



Decision and Reasons for Decision

Citation:	<i>DJ6G7Y and Queensland Police Service [2019] QICmr 4 (18 February 2019)</i>
Application Number:	314248
Applicant:	DJ6G7Y
Respondent:	Queensland Police Service
Decision Date:	18 February 2019
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – NONEXISTENT DOCUMENTS – applicant contends that documents should exist in relation to a police operation the applicant believes occurred near their residence – whether agency has taken all reasonable steps to locate responsive documents – whether access may be refused on the basis the documents do not exist – section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information in the following terms:

On [date supplied] at approximately 9.45am there was an operation directed at myself and involving the QPS. This included a police car with two officers in [address supplied] opposite [address supplied], an officer in a parked car outside [address supplied], an officer (the shooter) inside [address supplied] and two officers at the café next to the [business name supplied]. At approximately 5.00pm an officer attended [address supplied]. I require any and all information pertaining to this operation, including, but not restricted to, the identity of all officers and the organisations to which they belong, the justification for the operation and all protocols and directions issued. The reason for the officer's attendance at [address supplied] at 5.00pm.

2. In support of their application, the applicant also stated that they believed that, in connection with this operation, a police officer had spoken with a person (whom the applicant named) who lived at an address that the applicant supplied.
3. In response, QPS advised the applicant that searches had been conducted for documents that responded to the terms of the application, and that no records had been located that referred to or related to the date and the various locations supplied by the

¹ Application dated 21 September 2018.

applicant. QPS therefore decided² that the documents to which the applicant sought access did not exist.

4. The applicant applied³ to this Office (**OIC**) for review of QPS's decision in the following terms:

While the plain clothes officers may well have been a 'third party', the QPS were involved and there was a police squad car with two police officers stationed three doors away from my residence.

There had been an alert issued that I had an homicidal intent. The occupant of ... [address supplied] (G-man) was ascertained to be the most vulnerable as, although he is the instigator of this extraordinary persecution and denial of all human rights and civil liberties and several murder and framing attempts (with assistance from colleagues) of myself, he seems to have successfully orchestrated a 'new investigation' following the grievous assault of myself on [date supplied] – hence the disappearance of the recorded interview with Senior Sergeant [name supplied] at Police HQ on [date supplied] in which I complained of police corruption and harassment. This 'new' fake investigation suggests that I am the dangerous person and am fixated on him. He has arranged unprincipled and dishonest neighbours to provide false statements in this regard. The occupant of [address supplied] has been an enthusiastic supporter of this corruption.

Therefore I would ask you to review why a police squad car was stationed a short distance away and what information was provided to the QPS. If you would disclose the identity of the plain clothes officers that would be most appreciated.

5. For the reasons set out below, I affirm the decision made by QPS that the documents to which the applicant seeks access do not exist.

Background

6. Significant procedural steps taken by OIC in conducting this external review are set out in the Appendix to these reasons.
7. In response to the applicant's external review application, the Assistant Information Commissioner (**AIC**) wrote to the applicant⁴ to advise that OIC was considering not dealing with the application under section 107(1)(a) of the IP Act on the basis that it was misconceived or lacking in substance. The AIC explained that it appeared that the applicant believed there had been a police operation directed at the applicant, and that the applicant was seeking confirmation from OIC of their suspicion and requesting that OIC inquire into, and provide details of, the operation.
8. The AIC explained that an external review is concerned only with a review of a decision made by an agency about access to, or amendment of, information under the relevant legislation, and that OIC did not have a general jurisdiction to inquire into police operations in the way contemplated by the applicant. The AIC advised the applicant that the only possible issue which OIC could consider was the sufficiency of QPS's searches for responsive documents, and noted that QPS had already informed the applicant that a search of its records had not found any reference to a police operation or incident near the applicant's residence on the date supplied in the access application.
9. If the applicant did not agree to withdraw the application for external review, the AIC invited the applicant to provide a submission in support of their case.

² Decision dated 26 October 2018.

³ Application dated 1 November 2018.

⁴ Letter dated 27 November 2018.

10. The applicant responded by email dated 4 December 2018:

Please review the decision on the basis of the insufficiency of the search.

Logs have to exist for the presence of police near my home.

Please ensure that the search includes all information and records, of any type whatsoever or format, of operation or alerts, even automated alerts, and any and all documents, logs, recordings, correspondence, surveillance reports, copies of my emails sent that day, particularly my email to Archbishop [name supplied] which I believe has been illegally intercepted, which exist in which the entire QPS are involved, including, but not limited to, the counter terrorism division and [name of police station supplied].

Please ensure the QPS's search includes any and all information relating to the organisation to which the plain clothes officers involved were affiliated, whether QPS or any other agency, State or Federal.

