



Decision and Reasons for Decision

Citation:	<i>Y65 and Department of Education [2026] QICmr 35 (5 March 2026)</i>
Application Number:	318821
Applicant:	Y65
Respondent:	Department of Education
Decision Date:	5 March 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for student protection reports - whether the existence of responsive information can be neither confirmed nor denied - section 69 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access certain student protection reports about them.²
2. The Department decided, under section 69 of the IP Act, to neither confirm nor deny the existence of the documents sought by the applicant.³
3. The applicant then applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of that decision.
4. For the reasons set out below, I affirm the Department's decision to neither confirm nor deny the existence of the documents to which access is sought, on the basis that those documents would, if they existed, contain prescribed information.

¹ On 12 June 2024.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's access application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**.

These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> respectively.

³ Decision dated 22 July 2025.

⁴ External review application dated 5 August 2025.

Reviewable decision

5. The decision under review is the Department's 22 July 2025 decision.

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).

7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁵ particularly the rights to seek and receive information, and privacy and reputation.⁶ I consider a decision-maker will be '*respecting, and acting compatibly with*' those rights, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.⁷ 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 of Bell J on the interaction between equivalent Victorian legislation,⁸ that '*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*'.⁹

Issue for determination

8. The issue for determination is whether the Department was entitled, under section 69 of the IP Act, to neither confirm nor deny the existence of the documents sought by the applicant.

Relevant law

9. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent they contain the individual's personal information.¹⁰ However, this right is subject to limitations, including grounds for refusal of access.¹¹

10. Section 69 of the IP Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it existed, would contain prescribed information. This provision is intended to apply in situations where, due to the specific wording of the request, revealing that the agency does, or does not, have documents in response to an application, would reveal information to which an agency would normally be entitled to refuse access.

11. '*Prescribed information*' is defined¹² as:

- exempt information mentioned in schedule 3, section 1, 2, 3, 4, 5, 9 or 10 of the RTI Act; or
- personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

⁵ Relevant provisions of which commenced on 1 January 2020.

⁶ Sections 21(2) and 25 of the HR Act.

⁷ *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].

⁸ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁹ *XYZ* at [573]. This approach, in the context of the IP Act and RTI Act, was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information], and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

¹⁰ Section 40 of the IP Act.

¹¹ 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. The refusal grounds in the RTI Act can be found in section 47.

¹² In schedule 5 of the IP Act.

12. Relevant to this matter, information will comprise exempt information under:
- schedule 3, section 10(1)(b) of the RTI Act, if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; and
 - schedule 3, section 12(1) of the RTI Act, where its disclosure is prohibited by sections 186 to 188 of the *Child Protection Act 1999 (CP Act)*.¹³
13. The Department has the onus in this review of establishing that the decision under review was justified or that the Information Commissioner should give a decision adverse to the applicant.¹⁴

Findings

14. For the provision in section 69 of the IP Act to apply to the applicant's access application, I must be satisfied that, based on the terms of that access application, the requested documents would, if they existed, contain either exempt information or personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
15. In making these findings, I have carefully reviewed the access application, the decision under review, the external review application and the Department's submissions. However, as I am making findings in relation to a 'neither confirm nor deny' issue, I am somewhat limited in the level of detail I can provide in my assessment of the submissions received from the Department. In particular, I have been necessarily circumspect in detailing the information which the Department has provided in their submissions.
16. Nothing in these Reasons for Decision should be taken to confirm nor deny that the documents sought in the access application exist.
17. The Department has published a procedure about student protection (**Procedure**).¹⁵ Noting the contents of the Procedure, the Department submitted that, if reports of the nature requested by the applicant existed, they would enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.¹⁶
18. I have carefully reviewed the Procedure. In addition to identifying mandatory reporting obligations, the Procedure:
- requires confidentiality to be maintained in respect of student protection matters; and

¹³ These CP Act provisions contain information disclosure restrictions. In particular, section 186A of the CP Act prohibits disclosure of the identify a notifier of suspected harm or information from which the identity of the notifier could be deduced. While these CP Act provisions nominated in schedule 3, section 12(1) of the RTI Act identify limited circumstances in which disclosure is permitted to occur, none of those circumstances are relevant to the access request we are considering here.

¹⁴ Section 100(1) of the IP Act.

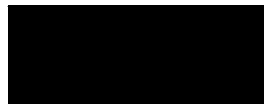
¹⁵ The Procedure is titled '*Student protection procedure Version 10.4*', which has an effective date of 17 October 2023. This document may be accessed via the Department's website (www.education.qld.gov.au).

¹⁶ Submissions dated 3 September 2025 and 22 October 2025. These submissions also specifically note that the Procedure confirms any Departmental employee who follows the required reporting processes will be entitled to the confidentiality protections afforded to notifiers under the CP Act.

- provides that any Departmental employee who follows the reporting processes required in the procedure will be entitled to the confidentiality protections afforded to notifiers under Chapter 6, Part 6, Division 2, Subdivision 1 of the CP Act.¹⁷
19. The applicant's access application has been worded such that confirming whether the requested documents exist would enable the existence or identity of a confidential source of information to be ascertained.
20. I am therefore satisfied that, if the documents sought by the applicant existed, they would contain exempt information under schedule 3, sections 10(1)(b) and/or 12(1) of the RTI Act. Accordingly, I am satisfied that those requested documents would, if they existed, contain prescribed information.

DECISION

21. For the reasons set out above, I affirm the reviewable decision¹⁸ and find that the Department is entitled, under section 69 of the IP Act, to neither confirm nor deny the existence of the documents sought by the applicant.
22. 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.



T Lake
Principal Review Officer

Date: 5 March 2026

¹⁷ In summary, these CP Act provisions prohibit the disclosure of information which would identify a notifier of suspected harm. While the provisions identify limited circumstances in which disclosure is permitted to occur, none of those circumstances are relevant to the access request we are considering here.

¹⁸ Under section 123(1)(a) of the IP Act.