



Decision and Reasons for Decision

Citation: *D76 and Queensland Health [2023] QICmr 29 (23 June 2023)*

Application Number: 316583

Applicant: D76

Respondent: Queensland Health

Decision Date: 23 June 2023

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - documents relating to the applicant's employment - workplace complaints - witness statements - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009 (Qld)* and sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - documents relating to the applicant's employment - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - section 67(1) of the *Information Privacy Act 2009 (Qld)* - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Health under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to the following documents:

1. *All documentation surrounding my recruitment – namely the interview of which [Individual A] was a panel member and all associated documentation / interactions undertaken by [Individual A] between [themselves], the DDG, People and Culture and [Individual B].*

2. *A copy of all referee reports submitted over my three instances of my recruitment as [role description] from 2018.*

¹ Access application dated 4 November 2021. Queensland Health did not make a decision in the required timeframe and was taken to have made a deemed decision. The applicant agreed to lodge a new application with the same scope as the original application and did so on 10 December 2021.

3. A copy of all documentation relating to the systemic bullying and harassment I was subjected to by [Individual C] since my commencement in the role in January 2018 through to when [Individual C] was dismissed from QH in 2019, of which [named individuals] were aware, including all associated documentation utilised to address this and support me.

Time period / date range: January 2018 – January 2020

2. Queensland Health located 323 pages responsive to the access application and decided² to grant access to 286 pages in full and 29 pages in part. Queensland Health decided to refuse access to eight full pages. Queensland Health also deleted irrelevant information from the pages disclosed to the applicant pursuant to section 88 of the IP Act.
3. The applicant then applied³ to the Office of the Information Commissioner (**OIC**) for review of Queensland Health's decision.
4. For the reasons set out below, I affirm Queensland Health's decision to refuse access to the remaining information in issue on the ground that its disclosure would, on balance, be contrary to the public interest. I also find that access to any further documents responsive to the terms of the application may be refused on the basis that they are nonexistent or unlocatable.

Background

5. Significant procedural steps are set out in the Appendix to this decision.
6. During the course of the external review, the applicant confirmed that they do not seek access to the information in the 29 partly refused pages.⁴ The applicant also raised concerns that Queensland Health had not located certain documents requested in the access application.

Reviewable decision

7. The decision under review is Queensland Health's decision dated 11 February 2022.

Evidence considered

8. Evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed 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.⁵ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**).⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between similar pieces of Victorian legislation:⁷ '*it is perfectly compatible with the scope of that*

² Decision dated 11 February 2022.

³ External review application dated 22 February 2022.

⁴ Confirmed in a telephone call between OIC and the applicant and email correspondence dated 4 April 2022.

⁵ Section 21(2) of the HR Act.

⁶ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

⁷ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

*positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*⁸

Information in issue

10. The information in issue is contained on eight full pages and comprises witness statements made in the context of workplace complaints (**Statements**).
11. It is my understanding that Queensland Health considers the Statements are responsive to item 3 of the access application. While I consider it arguable whether the Statements fall within the scope of the application, I am content to adopt Queensland Health's analysis of and approach to this issue.

Issues for determination

12. The issues for determination in this review are:
 - whether Queensland Health was entitled to refuse access to the Statements on the ground that their disclosure would, on balance, be contrary to the public interest; and
 - whether Queensland Health has undertaken all reasonable searches to locate documents responsive to the access application.
13. Some issues raised by the applicant during this review are outside the scope of this external review, including the applicant's concerns about how Queensland Health handled:
 - their personal information; and
 - alleged bullying to which they were subjected.
14. To the extent the applicant's submissions relate to the issues for consideration in this review, I have addressed them below.

Was Queensland Health entitled to refuse access to the Statements?

Relevant law

15. Under the IP Act, an individual has a right to be given access to documents to the extent they contain the individual's personal information.⁹ However, this right is subject to the provisions of the IP Act and the RTI Act.¹⁰ Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹¹
16. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹²
 - identify and disregard any irrelevant factors

⁸ XYZ at [573].

⁹ Section 40 of the IP Act. '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*'.

