



Decision and Reasons for Decision

Citation:	<i>L56 and Department of Justice and Attorney-General</i> [2024] QICmr 38 (16 August 2024)
Application Number:	318040
Applicant:	L56
Respondent:	Department of Justice and Attorney-General
Decision Date:	16 August 2024
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - application to access documents about applicant - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - whether certain located documents fall outside the scope of, or are irrelevant to, the access application - sections 40, 43 and 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant contends that further documents should exist in relation to the access application - 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 <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Justice and Attorney-General (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access documents about him which are:

¹ By dated 8 March 2024 (access application).

- in the possession of nominated Queensland Police Service (**QPS**) officers
 - contained within nominated QPS email inboxes; and
 - contained within QPS computer systems.
2. The Department located 232 pages. After identifying that seven of those pages were not relevant to the access application, the Department disclosed 23 pages and parts of 97 pages and decided² to refuse access to the remaining information.
 3. The applicant sought internal review of that decision³ and, on internal review, the Department varied its original decision.⁴
 4. The applicant then applied⁵ to the Office of the Information Commissioner (**OIC**) for review of the Department's decision, on the basis that he considered '*none of the redactions should have occurred here in these circumstances and more information should have been made available*'.
 5. For the reasons set out below, I vary the Department's internal review decision and find that:
 - access to certain information may be refused on the ground its disclosure would, on balance, be contrary to the public interest⁶
 - certain information falls outside the scope of, or is irrelevant to, the access application; and
 - access may be refused to any further documents relevant to the access application on the ground that they are nonexistent.⁷

Background

6. The access application sought access to information as follows:

I require any and all emails [sent, received and deleted] about me, ever, from 2015 - 2024 [current time] contained within the following Queensland Police Service email inboxes.

[nominated email address] @police.qld.gov.au

[nominated email address] @police.qld.gov.au

[nominated email address] @police.qld.gov.au

the email address of [Officer A], the acting superintendent of QLD assistant district officer, gold coast district

the email address of [Officer B], Acting superintendent assistant district officer gold coast district

I also require a copy of any and all faxes, letters, cellular texts, messages, pages [including from any pagers], social media communications, personal email messages and emails, documents, notebook notes, dash cam evidence [vehicle], body cam recordings, information, memos, video and audio recordings, about me, that is in the possession of [Officer C], Robina Police Station in Queensland, [Officer D], [Officer A], [Officer B]. I also wish to receive a copy of any and all queries that they have ever done on their computers and police record keeping systems about me. I wish to also receive a copy of any and all electronic flags on their computer systems, and the QPS computer systems about me, if any.

² Decision dated 30 April 2024.

³ By email dated 30 April 2024.

⁴ Internal Review Decision dated 27 May 2024. In making the internal review decision, the Department reconsidered the 232 located pages.

⁵ The applicant's email received on 28 May 2024 (**External Review Application**).

⁶ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

⁷ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

7. In a letter to the applicant dated 12 March 2024, the Department confirmed:
 - the scope of the access application (in the above terms)
 - that exact copies/duplicates were excluded; and
 - that date range of the access application was 1 January 2015 to 8 March 2024.⁸
8. In its internal review decision, the Department confirmed that, although it did not have access to QPS email systems or QPS' document and records management systems, the Department held documents responsive to the access application in the records of Victim Assist Queensland (VAQ).⁹
9. The significant procedural steps taken during the external review are set out in the Appendix.

Reviewable decision

10. The decision under review is the Department's internal review decision dated 27 May 2024.

Evidence considered

11. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
12. Generally, it is necessary that decision makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**), as section 11(1) of the HR Act provides that '[a]ll individuals **in Queensland** have human rights' (my emphasis). The applicant does not reside in Queensland. However, at times relevant to the information requested in the access application, he did reside in Queensland. On the basis of this nexus to Queensland, I have also had regard to the HR Act, particularly the right to seek and receive information.¹⁰ I consider a decision-maker will be '*respecting and acting compatibly with*' that rights and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹²

Information in issue

13. The information which was not disclosed to the applicant appears on 172 pages¹³ (**Information in Issue**). I am constrained about the level of detail I can provide about this information.¹⁴ However, as the nature of much of the Information in Issue is

⁸ The applicant did not disagree with the exclusions or date range nominated in this letter.

