OFFICE OF THE
Information Commissioner
QUEENSLAND

Decision and Reasons for Decision

Citation:	I35 and Queensland Treasury [2026] QICmr 118 (2 July 2026)
Application Number:	318741
Applicant:	I35
Respondent:	Queensland Treasury
Decision Date:	2 July 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OUTSIDE OF SCOPE DOCUMENTS - whether document is outside the terms of the access application - document located by agency on external review – document outside the narrowed scope agreed to in the external review ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DOCUMENTS NONEXISTENT OR UNLOCATABLE - request for documents relating to a fire and damage to a boundary fence - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis that they are nonexistent or unlocatable - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DOCUMENT OF AN AGENCY - whether the documents are in the possession or under the control of the Agency - section 12 of the *Right to Information Act 2009* (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for documents between named individuals and Crown Law regarding the applicant's property - whether the existence of responsive information can be neither confirmed nor denied - section 55 of the *Right to Information Act 2009* (Qld) (RTI Act)

DECISION

I vary[1] the reviewable decision of Queensland Treasury (**QT**) and find that:[2]

a. the document located during the external review is outside the terms of the application
b. with respect to documents sought by Parts 1 to 5 of the access application–
   - any further documents in QT or Crown Law's possession or control may be refused on the ground that they do not exist; and
   - any documents in the Loss Adjusters' possession alone are not in the possession or control of QT, and therefore would not be documents of the agency to whom the access application has been made; and
c. in relation to Part 6 of the scope, QT was entitled 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.

This means that no further information is to be released to the applicant. My reasons for the decision follow.

[redacted]

A Rickard
Assistant Information Commissioner
Date: 2 July 2026

[1] Under section 110(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
[2] I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI 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 RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP 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.

REASONS FOR DECISION

Background

1. The applicant applied[3] to QT under the RTI Act for access to six categories of documents dated *'14 September 2023 to present'* relating to a fire that occurred in 2023.

2. The Queensland Government Insurance Fund (**QGIF**) is the self-insurance scheme within QT for all Queensland government agencies and eligible statutory bodies, including the agency where the 2023 fire occurred. QT, acting through QGIF, sought and obtained advice from Crown Law regarding the fire. A particular private entity performing loss adjusting work (**Loss Adjusters**) has also been involved in insurance issues arising from the fire. The nature of the Loss Adjusters' involvement is pertinent to this review.

3. QT decided,[4] in relation to Parts 1 to 5 of the access application, to refuse to deal with these parts of the application under section 40 of the RTI Act on the ground that all documents requested related to a stated subject matter and were exempt under schedule 3 of the RTI Act. In relation to Part 6 of the application, QT decided to neither confirm nor deny the existence of the documents sought by the applicant under section 55 of the RTI Act.

4. The applicant applied[5] to the Office of the Information Commissioner (**OIC**) for external review of that decision.

5. On external review, in relation to Parts 1 to 5 of the scope of the application:

    a. The applicant provided a table with the specific types of documents sought on external review in relation to Parts 1 to 5 of the access application (**narrowed scope**).
    b. QT conducted further searches in respect of the narrowed scope and one document was located (**fencing quote**).[6] However upon further assessment QT submitted that this document was outside the timeframe of the application and as such outside the terms of the application.[7]
    c. In relation to the remaining documents listed in the narrowed scope, QT submitted that it has taken reasonable steps to locate these documents and therefore access to any further documents may be refused under the RTI Act on the ground that they do not exist.
    d. OIC conveyed QT's submissions to the applicant.[8] The applicant did not accept that only one document - the fencing quote - had been located and provided reasons why, in their view, such documents must exist.[9]

---

[3] On 6 May 2025.
[4] Decision dated 11 June 2025.
[5] On 25 June 2025.
[6] Submissions dated 15 August 2025.
[7] Submissions dated 12 December 2025.
[8] On 9 September 2025.
[9] Submissions dated 3 October 2025.

