions and having considered the documents located by QPS, OIC requested⁴⁶ QPS undertake further searches for any recording/s of the call between the applicant and QPS. In response, QPS submitted:⁴⁷
 - while the occurrence report indicated that the BWC had been activated, it did not specify the incident/s that were captured on the BWC
 - the BWC activation appeared to relate to the recorded telephone conversation/s with the another involved individual; and
 - confirmation had been received from the relevant District that no further documents, including BWC recordings, had been located.
31. QPS’s submissions were conveyed to the applicant along with OIC’s view that all reasonable searches had been conducted and access to further documents responding to the application, including recordings, could be refused on the basis they were nonexistent.⁴⁸
32. In response, the applicant submitted, in summary:⁴⁹

⁴³ See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

⁴⁴ See *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁴⁵ External review application dated 8 August 2025.

⁴⁶ Email dated 24 November 2025.

⁴⁷ Submission dated 8 January 2026.

⁴⁸ Letter to applicant dated 11 February 2026.

⁴⁹ Submission dated 7 March 2026.

- during his attendance at the police station, he *‘was expressly told by the officer that [he] was being recorded’*
- the occurrence report contains *‘no documentary trace ... of the later outbound call to [him], nor of any of [his] interactions with police that day’*
- as there are *‘defined time windows’* of when he attended the police station and received the later call, it would be reasonable that searches should include *‘all BWC activations for the relevant officer during those timeframes (including unlinked media), BWC activation logs and metadata, any station-based recording systems (including CCTV or interview room systems), and any standalone digital audio recordings, particularly any documents or recordings made or lodged by [name], the attending officer’*; and
- his *‘records of the interaction do not align with the extract of the report currently disclosed, which further underscores the importance of access to the recording or confirmation of its absence.’*

Findings

33. I have examined the documents located and submissions made by QPS during the review regarding the document searches conducted. I am satisfied that in undertaking searches in response to the access application, QPS contacted officers with relevant knowledge and experience and that document searches were undertaken in key recordkeeping systems that QPS maintains in relation to complaints of the nature made by the applicant.
34. Having considered the content of the located documents, I accept QPS's submissions that the BWC recordings referenced within the occurrence report comprise the two BWC recordings of conversations with another involved individual located by QPS. While I acknowledge the applicant's submissions that he was advised by the QPS officer taking his complaint that he was being recorded, enquiries with the relevant District confirmed that no further recordings exist. I am satisfied that there is no evidence within the occurrence report that any further recording/s exist which would provide a reasonable basis for requesting QPS undertake the further searches requested by the applicant at paragraph 32.
35. Taking into account the scope of the application, the located documents, and QPS's searches and record keeping practices, I am satisfied that QPS has undertaken reasonable document searches in this case, and that access to further documents, including recordings, can be refused on the basis they do not exist, in accordance with sections 47(3)(e) and 52(1)(a) of the RTI Act.

Conclusion

36. The above are the reasons for my decision set out at paragraph 1.