⁹ VAQ is part of the Department and provides information and advice for victims of crime, including information about support services, victim's rights and financial assistance.

¹⁰ Section 21(2) of the HR Act.

¹¹ *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]. I 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 OIC's position).

¹² 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*'.

¹³ Being 20 full pages (numbered pages 49, 50, 53, 54, 61, 77, 78, 84-89, 94-95, 182, 183, 190, 195 and 196) and portions of information on 152 pages (numbered 2-11, 13-37, 39-44, 47-48, 51-52, 55-56, 58-60, 63-68, 71-76, 79-80, 82-83, 93, 96-97, 99, 102-103, 111-113, 118-130, 137-140, 142-166, 168-173, 176-181, 184-185, 187-189, 191-194, 197-198, 200-207, 210-212 and 22).

¹⁴ Section 108(3) of the RTI Act.

evident from the surrounding text which has been disclosed to the applicant, I confirm that it broadly comprises:

- the names, contact details (including residential addresses, email addresses and mobile telephone numbers), dates of birth, health/relationship details, employment related details, images, signatures and other personal information of individuals other than the applicant (**Third Party Information**); and
 - 12 full pages,¹⁵ which the Department deleted on the basis they fell outside the scope of, or were irrelevant to, the access application (**Deleted Pages**).
14. Several pages located by the Department contain blacked out sections and, in the decision under review, the Department confirmed that this was the format in which those pages were received by VAQ.
15. I can also confirm that there is a significant level of duplication within the Third Party Information and the majority of the Third Party Information appears within a statement the applicant provided to police, email correspondence between the applicant and police, email correspondence between the applicant and VAQ and court documents concerning a civil matter to which the applicant was a party.

Issues for determination

16. On external review, the applicant considers that no information in the located documents should be redacted.¹⁶ The applicant has also raised concerns about the adequacy of the Department's search for documents relevant to the access application.¹⁷
17. The issues for determination in this review are therefore whether:
- access to the Third Party Information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest
 - the Deleted Pages fall outside the scope of, or are irrelevant to, the access application; and
 - the Department has taken all reasonable steps to locate documents relevant to the access application which are in the Department's possession, or under its control, and whether the Department may therefore refuse access to further relevant documents on the basis they do not exist or cannot be located.

Relevant law

18. An individual has a right, under the IP Act, to be given access to documents of an agency, to the extent they contain the individual's personal information.¹⁸
19. The IP Act defines a document of an agency¹⁹ as anything that is a document of an agency under the RTI Act. Section 12 of the RTI Act relevantly states that:

¹⁵ Pages 49, 50, 53, 54, 77, 78, 94, 95, 182, 183, 195 and 196.

¹⁶ External Review Application. In the applicant's email received on 9 July 2024, he submitted: 'There were no grounds for refusal here, to mask any information. The information disclosed does not meet the accountability and transparency considerations. Access should not have been refused to me, including pertaining public interest. None of the masked information should have occurred and the public body should not have masked any such information and they did not provide a proper and sufficient analysis as to why they masked such information'.

¹⁷ External Review Application and the applicant's email received on 9 July 2024.

¹⁸ 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'. Section 43(2)(b) of the IP Act requires an applicant to give sufficient information concerning the document(s) sought to enable a responsive officer of the agency to locate relevant documents.

In this Act, **document**, of an agency, means a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency, and includes—

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession, or under the control, of an officer of the agency in the officer's official capacity.

20. The IP Act access right is subject to limitations, including the grounds for refusal of access.²⁰
21. Access may be refused where disclosing information would, on balance, be contrary to the public interest.²¹ 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.²² 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.²³
22. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁴
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
23. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case.²⁵
24. Access may also be refused to a document where the document is nonexistent or unlocatable—a document will be *nonexistent* if there are reasonable grounds to be satisfied the document does not exist²⁶ and 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.²⁷
25. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:²⁸

¹⁹ In section 13 of the IP Act.

²⁰ The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act. Section 47(2)(a) of the RTI Act also confirms that the grounds for refusing access to information are to be interpreted narrowly.

²¹ Sections 47(3)(b) and 49 of the RTI Act.

²² See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²³ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²⁴ Section 49(3) of the RTI Act.

²⁵ I have considered these lists, together with all other relevant information, in reaching my decision.

²⁶ Section 52(1)(a) of the RTI Act.