e. The applicant's submissions were conveyed to QT for consideration. In response, QT provided certifications regarding searches conducted by QGIF and Crown Law. However, in relation to searches for documents of the Loss Adjusters, QT advised that documents held by the Loss Adjusters, but not in the possession of Crown Law, are not documents of QT and therefore further searches by the Loss Adjusters could not be directed.[10]

f. OIC conveyed a preliminary view to the applicant[11] that:
   - QGIF has performed searches and directed Crown Law to perform searches relevant to the narrowed scope and no further documents – apart from the fencing quote – were located
   - the fencing quote was outside the timeframe of the application
   - access to any further documents of the Loss Adjusters may be refused on the ground that they do not exist or, with respect to documents in the Loss Adjusters' possession alone, if such documents existed, they would not be in the possession or control of QT, and therefore would not be documents of the agency to whom the access application has been made
   - even if documents in the Loss Adjusters' possession alone existed and were considered to be in the control of QT, and therefore documents of the agency to whom the access application was made, they would be subject to legal professional privilege, as they would be prepared by the Loss Adjusters for Crown Law to provide legal advice in relation to the claims following the fire incident, and therefore access to them could be refused on the ground they were exempt information.

g. The applicant disagreed with this view and provided submissions in support of their view.[12]

6. On external review, in relation to Part 6 of the scope of the application, OIC conveyed a preliminary view to the applicant[13] that QT was entitled to neither confirm nor deny the existence of documents they sought. The applicant disagreed with the preliminary view and provided submissions in support of their position.[14]

Issues for determination

7. The issues for determination in this review are:

   a. whether the fencing quote located during the external review is outside the terms of the application

   b. whether access to documents within the narrowed scope for Parts 1 to 5 –
      - may be refused on the ground that they do not exist; and
      - which are in the Loss Adjusters' possession alone, are documents in the possession or control of QT and therefore documents of the agency to whom the access application has been made; and

---

[10] Submissions dated 12 December 2025, 16 February 2026, 26 March 2026 and 9 June 2026.
[11] Letter dated 9 April 2026 and email dated 22 June 2026.
[12] Submissions dated 7 May 2026 and 28 June 2026.
[13] On 9 September 2025.
[14] Submissions dated 3 October 2025.

c. in relation to Part 6 of the scope, whether QT was entitled, under section 55 of the RTI Act, to neither confirm nor deny the existence of the documents sought by the applicant.

Evidence considered

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

9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to seek and receive information.[15] 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 RTI Act.[16] I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

The fencing quote

10. As noted in paragraph 1 above, the applicant made an application under the RTI Act seeking access to documents held by QT in relation to a fire that occurred in 2023.[17] Given the date range specified in the application,[18] the application was taken to request documents dated 14 September 2023 to 7 May 2025 (being the date on which QT received a compliant application).[19]

11. On external review, the applicant narrowed the scope of Parts 1 to 5 of the access application by providing a table with the specific types of documents sought on external review in relation to each part.[20] In this regard, the applicant did not specify any date range, and OIC proceeded on the basis that the narrowed scope related to the same date range as that specified in the access application.

12. OIC asked QT to conduct further searches and as a result one document, namely a fencing quote, was located. In terms of this fencing quote, QT submitted that, while the date of the fencing quote itself fell within the relevant date range, it was attached to an email from the Loss Adjusters to Crown Law which was sent outside the date range.[21]

13. Noting these circumstances, OIC conveyed a view to the applicant that the fencing quote was outside the scope of the access application.[22] The applicant contested

---

[15] Sections 21(2) and 25 of the HR Act.
[16] *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 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* FOI Act. I further note that OIC's approach to the HR Act (as 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 DJ McGill SC saw '*no reason to differ'* from OIC's position).
[17] The timeframe set in the narrowed scope was for documents dated between 14 September 2023 to 7 May 2025.
[18] *'14 September 2023 to present'*.
[19] In accordance with section 27 of the RTI Act.
[20] On 25 June 2025.
[21] Submissions dated 12 December 2025 and 29 June 2026.
[22] Letter dated 9 April 2026.

this view and submitted that their request '*most certainly falls within the period where* [the Loss Adjusters] *were engaged by Treasury Queensland – the Queensland Government Insurance Fund (QGIF) on behalf of Queensland'*.[23]

14. It is well established that an applicant cannot unilaterally expand the scope of an access request on external review.[24] Further, the Information Commissioner has previously expressed the view that the scope of an original application sets the parameters for the agency's searches.[25]

15. The access application was limited to documents within a specific date range. I am satisfied that, although the fencing quote itself is dated within the date range, the version of it located on external review became a document of QT for the purpose of the application only on the date it was received by Crown Law attached to an email from the Loss Adjusters. As this date of receipt is outside the specified date range, so too is the fencing quote attachment. On this basis, I find that the located fencing quote is not captured by the scope of the access application. As such, OIC has no jurisdiction to consider it further in this review.