¹⁰ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

¹¹ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

¹² Section 49(3) of the RTI Act.

- identify factors in favour of disclosure
 - identify factors in favour of nondisclosure; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
17. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these lists,¹³ together with all other relevant information, in reaching my decision. I have also applied the IP Act's pro-disclosure bias¹⁴ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.¹⁵

Findings

Irrelevant factors

18. I have taken no irrelevant factors into account in arriving at my decision regarding the Statements.

Factors favouring disclosure

19. The applicant has submitted that they are entitled to access information about themselves, including about allegations pertaining to their performance as a manager.¹⁶
20. The Statements contain personal information of the applicant. The RTI Act recognises that there is a public interest in providing individuals with access to their own personal information,¹⁷ and I afford this factor favouring disclosure high weight.
21. In the Statements, the applicant's personal information is inextricably 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. This raises a number of relevant factors favouring nondisclosure of the Statements, which I have addressed below at paragraphs 30 to 31 of this decision.
22. The applicant has submitted that they believe eHealth Queensland made reference to complaints material in the Statements during a disciplinary process, by stating that the behaviour being considered in that matter was repeated behaviour,¹⁸ and that:¹⁹

Surely if there were complaints made against me, unbeknown to me, and in which QH used to justify disciplinary action I should at the very least be given the opportunity to respond – I think that would be natural justice... unless QH have something to hide?

23. I note that the terms of the application do not encompass the disciplinary matter raised in these submissions. However, the applicant's submissions as a whole raise the following factors favouring disclosure for me to consider, both in terms of this disciplinary matter and more generally:

¹³ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning innovation and the facilitation of research (schedule 4, part 2, item 19 of the RTI Act).

¹⁴ Section 64 of the IP Act.

¹⁵ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

¹⁶ Applicant's submissions dated 4 April 2022 and 9 February 2023.

¹⁷ Schedule 4, part 2, item 7 of the RTI Act.

¹⁸ Telephone call between OIC and the applicant on 10 February 2023.

¹⁹ Submissions dated 9 February 2023.

- disclosure could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability²⁰
 - disclosure could reasonably be expected to 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 community²¹
 - disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision²²
 - disclosure could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies²³
 - disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness;²⁴ and
 - disclosure could reasonably be expected to contribute to the administration of justice for a person.²⁵
24. During this review, OIC asked Queensland Health to respond to the applicant's submission that, if complaints were made about them and Queensland Health relied on these to justify disciplinary action, they ought to have been given an opportunity to respond. Queensland Health responded as follows:²⁶

I have confirmed with our HR Branch that these complaints did not form part of the disciplinary process, nor did the decision maker rely on them when making a decision. They advised that the information relied upon was the investigation report conducted by [workplace consultancy], and dated 23 October 2020. I [have] reviewed the 22 allegations raised against the applicant in this report, and can confirm that none of these allegations relate to the material in issue.

25. I consider that releasing the Statements would, to some extent, promote the accountability and transparency of Queensland Health.²⁷ However, given the Statements contain only information about workplace complaints, and no information about how Queensland Health or the relevant hospital and health service dealt with these complaints, I consider that these factors favouring disclosure warrant only low weight.
26. I have noted Queensland Health's submission that the complaints did not form part of the disciplinary matter raised by the applicant. Further, I have noted that, apart from stating that complaints in the Statements were referred to during a disciplinary matter (in the context of a comment that the behaviour being considered in that matter was repeated behaviour), the applicant has provided no information to indicate that this was more than a passing reference and show that the complaints were used or relied on in that matter.²⁸ In these circumstances, the information before me is inadequate to support a finding that disclosure of the Statements could reasonably be expected to provide background or contextual information to decisions made in the context of the disciplinary matter, or to advance fair treatment or the administration of justice in that matter.

²⁰ Schedule 4, part 2, item 1 of the RTI Act.

²¹ Schedule 4, part 2, item 3 of the RTI Act.

²² Schedule 4, part 2, item 11 of the RTI Act.

²³ Schedule 4, part 2, item 10 of the RTI Act.

²⁴ Schedule 4, part 2, item 16 of the RTI Act.