²⁷ Section 52(1)(b) of the RTI Act. To determine whether a document exists, but is unlocatable, requires consideration of whether there are reasonable grounds 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 it.

²⁸ 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] (*PDE*). These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) (*Van Veenendaal*) at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities²⁹
 - 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.
26. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.³⁰ 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.³¹ What constitutes reasonable steps will vary from case to case.³²
27. 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.³³ In assessing an agency's searches, the Information Commissioner has recently confirmed the relevant question is whether the agency has taken all reasonable steps to identify and locate documents, as opposed to all possible steps.³⁴

Findings

Third Party Information

28. I have not taken any irrelevant factors into account in reaching my decision.

Factors favouring disclosure

29. A small amount of the Third Party Information relates to the applicant, which gives rise to a public interest factor favouring disclosure,³⁵ to which I attribute high weight. However, this small amount of the applicant's personal information appears intertwined with the personal information of other individuals, meaning that it cannot be disclosed without also disclosing the personal information of those other individuals (giving rise to the nondisclosure factors discussed below).
30. The RTI Act also recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:

²⁹ Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

³⁰ For example, where a particular document was not created because the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document.

³¹ As set out in *PDE* at [49].

³² 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.

³³ Section 137(2) of the IP Act. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the equivalent provision in 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. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review.

³⁴ *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [202] QICmr 13 (17 April 2024) at [19].

³⁵ Schedule 4, part 2, item 7 of the RTI Act.

- promote open discussion of public affairs and enhance the Government's accountability³⁶
 - 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;³⁷ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁸
31. The applicant submitted that *'The information disclosed does not meet the accountability and transparency considerations. Access should not have been refused to me, including pertaining public interest.'*³⁹
32. While disclosure of the Third Party Information would provide the applicant with a complete picture of the responsive documents in the Department's possession, the Department has disclosed a large proportion of the located documents to the applicant. I consider this disclosed information has substantially advanced the disclosure factors relating to accountability and transparency,⁴⁰ by enabling scrutiny of VAQ's processes and providing background to any decision that was made by VAQ in respect of the applicant.⁴¹ The majority of the Third Party Information comprises the personal information of individuals who are not public sector officers. I do not consider disclosing information of this nature would further advance, in any significant way, government accountability and transparency. On this basis, I afford only low weight to these public interest factors in respect of this component of the Third Party Information. The remaining Third Party Information comprises the direct telephone number of a VAQ officer⁴² and parts of QPS officer email addresses.⁴³ Taking into account that the Department has disclosed almost all the content of the page on which this telephone number appears (including the name of the VAQ officer and the general number for contacting VAQ), I do not consider disclosure of the direct telephone number would further advance these factors in any meaningful way. Nor do I consider the disclosure of these particular parts of QPS officer email addresses would further advance these factors. Accordingly, in respect of the remaining Third Party Information, I afford no weight to the public interest factors concerning government accountability and transparency.
33. The Third Party Information also includes a small amount of information which was provided to police by, or about, individuals other than the applicant. Information of this nature is shaped by an individual's observations, perceptions, concerns and opinions. This inherent subjectivity does not mean that the information is necessarily incorrect or misleading.⁴⁴ Having carefully reviewed the Third Party Information, there is nothing before me to suggest that it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. On this basis, I am satisfied that the public interest factor in schedule 4, part 2, item 12 of the RTI Act does not apply to favour disclosure of the Third Party Information.

³⁶ Schedule 4, part 2, item 1 of the RTI Act.

³⁷ Schedule 4, part 2, item 3 of the RTI Act.

³⁸ Schedule 4, part 2, item 11 of the RTI Act.

³⁹ Applicant email received 9 July 2024.

⁴⁰ Substantially advancing the disclosure factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴¹ I also consider the disclosed information provides some background about how QPS dealt with complaints it received from the applicant.

⁴² This Third Party Information appears on only one page (page 139).

⁴³ This Third Party Information appears on pages 32 and 161.