16. If I am wrong in this regard, and the fencing quote is considered to fall within the relevant date range, I would nevertheless consider that it comprised communications between a lawyer (Crown Law) and third party (the Loss Adjusters) which was subject to legal professional privilege.[26]

Documents within the narrowed scope for Parts 1 to 5

Relevant law about nonexistent documents

17. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.[27] While the legislation is to be administered with a pro-disclosure bias,[28] the right of access is subject to certain exceptions and limitations, including grounds for refusing access.[29]

18. Relevantly, access to a document may be refused if it is nonexistent or unlocatable.[30] A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.[31] A document will be unlocatable if it has been or should be in the

[23] Submissions dated 7 May 2026.
[24] *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].
[25] *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8]; *O8OPCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33]; *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [15].
[26] *Trade Practices Commission v Sterling* (1979) 36 FLR 244 at 245246 if the dominant purpose is reasonably anticipated litigation; and *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 136 FCR 357 at [41], [49], [52] and [105]-[109] if the dominant purpose is the provision of legal advice. In this regard, I note that access may be refused to information under the RTI Act which comprises exempt information (section 47(3)(a) of the RTI Act). Under schedule 3, section 7 of the RTI Act, information will comprise exempt information if it is subject to legal professional privilege – this exemption reflects the requirements for establishing legal professional privilege at common law.
[27] Section 23 of the RTI Act.
[28] Section 44 of the RTI Act.
[29] Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.
[30] Sections 47(3)(e) and 52 of the RTI Act.
[31] Section 52(1)(a) of the RTI Act.

agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.[32]

19. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures and the nature and age of requested documents.[33] 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 creation of that specific document. In such instances, 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.

20. Where 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, depending on which of the key factors are most relevant in the circumstances. 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.[34]

Searches, evidence and submissions

21. As noted at paragraph 5.a., the applicant, on external review narrowed the scope of Parts 1 to 5 of the access application. The narrowed scope is as follows:

> *Emails/ correspondence exchanged by* [named] *Lawyers relating to replacement of boundary fencing between* [property A] *and* [applicant's] *Property and* [property B] *and* [property C]
>
> *Emails/ correspondence exchanged between* [property A] *and* [business name 1] *Fencing and* [property A] *and* [business name 2] *Fencing regarding*
> *(i)* *shared boundary fencing including* [property A]*'s three shared boundaries with* [applicant] *Property*
> (ii) *shared boundary fencing between* [applicant] *property and* [named individual] *Property,*
> *which is likely to also include reference to boundary fencing shared between* [property C] *and* [property A].
>
> *Emails/ correspondence exchanged between* [Loss Adjusters] *(on the instructions of Qld Treasury/ Crown Law) with* [named individual] *which relates to shared boundary fencing which includes boundary fencing shared with the* [applicant] *Property,*

---

[32] Section 52(1)(b) of the RTI Act.
[33] 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]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].
[34] Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI 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.

which is likely to also include reference to boundary fencing shared between [property C] *and* [property A].

Emails and correspondence exchanged between [property A]*'s Lawyers,* [named] *Lawyers and Crown Law and or Qld Treasury relevant to shared boundary between* [property A] *and* [applicant] *Property and* [applicant] *Property and* [named individual] *property,*
which is likely to also include reference to boundary shared between [property C] *and* [property A].

Documents in the possession of QT and Crown Law

22. QT conducted searches in respect of the narrowed scope and one document – a fencing quote – was located in QGIF's possession or control. As previously explained at paragraphs 10 to 15, this document is outside the scope of the application.