As the plain clothes officers/agents appropriated a [name of local business supplied] car, please ensure the search includes telephone calls and transcripts or any documentation at all relating to contact with [name of local business] on [date supplied].

Reviewable decision

11. The decision under review is QPS's decision dated 26 October 2018.

Evidence considered

12. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).

Issue for determination

13. The issue for determination is whether there are reasonable grounds to be satisfied that no documents exist in response to the terms of the access application. In considering this issue, it is also necessary to determine whether QPS has taken all reasonable steps to locate documents responding to the application.

Relevant law

14. An agency may refuse access to documents which do not exist.⁵ A document is nonexistent if there are reasonable grounds for the agency or Minister to be satisfied that the requested document does not exist. A decision-maker must rely on their particular knowledge and experience to be satisfied that documents are nonexistent, and must have regard to a number of key factors:

- administrative arrangements of government
- agency structure, functions and responsibilities
- agency recordkeeping practices and procedures; and
- other factors including the nature and age of the requested documents and the nature of the government activity to which the requested information relates.⁶

⁵ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**). (Section 67 of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.)

⁶ See *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (**PDE**) at [37]-[38]. The decision in *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 here.

15. After considering these factors, an agency may determine that a particular document was not created because, for example, its processes do not involve creating the specific document. Where an agency can adequately explain the relevant circumstances accounting for nonexistent documents, it would not be necessary for the agency to conduct searches. If searches are undertaken, an agency must demonstrate that all reasonable steps have been taken to locate responsive documents, prior to deciding that the documents are nonexistent. In determining whether all reasonable steps have been taken, the key factors must be considered together with the circumstances of the case.

Findings

16. In submissions dated 4 December 2018 (see paragraph 10 above), the applicant sets out why they consider there are reasonable grounds for believing that documents that respond to the terms of their access application ought to exist in the possession or under the control of QPS. The applicant believes that they saw police cars near their residence on a particular day, and that a police operation involving the applicant was being conducted. The applicant also believes that plain clothes police officers had 'appropriated' a car belonging to a local business and were also involved in the operation.
17. In its decision, QPS had advised the applicant that searches of its records had failed to locate any records for the date, names and locations to which the applicant had referred in the access application.
18. Following receipt of the applicant's submission dated 4 December 2018, OIC asked QPS to provide further information about the particular searches undertaken.⁷ By email dated 18 January 2019, QPS advised that searches of its QPRIME electronic database⁸ had been carried out under the following search fields:
 - the applicant's name for any entries in relation to the date provided
 - the applicant's address for any entries in relation to the date provided
 - a road named by the applicant for any entries in relation to the date provided
 - various addresses in a street named by the applicant in relation to the date provided; and
 - the name of the person referred to by the applicant in the access application as being a person residing at an address supplied by the applicant and with whom the applicant believes a police officer spoke on the date provided.
19. I am satisfied that, given QPS's usual record-keeping practices and procedures, it is reasonable to expect that QPRIME would be the repository for any responsive documents. I am further satisfied that the search fields used by QPS to search QPRIME were reasonable, based upon the information provided by the applicant, and were sufficient to capture any documents that existed in QPS's possession or under its control in relation to the police presence or operation that the applicant alleges occurred near their residence on the date in question. The fact that those searches of QPRIME failed to locate any responsive documents gives rise to reasonable grounds for believing that the documents to which the applicant seeks access do not exist.
20. As regards the applicant's request for access to any emails sent on the date specified by the applicant, which the applicant believes were 'illegally intercepted' by QPS, including an email sent to an Archbishop, I am not satisfied, on the basis of the information provided by the applicant, that such documents, even if they existed, would fall within the terms of the access application. Furthermore, the applicant has provided

⁷ By email dated 11 January 2019.

⁸ QPRIME – Queensland Police Records and Information Management Exchange – is the electronic database used by QPS to record complaints, incidents, investigations and various other police interactions with members of the public.

no reasonable grounds for believing that such emails ought to exist in the possession or under the control of QPS, other than the applicant's unsubstantiated allegation of illegal interception. In any event, it is reasonable to expect that the search of QPRIME that was conducted by QPS under the applicant's name would have located any such documents.

21. For these reasons, I am satisfied that QPS has taken all reasonable steps to locate documents in response to the applicant's access application and access may be refused to the requested documents on the basis that they do not exist.⁹

Decision

22. I affirm QPS's decision to refuse access to information 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 documents responding to the application do not exist.
23. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner

Date: 18 February 2019

⁹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
1 November 2018	Applicant applied to OIC for external review.
27 November 2018	OIC wrote to the applicant to discuss the application of section 107(1)(a) of the IP Act and invited a response.
4 December 2018	Applicant provided submissions in support of 'sufficiency of search' issues. OIC accepted application for review.
11 January 2019	OIC requested that QPS provide details of searches conducted.
18 January 2019	QPS provided details of searches conducted.