⁴⁴ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

34. On the information before me, no other public interest factors favouring disclosure apply to favour disclosure of the Third Party Information.⁴⁵

Factors favouring nondisclosure

35. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁴⁶ and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁴⁷
36. The Third Party Information identifies, or is about, individuals other than the applicant. I am therefore satisfied that it comprises the personal information of those other individuals. As noted above, some of the Third Party Information is intertwined with a small amount of the applicant's personal information.
37. For the Third Party Information which comprises the personal information of individuals who are not public sector officers, I note this information appears within the context of complaints made to QPS—some of those complaints concern serious allegations of misconduct and some of the Third Party Information is highly sensitive in nature. In these circumstances, I am satisfied that disclosing this part of the Third Party Information would be a significant intrusion into the privacy of these other individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. I have therefore afforded significant weight to these factors which favour nondisclosure of this component of the Third Party Information. I acknowledge that, as a result of the applicant's interactions with QPS and VAQ, he may be generally aware of some of the Third Party Information. However, I do not consider this negates the right to privacy or reduces the expected harm disclosure of this personal information under the IP Act could be expected to cause, particularly given the complaint context in which it appears and that there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.
38. In respect of the remaining Third Party Information, this appears within routine work information of public sector officers. I consider it is reasonable to expect that a lower level of prejudice and harm could be expected to arise from disclosure of this type of information. Taking into account the complaint context in which this small component of the Third Party Information appears, I afford these nondisclosure factors low weight.

Balancing the public interest

39. In reaching my decision, I have taken into account the pro-disclosure bias of the IP Act.⁴⁸

⁴⁵ For example, taking into account the nature of the Third Party Information, there is nothing before me which indicates that its disclosure could reasonably be expected to 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 effective oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); allow or assist inquiry into, reveal or substantiate, agency conduct deficiencies (schedule 4, part 2, items 5 and 6 of the RTI Act); advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies (schedule 4, part 2, item 10 of the RTI Act); contribute to the administration of justice generally, including procedural fairness, or for a person (schedule 4, part 2, items 16 and 17 of the RTI Act); or contribute to the maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 15 and 18 of the RTI Act).

⁴⁶ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁷ Schedule 4, part 3, item 3 of the RTI Act. 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 (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).

⁴⁸ Section 64 of the IP Act.

40. For the reasons set out above, I am satisfied that the nondisclosure factors relating to the protection of privacy and personal information of other individuals are deserving of significant weight for the majority of the Third Party Information and low weight in respect of the remaining Third Party Information.
41. On the other hand, I have afforded high weight to the factor favouring disclosure of the small amount of the applicant's personal information within the Third Party Information. However, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. I have identified additional factors relating to government accountability and transparency which favour disclosure and, taking into account the nature of the Third Party Information, I have afforded these factors only low weight for the majority of the Third Party Information and no weight in respect of the remaining Third Party Information.
42. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁴⁹

Deleted Pages

43. Where a document does not contain *any* of an applicant's personal information, it is not relevant to an application made under the IP Act and may be deleted on that basis.
44. Section 88 of the IP Act also permits an agency to delete information that is not relevant to the access application from the 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.⁵⁰
45. I have carefully considered the agreed terms of the access application and the contents of the Deleted Pages. I am satisfied that those pages either:
- do not contain *any* information about the applicant, or information from which the applicant's identity could reasonably be ascertained; or
 - duplicate copies of pages which appear elsewhere within the located documents.
46. Therefore, I find that the applicant is not entitled to access the Deleted Pages under the IP Act, as they fall outside the scope of, or are irrelevant to, the access application.⁵¹

Nonexistent or unlocatable documents

47. In the decision under review, the Department confirmed that the types of documents requested in the access application may only be accessed by the Department to the extent they appear within records held by VAQ.⁵²
48. When seeking internal review, the applicant submitted that more emails exist between a particular police officer '*and others*' and that audio and video documents exist. On external review, the applicant raised similar concerns about missing documents.⁵³

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

⁵⁰ *Van Veenendaal* at [41], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

⁵¹ Apart from the general assertion referenced in paragraph 16, the applicant did not make any submission on this issue.

⁵² The Department's original decision provided similar confirmation.

