



Decision and Reasons for Decision

Citation:	<i>W42 and Queensland Police Service [2026] QICmr 82 (25 May 2026)</i>
Application Number:	318607
Applicant:	W42
Respondent:	Queensland Police Service
Decision Date:	25 May 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - request for certain documents held by agency in relation to the applicant's attendance at a Police Station - where the agency has explained why further documents do not exist - whether explanation is reasonable - whether access may be refused on the ground that no further documents exist - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009 (Qld)</i>

DECISION

I vary¹ the reviewable decision of Queensland Police Service (**QPS**) and find that access may be refused to any further information on the ground that it is nonexistent.²

This means that no further information is to be released to the applicant.

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

² Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

My reasons for this decision follow.



Stephanie Winson
Right to Information Commissioner

Date: 25 May 2026

REASONS FOR DECISION

Background

1. This is one in a series of applications under the IP Act the applicant has made to QPS seeking access to information relating to their interactions with QPS.
2. The applicant agreed to resolve a previous external review on the basis that QPS would process a fresh application for certain documents relating to their attendance at a QPS station (**Station**) to submit a complaint. The information that the applicant sought access to includes the:
 - a. flag information that QPS held about the applicant 'as at' 14 December 2023 (**Flag Information**); and
 - b. the audio recording (**Recording**) of a telephone conversation between a named QPS officer and a Policelink operator.
3. QPS decided to:³
 - refuse to deal with the Flag Information, as it considered this part of the application was expressed to relate to a class of documents⁴ and it appeared to QPS that all of the documents comprised exempt information;⁵ and
 - refuse access to part of the Recording on the basis that disclosure would, on balance, be contrary to the public interest.⁶
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.⁷

Reviewable decision

5. The decision under review is QPS's decision dated 23 April 2025.

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes).
7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ A decision-maker will be 'respecting, and acting compatibly with' that right, and others prescribed in the HR Act, when

³ Decision dated 23 April 2025.

⁴ Under section 59(1)(a) of the IP Act.

⁵ Under section 59(1)(b) of the IP Act, as QPS considered that disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law) under schedule 3, section 10(1)(f) of the RTI Act.

⁶ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁷ Email to OIC on 3 May 2025.

⁸ Section 21(2) of the HR Act.

applying the law prescribed in the IP Act and RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁰

8. The applicant provided a number of submissions to OIC¹¹ during the review. I have summarised and addressed those submissions to the extent they are relevant to the issues for determination. I also personally spoke with the applicant at their request to discuss their concerns about the preliminary view issued in this case.¹² The applicant remains dissatisfied with the way in which QPS has handled their complaints and their access applications, and holds concerns about the conduct of particular QPS officers. However, the Information Commissioner does not have jurisdiction to investigate a complaint handling process and there is no evidence before me to suggest misconduct in the administration of the IP Act.¹³ The role of the Information Commissioner in this matter is to conduct merits review of an agency's decision on access to information under the IP Act.

Issues for determination

9. During the review, OIC conveyed a preliminary view to QPS that, in the circumstances of this particular matter, OIC did not consider that:¹⁴
- the Flag Information comprised exempt information and that this information should be disclosed to the applicant; and
 - the disclosure of the small amount of refused information in the Recording¹⁵ would, on balance be contrary to the public interest.
10. In response, QPS agreed to:
- disclose a document comprising the flags that were recorded about the applicant as at 14 December 2023;¹⁶ and
 - provide the applicant with full access to the Recording.¹⁷
11. On receiving the further information from QPS, the applicant submitted that:

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573], wherein Bell J observed 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'* on the interaction between equivalent pieces of Victorian legislation; *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 Justice Member McGill saw *'no reason to differ'* from OIC's position).

¹⁰ I have also taken into consideration the applicant's submission that he has a right to fair treatment and equal protection under the law. Applicant's submission dated 25 November 2025, received by OIC on 16 December 2025.

¹¹ On 3 May 2025, 26 May 2025, 14 August 2025, 16 August 2025, 19 August 2025, 22 August 2025, 30 August 2025, 1 September 2025, 13 September 2025, 8 December 2025, 11 December 2025, 16 December 2025, 8 May 2026, 11 May 2026 and 18 May 2026.

¹² On 14 April 2026.

¹³ As envisaged by section 126 of the IP Act.

¹⁴ Letter to QPS dated 4 July 2025.

¹⁵ At 00.30 to 00.33 of the Recording.

¹⁶ Letter to OIC dated 31 July 2025, subject to the redaction of a small amount of third-party personal information, the disclosure of which would on balance, be contrary to the public interest.

¹⁷ Email to OIC dated 7 August 2025.

- they did not accept that the document provided comprised all of the Flag Information and it was not a '*legitimate document*'; and
 - the copy of the Recording still contained redactions.¹⁸
12. Accordingly, the issues for determination are whether QPS has provided the applicant with a complete copy of the Flag Information and full access to the Recording, such that access may be refused to any further information on the ground that it is nonexistent.