²⁵ Schedule 4, part 2, item 17 of the RTI Act.

²⁶ Email from Queensland Health to OIC dated 3 April 2023.

²⁷ Schedule 4, part 2, items 1 and 3 of the RTI Act.

²⁸ Here, I note the applicant's submissions dated 4 April 2022 stated that Individual C's correspondence (but not the Statements) was introduced as new material in a separate matter, which I take to be the disciplinary matter.

27. I have also noted the information Queensland Health has released to the applicant,²⁹ which shows that the applicant participated in three recruitment processes³⁰ and on each occasion was the successful candidate. The released information includes, amongst other things, the selection panel's comments, email correspondence, interview notes and reports, referee reports obtained for the applicant and other emails about the applicant. The released information shows that the second and third of the three recruitment processes where the applicant was the successful candidate occurred *after* the Statements were made and disseminated amongst senior staff of the relevant hospital and health service.³¹ The released information also shows the nature of the reservation about the applicant expressed by a panel member in the second of the three recruitment processes,³² and the documented timing of a discussion regarding prior knowledge of the applicant in that process.³³
28. Given this particular information, insofar as the reservations expressed by the panel member in the second process could be considered an adverse decision, there is nothing to suggest that the panel member took information in the Statements into account. Further, in terms of the second and third recruitment processes overall, the applicant's success in both processes – and the consequent absence of a recruitment decision adverse to the applicant in either instance – makes it difficult to discern the relevance of the fair treatment and administration of justice factors favouring disclosure or accept the likelihood that the information in the Statements provided background or contextual information that informed either of these decisions.
29. For these reasons, I consider that the factors favouring disclosure regarding background or contextual information, fair treatment and the administration of justice³⁴ do not apply. If I am wrong in this regard, and they are applicable, I find that they are deserving of no more than low weight.

Factors favouring nondisclosure

30. As noted above, the Statements comprise witness statements of individuals other than the applicant in the context of workplace complaints. They include the names, opinions, thoughts, feelings and concerns of these individuals, and do not form part of their routine personal work information. I am satisfied that each Statement comprises the personal information of individuals other than the applicant. I do not consider it is possible to separate the personal information of the applicant from that of other individuals in the Statements.
31. Given the sensitive workplace context in which the Statements appear, I consider significant weight applies to the following two factors favouring nondisclosure:
- disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;³⁵ and
 - disclosure could reasonably be expected to cause a public interest harm by disclosing personal information of a person.³⁶

²⁹ Comprising 286 full pages and parts of 29 pages.

³⁰ In January 2018, March to April 2019 and November to December 2019.

³¹ Noting that the information released to the applicant indicates that the first letter of offer of employment was sent in January 2018 (see page 72 of the 217 pages of 'Recruitment documents'); the Statements were received in the latter half of 2018 (see pages 1 and 10 of the 12 pages of 'Item 3 documents'), and the second and third letters of offer of employment were sent in April and December 2019 (see pages 110 and 178 of the 217 pages of 'Recruitment documents').

³² Expressed in terms of the applicant's conduct in the interview (see page 121 of the 217 pages of 'Recruitment documents').

³³ Noted as occurring after all interviews were completed and after the scoring (see page 127 of the 217 pages of 'Recruitment documents' and page 38 of the 51 pages of 'Further recruitment documents').

³⁴ Schedule 4, part 2, items 10, 11, 16 and 17 of the RTI Act.

³⁵ Schedule 4, part 3, item 3 of the RTI Act.

³⁶ Schedule 4, part 4, section 6 of the RTI Act.