23. In relation to the any further documents responsive to the narrowed scope, QT submitted that:[35]

    a. enquiries were undertaken with the relevant staff of QGIF involved in claims relating to the fire that occurred in 2023 using the particularised list of documents set out in the narrowed scope
    b. such searches were conducted in the locations where it could reasonably be expected to locate the information and those staff confirmed that no documents (with the exception of the fencing quote referred above) were located in response
    c. QGIF arranged for the documents (including electronic) of Crown Law to be searched, and no further documents were located
    d. therefore, if the information existed, the searches performed would have located it.

24. OIC conveyed QT's submissions to the applicant.[36] The applicant disagreed with QGIF's searches and submitted that given '[property A]'s … *approach it is not possible that* [property A] *is not corresponding ongoing with Crown Law and Treasury regarding its objective to be financially compensated*' for the damage to the boundary fencing.[37] The applicant also submitted that:

    I respectfully request that the OIC require the legal team at Crown Law to directly review the material Crown Law holds and QGIF holds and [Loss Adjusters] *holds which I submit not only exists but is accessible through RTI rather than exempt.*

25. QT provided detailed information regarding where the searches were conducted including locations, terms and details of the searches directed to QGIF and Crown Law relating to the narrowed scope and submitted that:[38]

[35] Email dated 29 August 2025.
[36] On 9 September 2025.
[37] Submissions dated 03 October 2025.
[38] Email dated 29 August 2025.

- *I am satisfied that, if the information existed, the searches performed would have located it.*
- *Taking into account my knowledge and experience of the filing systems and administrative processes of this agency, I am satisfied that Queensland Treasury has taken all reasonable steps to locate the information.*
- *On the basis of the above, I submit that access to the remaining documents particularised in Annexure A may be refused on the basis that they do not exist: sections 47(3)(e) and 52(1)(a), Right to Information Act 2009 (Qld).*

26. QT also confirmed that:[39]

> *QT has taken all reasonable steps in compliance with the RTI Act to locate the information sought by the applicant, both in respect of the RTI application and the specified scope being the subject of this external review. As such, further searches are not required.*

27. Having examined the information available to me, including QT's submissions, the records of searches completed by QGIF and Crown Law, the extent of the searches conducted, and the fencing quote attachment located by QT (which as mentioned above falls outside the application), I am satisfied that targeted searches and inquiries have been undertaken by QT (including by QGIF and Crown Law) to locate information relevant to the terms of the narrowed scope.

28. I acknowledge the applicant's concern that property A is seeking that the applicant '[p]*ay the significant cost to replace the fencing'*[40] and the applicant's understanding that such payment would be covered by property A's claim and therefore communication between Crown Law, QGIF and property A must have occurred in relation to the damage to the boundary fencing. However, QGIF and Crown Law have conducted the relevant searches and as a result no further documents – apart from the fencing quote – were located.

29. Based on the information set out in the preceding paragraphs, I am satisfied that all relevant searches (including by QGIF and Crown Law) have been conducted in locations where it would be reasonable to expect documents relevant to the narrowed scope to be found. In the circumstances, I am unable to identify any further searches that would be reasonable for QT (or Crown Law) to undertake.

30. For the reasons set out above, I am satisfied that QT and Crown Law have taken all reasonable steps to locate any documents relevant to the narrowed scope which are in the **possession** of QT and Crown Law. Necessarily this conclusion includes documents in QT's **control** because they are documents in Crown Law's possession which QT, as client, is entitled to obtain from Crown Law, as QT's lawyer.

31. A question arises, however, in relation to documents that are in the possession of the Loss Adjuster alone, and whether these are in the **control** of QT per se, or the control of Crown Law and therefore QT as Crown Law's client. I will now address this question.

---

[39] Submissions dated 12 December 2025.
[40] Submissions dated 3 October 2025.