Relevant law

13. The IP Act gives an individual a right of access to documents of an agency or Minister to the extent the documents contain the individual's personal information.¹⁹ However, this right is subject to the provisions of the IP Act and RTI Act including grounds for refusing access to information.²⁰ Relevantly, access may be refused to a document if it is nonexistent or unlocatable.²¹
14. To be satisfied that a document does not exist, the Information Commissioner has previously identified several key factors to consider, including the agency's structure, recordkeeping practices and procedures and the nature and age of the requested documents.²² By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example, the agency's processes do not require the creation of that specific document. In such circumstances, it is not necessary for the agency to search for the document but sufficient that the circumstances to account for the nonexistence are adequately explained.
15. On external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.²³ However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.²⁴ Suspicion or mere assertion will not satisfy this onus.²⁵

¹⁸ In particular the applicant referred to 1.39 to 2.12 of the Recording.

¹⁹ Section 40(1) of the IP Act.

²⁰ 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.

²¹ Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

²² These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]–[38].

²³ Section 100(1) of the IP Act.

²⁴ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

²⁵ *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].

Findings

Flag Information

16. During the review, I questioned the interpretation of the scope of the Flag Information, in particular whether the reference to 'as at' 14 December 2023 included only current flags that were recorded about the applicant, or whether it also included any Flag Information that had been recorded and may have expired by 14 December 2023.²⁶
17. While QPS did not agree that the scope of the application should be interpreted as broadly as I had suggested, given the protracted nature of the review and the particular circumstances of this matter, QPS agreed to disclose a document to the applicant comprising both current and expired Flag Information that it held about the applicant as at 14 December 2023.²⁷
18. The applicant remains dissatisfied with the information disclosed by QPS. In summary the applicant's concerns fall into two categories. They consider:
 - a. one of the flags has been amended; and
 - b. that there should be further flags recorded.
19. In relation to a. above, I am satisfied that QPS has provided a reasonable explanation as to why one of the flags was amended and this has been conveyed to the applicant. The applicant has also been informed why QPS is not able to provide a copy of the particular flag as it existed before the amendment was made.²⁸
20. In relation to b. above, there are two categories of further information that the applicant considers should have been recorded in QPRIME as flags.
21. In terms of one of these categories, I am satisfied that QPS has provided a reasonable explanation as to why the information was not recorded as flags in QPRIME – i.e. that QPS either records such information in QPRIME as a 'Caution', rather than a flag, or that specific information is recorded against a property rather than an individual. This explanation has been conveyed to the applicant.²⁹ I also note that, in an attempt to informally resolve this matter, QPS disclosed a copy of the Cautions recorded about the applicant.³⁰
22. In terms of the other category, it is relevant to note that the Flag Information disclosed to the applicant contains reference to a certain type of order. The applicant submitted that a number of these orders have been issued and accordingly all of the orders should have been recorded as flags in QPRIME.

²⁶ Email to QPS dated 21 April 2026.

²⁷ A copy of this information was provided to the applicant on 15 May 2026.

²⁸ Letter to the applicant dated 8 December 2025.

²⁹ Letter to the applicant dated 26 March 2026.

³⁰ On 2 April 2026.

23. When QPS agreed to disclose the Flag Information comprising both expired and current flags as at 14 December 2023, it stated '*... the report comprises all of the flags that have been entered about the applicant up until 14 December 2023*'.³¹
24. The applicant continued to assert that there are missing flags. As noted at paragraph 15 above, where an applicant submits that there are missing documents, the applicant bears a practical onus of demonstrating that QPS has not discharged its obligation to locate all relevant documents.
25. While I acknowledge that the applicant continues to believe there is missing Flag Information, other than their assertions that this is the case, they have not provided or pointed to any information or evidence to suggest that the explanations provided by QPS are incorrect. Nor is there any other information before me to suggest that is the case. In addition, I note that QPS appears to have searched the relevant part of QPRIME to obtain the Flag Information and it is reasonable to conclude that if further Flag Information existed QPS would have located it.
26. Given this, I am satisfied that access to any further Flag Information may be refused on the ground that it is nonexistent.

Recording

27. When the applicant attended the Station in 2023, he spoke to a particular QPS officer. Subsequently the QPS officer made a telephone call to Policelink to enquire where the applicant's complaint should be forwarded. The Recording comprises a copy of the relevant telephone call.
28. As noted at paragraph 11, after receiving a complete copy of the Recording from QPS, the applicant submitted that they do not accept that QPS provided full access to the Recording. In this respect, the applicant referred to a specific time in the Recording, where the Recording is silent.³²
29. Having listened to the recording, OIC wrote to the applicant advising that it was satisfied that the timeframe when the Recording was silent was where the Policelink operator placed the call on hold to ask a Team Leader for advice.
30. The applicant did not accept this explanation. In support of this view, the applicant provided a copy of a waveform of the Recording which showed no spikes of the waveform for the timeframe in question.
31. In response to the applicant's assertion, OIC invited QPS to respond to the applicant's concerns. QPS stated that a Policelink Quality Assurance Coordinator had reviewed the Recording and submitted.³³

³¹ Email to OIC dated 6 May 2026.

³² At 1:39 to 2:12 of the Recording.

³³ Email to OIC dated 6 May 2026.

I can confirm that I have reviewed the contact and the specific period that is referred to in your email is when the CSO calls the TL and is on hold until the call is answered by the TL. The audio kicks back in at the 2.12 mark when the TL answers the call.

32. While I acknowledge that the applicant remains dissatisfied with the explanation provided by QPS, having listened to the Recording and based on the information before me, I am satisfied that the applicant has been provided with full access to the Recording. Given this, access may be refused to any further information, on the ground that it is nonexistent.

Conclusion

33. The above are the reasons for my decision set out on the first page.
34. 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.