32. The applicant has submitted that they believe they know the identity of certain individuals named in the Statements.³⁷ In this review, I must consider whether the Statements should be released under the IP Act, where there is no restriction on its further use and dissemination. In those circumstances, I do not consider that the fact the applicant believes they know the content of some of the Statements in any way reduces the weight I have afforded to the personal information and privacy nondisclosure factors.
33. I also consider disclosing the Statements could result in Queensland Health staff being reluctant to provide information to Queensland Health about workplace incidents in the future. In investigations into workplace complaints, it is the usual expectation of staff that information they supply may be used for an investigation or any subsequent disciplinary investigations. It is also expected that staff will provide information in an open and honest manner.³⁸ Of course, if any investigation ensues, procedural fairness requires that complaints are put to the relevant party to the extent necessary to allow them to respond to adverse material. In this regard, it is most often the case that the adverse allegations in the complaint are outlined, but the complaint itself is not provided. Outside of this, however, I consider that staff do not generally expect that information regarding their complaints will be shared. Consequently, if this occurs, I consider that, in the future, staff could reasonably be expected to be more reluctant to provide information about workplace incidents, and fewer would actually do so. For these reasons, I afford significant weight to the following two factors favouring nondisclosure:
- disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;³⁹ and
 - disclosure could reasonably be expected to prejudice the management function of, or conduct of industrial relations by, an agency.⁴⁰

Balancing the public interest

34. In balancing the public interest, I have taken into account the various factors enlivened by the applicant's submissions, as well as other factors I have identified. Additionally, I have reviewed the various factors for and against disclosure enunciated in Schedule 4 of the RTI Act. All relevant factors are set out above. I did not consider any other factors listed in Schedule 4 of the RTI Act to be relevant to this matter.
35. There is a public interest factor of high weight in releasing the applicant's personal information to them. However, weighted against this public interest factor is the fact that the applicant's personal information is inextricably intertwined with the personal information of other individuals who provided witness statements. For the reasons I have explained in this decision, I have afforded significant weight to the personal information and privacy considerations relating to these other individuals.
36. I have afforded low weight to the factors favouring disclosure of the Statements which relate to the accountability and transparency of Queensland Health. On the other hand, I have afforded significant weight to the factors favouring nondisclosure which relate to Queensland Health's ability to obtain confidential information, management function and conduct of industrial relations.

³⁷ Applicant's submissions dated 9 February 2023.

³⁸ *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [130].

³⁹ Schedule 4, part 3, item 16 of the RTI Act.

⁴⁰ Schedule 4, part 3, item 19 of the RTI Act.

37. Taking into account the matters set out above, I am satisfied that, on balance, the public interest factors favouring nondisclosure of the Statements outweigh the public interest factors favouring disclosure. Accordingly, I find disclosure of the Statements would, on balance, be contrary to the public interest and Queensland Health can refuse access to them on that basis.

Has Queensland Health undertaken all reasonable searches to locate documents?

Relevant law

38. Under the IP Act, access to documents may be refused where the documents are nonexistent or unlocatable.⁴¹ 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.⁴²
39. To be satisfied that a document is *nonexistent*, an agency must rely on their particular knowledge and experience and have regard to a number of key factors.⁴³ When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if 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 as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
40. To determine whether a document exists, but is *unlocatable*, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession, and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors.⁴⁴
41. Generally, the agency that 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.⁴⁵ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.⁴⁶

⁴¹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) 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.

⁴² Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

⁴³ Including the administrative arrangements of government, the agency's structure, the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it), the agency's practices and procedures (including but not exclusive to its information management approach), and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates. 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].

⁴⁴ *Pryor* at [21].

⁴⁵ Section 100(1) of the IP Act.

⁴⁶ *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].