Documents in Loss Adjusters' possession alone

32. As discussed above, the outcome of the searches and inquiries made by QT in relation to the narrowed scope was conveyed to the applicant along with OIC's preliminary view that QT had taken reasonable steps to locate the documents sought in the narrowed scope and access to documents may be refused on the basis they are nonexistent.[41] In response, the applicant disagreed and indicated that that further searches should also be conducted by the Loss Adjusters engaged by Crown Law. OIC conveyed the applicant's submissions to QT for consideration. In response, QT stated:[42]

> *…'Queensland Corrective Services notified QGIF of potential claims arising from the incident and QGIF immediately engaged Crown Law to act on their behalf. Crown Law subsequently engaged* [Loss Adjusters] *and Crown Law's engagement of* [Loss Adjusters] *remained in effect up to and including 7 May 2025 (being the end of the time period the subject of the RTI application).*
>
> *Any documents that* [Loss Adjusters] *hold and have not provided to Crown Law are not "client documents."*
>
> *QT are not required to cause* [Loss Adjusters] *to undertake a search of documents that they hold or to provide documents not previously supplied to Crown Law or QGIF.* [Loss Adjusters] *is a private entity and is not an "agency" as defined in the RTI Act. QT are required to cause a search for documents in their control, such as those client documents held by Crown Law. As outlined below, QT have arranged for such searches to be undertaken by Crown Law.*

33. OIC requested further information from QT regarding the nature of the relationships between QGIF, Crown Law and the Loss Adjusters.[43] In response, QT submitted:[44]

- *We are unable to comment on the relationship with Crown Law and* [Loss Adjusters] *as it concerns matters that are subject to legal professional privilege*
- *QGIF have caused Crown Law to undertake searches to locate information sought by the applicant in the specified scope. The results of such searches are outlined in the Department's previous submissions. The Department is entitled to access "client documents" held by Crown Law.*
- *Any documents that* [Loss Adjusters] *may hold and have not provided to Crown Law are not "client documents." Accordingly, there is no legal basis for QGIF to direct* [Loss Adjusters] *undertake searches to locate information sought by the applicant.*

34. QT further submitted:[45]

- *Queensland Corrective Services ('**QCS**') provided notification to QGIF of potential claims arising from an incident that occurred on or around* [date] *2023 at the* [location] *('the incident').*

---

[41] Letter dated 31 October 2025.
[42] Submissions dated 12 December 2025.
[43] Correspondence dated 2 February 2026.
[44] Submissions dated 16 February 2026.
[45] Submissions dated 26 March 2026.

- *QGIF took over management of the claims arising from the incident on QCS' behalf. As part of this management, QGIF instructed Crown Law and funds the legal costs incurred by Crown Law.*
- *Crown Law engaged* [Loss Adjusters] *and such engagement of* [Loss Adjusters] *remained in effect up to and including 7 May 2025 (being the end of the date range the subject of the RTI application).*
- [Loss Adjusters] *are a third party engaged by Crown Law. This relationship differs from that between QGIF and Crown Law, being a solicitor and client. The relationship between QGIF and Crown Law enables QT to seek "client documents". Detailed submissions have been previously provided in relation to searches undertaken in respect of documents held by Crown Law.*
- *There is no legal basis for QGIF to direct* [Loss Adjusters] *to provide documents that are not held by Crown Law or QT. In other words, QT does not have a present legal entitlement to obtain documents from* [Loss Adjusters].

35. Whilst on external review, QT initially indicated that QCS, not QGIF, was to be considered the client of Crown Law, QT then clarified this position and confirmed that QGIF was the client for the purposes of this review and not QCS.[46]

36. However, in terms of documents in the possession of the Loss Adjusters, but not Crown Law:

- QT maintains its position that Crown Law, and therefore QGIF, have no legal entitlement to require the Loss Adjusters to provide these documents – and as such, further searches by the Loss Adjusters cannot be directed.[47]
- On the other hand, the applicant maintains that the Loss Adjusters were appointed directly by QGIF and QGIF is legally entitled to the Loss Adjusters' documents and/or Crown Law's arrangements with the Loss Adjusters entitle Crown Law, and therefore QGIF, to such documents.[48]

37. The applicant's and QT's submissions require consideration of whether documents in the possession of the Loss Adjusters – but not Crown Law – are documents 'documents of an agency' for the purpose of this review.