49. The *Victims of Crime Assistance Act 2009* (**VOCA Act**) authorises VAQ assessors to obtain certain information from QPS in relation to an act of violence for which financial assistance is sought—the types of information which can be obtained are identified in sections 65 and 66 of the VOCA Act. Here, the disclosed information confirms that QPS provided the following types of information to VAQ pursuant to section 66 of the VOCA Act—emails (including emails from the applicant) and investigation documents ‘including transcripts of [the applicant’s] recordings’.⁵⁴
50. On external review, the Department provided OIC with information concerning its processing of a number of the applicant’s access applications—that information confirms that searches for the specific documents requested in this access application were conducted of VAQ’s record keeping systems⁵⁵ by a VAQ officer, using the applicant’s name as the search term.
51. Having reviewed the terms of the access application, the located documents and the search information provided by the Department, there was nothing before me to suggest that the Department was in possession of any further information relevant to the access application. Accordingly, I conveyed a preliminary view to the applicant that the Department had conducted appropriately targeted searches of the locations it was able to access and where it was reasonable to expect that the documents requested in the access application would be stored.⁵⁶
52. The applicant did not accept my preliminary view and submitted:⁵⁷

Please know and note that no actual detailed analysis was provided on how they reached such conclusion and who exactly they asked and how they asked for information. Who is it who commenced the searches? More detailed analyses should have been made. DJAG can speak to other public bodies to obtain any other records that may exist.
53. The applicant applied to the Department to access the documents requested in the access application. Under the legislative provisions referenced in paragraph 19 above, ‘documents’ of the Department are documents which are in the Department’s possession or under its control. The term ‘possession’⁵⁸ requires nothing more than the relevant documents be in the physical possession of an agency.⁵⁹ The Information Commissioner has previously explained that a document will be ‘under the control’ of an agency where the agency has a present legal entitlement to take physical possession of the document.⁶⁰
54. Having reviewed the terms of the access application and other information before me (including the applicant’s submissions and the search information received from the Department), I consider that the Department has conducted appropriately targeted

⁵³ For example, in the External Review Application, the applicant submitted: ‘... more information should have been made available. For example, Internal email correspondence was not released to me, along with notes and other audios and videos.’

⁵⁴ For example, page 11.

⁵⁵ Being VAQ’s eDocs Electronic Documents and Records Management System and Resolve.

⁵⁶ It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner’s processes for early resolution of external reviews.

⁵⁷ By email dated 9 July 2024.

⁵⁸ As used in section 12 of the RTI Act.

⁵⁹ *Kalinga Woolloowin Residents Association Inc. and Department of Employment, Economic Development and Innovation; City North Infrastructure Pty Ltd (Third Party)* (Unreported, Queensland Information Commissioner, 21 December 2011) and *Kalinga Woolloowin Residents Association Inc and Brisbane City Council and Ors* (Unreported, Queensland Information Commissioner, 9 May 2012), each applying *Holt and Reeves and Education Queensland and Ors* (1998) 4 QAR 310.

⁶⁰ *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 30 (26 November 2015) at [15], citing with approval *Price and the Nominal Defendant* (1999) 5 QAR 80 at [18].

searches of locations where it would be reasonable to expect the documents requested in the access application would be stored within the Department's record keeping systems. Further, taking into account the provisions of the VOCA Act referenced above, there is nothing before me which suggests that the Department has any present legal entitlement to take physical possession of any further documents which may be relevant to the access application. The IP Act does not, as the applicant suggested, require the Department to contact other agencies to obtain documents relevant to the access application. While further documents relevant to the access application may, or may not, exist within QPS' records, I am satisfied any such further documents, if they exist, are not documents in the possession, or under the control of, the Department.

55. Accordingly, I am satisfied that:

- the Department has taken all reasonable steps to locate documents relevant to the access application; and
- access to any further documents relevant to the access application may be refused on the basis they do not exist.⁶¹

DECISION

56. For the reasons set out above, I vary the Department's decision and find that:

- access to the Third Party Information may be refused on the ground its disclosure would, on balance, be contrary to the public interest⁶²
- the Deleted Pages fall outside the scope of, or are irrelevant to, the access application; and
- access may be refused to any further documents relevant to the access application on the ground that they are nonexistent.⁶³

57. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

T Lake
Principal Review Officer

Date: 16 August 2024

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

⁶² Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁶³ 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
28 May 2024	OIC received the external review application.
18 June 2024	OIC notified the applicant and the Department that the application for external review had been accepted and requested information from the Department.
24 June 2024	OIC received the requested information from the Department.
5 July 2024	OIC conveyed a preliminary view to the applicant and invited the applicant to provide a submission if he wished to contest that view.
9 July 2024	OIC received the applicant's submission contesting the preliminary view.
11 July 2024	OIC wrote to the applicant to confirm the preliminary view and notify the applicant that a decision would be issued to finalise the external review.