Findings

42. Queensland Health has provided OIC with details of their searches and enquiries to identify documents relevant to the access application. These records show that Queensland Health conducted targeted enquiries with relevant staff members within Queensland Health to identify the documents sought in the application.
43. The applicant has identified a number of types of documents they consider Queensland Health has not located.⁴⁷ These documents broadly consist of:
- documents which record conversations referenced in the material Queensland Health has released – specifically:
 - advice from eHealth Queensland People and Culture sought and received by Individual A⁴⁸
 - a discussion regarding prior knowledge of the applicant in the second recruitment process⁴⁹
 - communications between Individual A and four specified individuals at Queensland Health;⁵⁰ and
 - documents responsive to item 3 of the application.⁵¹
44. During this review, OIC wrote to Queensland Health to identify the documents the applicant considered missing, request further details of their searches, and to request that Queensland Health conduct any necessary further enquiries to identify relevant documents. In response to this request, Queensland Health made further specific enquiries and confirmed that these enquiries did not identify any further documents.
45. Queensland Health also made submissions, based on their further enquiries, as to why further documents do not exist or cannot be located.⁵² In summary, Queensland Health submitted:
- in terms of the conversations referenced in the material Queensland Health has released:
 - there are no further documents regarding the advice sought and received by Individual A, as the information in the released information was typed by Individual A during a telephone call with eHealth Queensland People and Culture at the time the advice was provided
 - if further documents regarding the prior knowledge conversation were, in fact, created, this would have been by a staff member who is no longer with Queensland Health and Queensland Health cannot confirm whether this staff member did, in fact, create these documents
 - in terms of communications between Individual A and the four specified individuals, Individual A conducted searches across all their emails, electronic and written files and provided everything they had to Queensland Health's Right To Information unit. Other than the communications already disclosed, communications as raised would not exist, noting advice from Individual A that they do not believe they would have had discussions with these individuals during the recruitment process, as it would

⁴⁷ Submissions dated 4 April 2022.

⁴⁸ At 2.a and b. of submissions with reference to released information on page 120 of the 217 pages of 'Recruitment documents'.

⁴⁹ At 2.f. of submissions, presumably with reference to released information such as that on page 127 of the 217 pages of 'Recruitment documents'.

⁵⁰ At 2.c., d., e. and g. of submissions.

⁵¹ At 3. of submissions.

⁵² Email from Queensland Health to OIC dated 26 September 2022.

have been inappropriate to discuss matters regarding that process with anyone other than members of the panel; and

- in terms of documents responsive to item 3, Queensland Health's enquiries indicated that no formal complaint was lodged and no disciplinary action was taken by any employee of eHealth Queensland or the relevant hospital and health service in relation to bullying and harassment by Individual C, and therefore no such documents exist.

46. OIC wrote to the applicant during this review to confirm that, having considered the information received from Queensland Health about their searches and enquiries, it was OIC's preliminary view that Queensland Health had conducted all reasonable searches to locate documents relevant to their application.⁵³ The applicant then raised additional concerns that Queensland Health had not provided information about actions taken to address alleged systemic bullying they endured from Individual C, as well as three other named individuals.⁵⁴
47. To the extent this submission is about the three other named individuals, I consider the applicant is seeking to expand the scope of their application. On an objective reading of item 3, documents relating to alleged bullying and harassment of the applicant by these three other individuals do not fall within its scope. It is not open to an applicant to unilaterally expand the scope of an access application on external review.⁵⁵ I am limited to the wording of the scope as set out in the application, as that is the basis of the agency's decision which is under review. Accordingly, I consider that the further documents relating to these three other individuals, if they exist, fall outside the scope of this review and it is reasonable for Queensland Health not to have conducted searches to identify that information.⁵⁶
48. To the extent the applicant's submissions raise concerns about missing documents relating to item 3 of the application, I accept Queensland Health's explanation that these documents do not exist because no formal complaint was lodged and no disciplinary action was taken by any employee of eHealth Queensland or the relevant hospital and health service in relation to bullying and harassment by Individual C.
49. During this review, the applicant also requested that OIC ask Queensland Health to conduct broader or more in-depth searches, and confirm that the reason there are no records of actions taken to address the alleged systemic bullying and support the applicant is because they did not take steps to support the applicant.⁵⁷
50. While I understand that the applicant considers further information should be available, in the circumstances I am unable to identify any further searches that it would be reasonable to ask Queensland Health to undertake. I do not consider that the applicant has discharged the onus upon them in this review to establish reasonable grounds to believe that Queensland Health has not discharged its obligation to locate all relevant documents.
51. My jurisdiction in this review is limited to considering whether the applicant is entitled to access documents held by Queensland Health that were requested in their access

⁵³ First preliminary view dated 14 December 2022.

⁵⁴ Submissions dated 9 February 2023.

⁵⁵ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]; *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 (13 February 2015) at [14]; *Sensus Building Group Pty Ltd ACN 153 602 861 and Queensland Building and Construction Commission* [2022] QICmr 32 (23 June 2022) at [57].