Relevant law about documents of an agency

38. Section 12 of the RTI Act relevantly defines 'document of an agency' as follows:

> *...a document...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.*

39. In earlier decisions, the Information Commissioner has found that mere physical possession of a document[49] by an agency is sufficient to meet the above

[46] By telephone dated 4 June 2026 confirmed by email dated the same day.
[47] Submissions dated 12 December 2025, 16 February 2026 and 26 March 2026.
[48] Submissions dated 7 May 2026 and 28 June 2026.
[49] Including electronic documents. See section 36 and Schedule 1 of the *Acts Interpretation Act 1954* (Qld).

requirements and subject the document to the operation of the RTI Act.[50] Possession does not require formal legal possession nor is it concerned with the means by which the documents came into the agency's possession.[51] However, it is limited to instances where the agency is legally entitled to produce the requested documents.[52]

40. Physical possession is not, however, the sole test as to whether a document is a document of an agency. A document not in the physical possession of an agency will nevertheless be a 'document of an agency' if it is 'under the control' of the relevant agency. This includes documents to which an agency is 'entitled to access'.[53] The Information Commissioner has previously explained that a document will be under the control of an agency[54] where the agency has a present legal entitlement to take possession of the document.[55]

41. If the information sought is not a document of an agency under section 12 of the RTI Act, there is no right of access to it under section 40(1)(a) of the IP Act.

Does QT have legal entitlement to documents held by Loss Adjuster alone?

42. QT submits that '[T]*here is no legal basis for QGIF to direct* [Loss Adjusters] *to provide documents that are not held by Crown Law or QT. In other words, QT does not have a present legal entitlement to obtain documents from* [Loss Adjusters].

43. As part of this review, OIC conveyed QT's submissions to the applicant. The applicant disagreed[56] and maintained their view that QCS is not the client for the purposes of ownership of the documents held by Crown Law and the Loss Adjusters and instead, rather QGIF is the client, and QGIF appointed the Loss Adjusters. In support of their submissions, the applicant provided:

    a. extracts of an email from an employee of Crown Law to the applicant relevantly stating: '*I act for the Queensland Government Insurance Fund (QGIF), the State insurer for Queensland Corrective Services (QCS)*'
    b. extracts of email from an employee of the Loss Adjusters to the applicant relevantly stating: *'I am a Liability Loss Adjuster appointed by QGIF in relation to a claim for fire related damage to your property'*.

[50] *Kalinga Wooloowin Residents Association Inc. and Department of Employment, Economic Development and Innovation; City North Infrastructure Pty Ltd (Third Party)* (Unreported, Queensland Information Commissioner, 19 December 2011) (***Kalinga***) and *Kalinga Wooloowin 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 (***Holt***). While *Holt* concerned section 7 of the *Freedom of Information Act 1992* (Qld) (repealed), that provision was framed in substantially similar terms to section 12 of the RTI Act. I am satisfied relevant principles apply equally to section 12.
[51] *Kalinga* at [14]-[15] and [19].
[52] *Carmody v Information Commissioner & Ors (No. 4)* [2018] QCATA 17 at [66] per Hoeben J.
[53] *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 30 (26 November 2015).
[54] Or one which an agency is entitled to access.
[55] *Price and the Nominal Defendant* (1999) 5 QAR 80, at [18] (***Price***). The Information Commissioner went on in *Price* at [33] to explain that the *'…ruling test imposed by the definition of "document of an agency" is comprised in the words "in the possession or under the control of an agency". The remaining words of the definition illustrate, rather than extend, the ruling test'*.
[56] Submissions dated 7 May 2026.

44. OIC conducted further enquiries with QT's regarding the relationship between QGIF, Crown Law and the Loss Adjusters. In response to the applicant's contentions, QT confirmed its position to be that:[57]

   a. QGIF, not QCS is Crown Law's client.[58]
   b. QT/QGIF did not appoint the Loss Adjusters. The contemporaneous comments of the Loss Adjuster employee to the applicant by email that the Loss Adjuster was appointed by QGIF (as noted at paragraph 43.b. above) are incorrect.
   c. Rather, Crown Law appointed the Loss Adjusters, and the nature of Crown Law's arrangements with the Loss Adjusters do not entitle Crown Law to request, on behalf of QT/QGIF, information from the Loss Adjusters which underpins reports and other type of documents provided by the Loss Adjusters to Crown Law.