⁵⁶ In the second preliminary view dated 28 April 2023, OIC confirmed to the applicant that it is open to them to make a fresh access application to Queensland Health if they wish to seek access to this information.

⁵⁷ Telephone call between OIC and the applicant on 10 February 2023.

application under the IP Act. I do not have the power to require Queensland Health to provide a written response to a question.⁵⁸

52. Having considered all of the information before me, including details of Queensland Health's searches and enquiries, the documents located by Queensland Health and submissions from the applicant and Queensland Health, I am satisfied that Queensland Health has taken all reasonable steps to locate documents relevant to the application. Accordingly, I consider there are reasonable grounds for me to be satisfied that further relevant documents do not exist or cannot be located.⁵⁹

DECISION

53. For the reasons set out above, I affirm Queensland Health's decision to refuse access to the Statements on the ground that their disclosure would, on balance, be contrary to the public interest.⁶⁰ I also find that access to any further documents responsive to the terms of the application may be refused on the basis that they are nonexistent or unlocatable.⁶¹
54. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 23 June 2023

⁵⁸ OIC confirmed this to the applicant in the second preliminary view dated 28 April 2023.

⁵⁹ Pursuant to section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

⁶⁰ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁶¹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
22 February 2022	OIC received the application for external review. OIC requested preliminary documents from Queensland Health.
8 March 2022	Queensland Health requested an extension of time to provide the preliminary documents. OIC granted the extension of time.
10 March 2022	OIC received the preliminary documents from Queensland Health.
22 March 2022	OIC advised the applicant and Queensland Health that the application for external review had been accepted. OIC requested the information in issue from Queensland Health and submissions from the applicant.
31 March 2022	OIC received the information in issue and search records from Queensland Health.
4 April 2022	The applicant provided submissions to OIC.
17 August 2022	OIC requested further searches and information from Queensland Health. OIC wrote to the applicant to confirm the issues in review and clarify OIC's jurisdiction.
2 – 15 September 2022	Queensland Health requested a number of extensions of time to provide the requested information, which OIC granted.
26 September 2022	Queensland Health provided the requested information.
14 December 2022	OIC conveyed a preliminary view to the applicant and gave a due date of 6 January 2023 for any submissions in response. OIC provided Queensland Health with an update.
10 January 2023	OIC received an email from the applicant requesting a meeting to discuss next steps in the review. OIC sent an email to the applicant to try and arrange a time for a telephone call.
16 January 2023	OIC sent a further email to the applicant trying to arrange a time for a telephone call.
3 February 2023	OIC advised the applicant that, having been unable to contact them, OIC would close the review if the applicant did not respond to the preliminary view.
9 February 2023	The applicant provided submissions to OIC and requested a telephone call to discuss the review.
10 February 2023	OIC discussed the matter with the applicant and the applicant requested an extension of time until 5pm on 13 February 2023 to provide further submissions in response to OIC's preliminary view.
13 February 2023	OIC granted the applicant an extension of time until 5pm on 14 February 2023.

Date	Event
15 March 2023	OIC requested further submissions from Queensland Health.
3 April 2023	Queensland Health provided the requested submissions.
28 April 2023	OIC conveyed a second preliminary view to the applicant and gave a due date of 15 May 2023 for any submissions in response.
2 May 2023	The applicant confirmed they did not accept OIC's preliminary view, questioned the due date, and requested that OIC contact them to explain the next steps in the review.
9 May 2023	OIC advised the applicant to make any final submissions, or provide reasons if they required additional time to make submissions, by 15 May 2023. OIC confirmed that, in the absence of a response, OIC would proceed on the basis that there was nothing further the applicant wanted OIC to consider before proceeding to a formal decision.
9 June 2023	The applicant emailed OIC and stated that <i>'[t]o ensure equity, I request a "Stay" commensurate to the duration it has taken your office to respond and engage with me'</i> .
12 June 2023	OIC confirmed to the applicant that no further submissions or a request for an extension were received by 15 May 2023, and that OIC was satisfied that procedural fairness requirements were more than satisfied.