45. This position was conveyed to the applicant who, in response, submitted[59] that OIC could not make a finding consistent with QT's position unless and until OIC had required the following:

   (i) *Crown Law to provide to the OIC a sworn statement attaching its instructions of September 2023 to* [the] *Loss Adjustors* [sic] *(to act)* <u>and</u>
   (ii) *a sworn statement from* [the employee of the Loss Adjusters who sent the applicant the email noted at paragraph 43.b. above]*, asking* [that employee] *to confirm whether the content of* [the employee] *email to me … was correct, and if not, why was the feedback* [the employee] *provided incorrect*.

46. However, QT responded to OIC's queries, OIC sought confirmation, and this was provided by QT. In the circumstances, I consider it reasonable and preferrable to accept statements specifically responding to OIC's queries made by both QT's General Counsel and a Senior RTI Officer, rather than an earlier statement made in the email by the Loss Adjusters' employee noted at paragraph 43.b. above, which I consider may reasonably be construed as explaining the Loss Adjusters' role in a practical manner appropriate for a lay person, rather than defining legal roles and relationships between the parties. The applicant's submissions[60] about their engagement with this employee and their understanding of that engagement in light of their own professional experience, including regarding insurance matters, are not sufficient to persuade me otherwise.[61]

47. Based on the information provided by QT, I am satisfied that there is insufficient material to indicate a legal entitlement of QT per se, or a legal entitlement of Crown Law and therefore of QT as client, to **control** the use or physical possession of documents held by the Loss Adjusters not previously provided to Crown Law. This, in my opinion, appears reasonably consistent with usual practice when third parties such as loss adjusters become involved in circumstances of this type, where

---

[57] Submissions dated 9 June 2026.
[58] By telephone dated 4 June 2026 confirmed by email dated the same day.
[59] Submissions dated 28 June 2026.
[60] Submissions dated 7 May 2026 and 28 June 2026.
[61] For sake of completeness, I confirm there is nothing before me to suggest that any QT officer has provided false or misleading information to OIC, contrary to section 177 of the RTI Act.

arrangements generally entitle the solicitor and client to the certain documents such as assessments and reports settled by the third party for the purpose of legal advice and/or litigation, but not the information held by the third party underpinning or related to the provided documents.

48. In these circumstances, I am satisfied that there is no legal entitlement evident to support a conclusion that QGIF has **control** over documents that are in the possession of the Loss Adjusters alone. As such, I must conclude that, to the extent such documents may exist, they cannot properly be characterised as *'documents of* [the] *agency'* (within the meaning of section 12 of the RTI Act) to whom the access application has been made. Given this, I am satisfied that there is no right of access to any documents that are in the possession of the Loss Adjusters alone under section 23(1)(a) of the RTI Act.

Summary

49. In summary, with respect to documents responsive to Parts 1 to 5 as raised in the applicant's narrowed scope, for the above reasons I find that:

    a. any further documents in the possession or control of QT per se, or in the possession or control of Crown Law and therefore QT as Crown Law's client, may be refused on the ground that they do not exist; and
    b. any documents in the Loss Adjusters' possession alone are not in the possession or control of QT, and therefore are not documents of the agency to whom the access application has been made.

50. If I have erred in my finding at paragraph 49.b., and documents in the Loss Adjusters' possession alone are considered responsive to the narrowed scope, to the extent such documents exist, I would nevertheless consider that they comprised information subject to legal professional privilege.[62]

Documents responsive to Part 6

Relevant Law

51. The right to be given access to documents of an agency noted at paragraph 17 above is also subject to grounds for refusing access.[63]

52. One such ground is in section 55 of the RTI Act. Section 55 allows a decision maker to neither confirm nor deny the existence of a document which, if it existed, would contain prescribed information.

53. '*Prescribed information'* is defined[64] as:

    (a) exempt information mentioned in schedule 3, section 1, 2, 3, 4, 5, 9 or 10; or

---

[62] See footnote 26 above.
[63] Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.
[64] In schedule 5 of the RTI Act.

(b) personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b).

54. 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.

55. Determining this issue essentially requires a decision maker to conduct a hypothetical public interest balancing exercise, making a judgement as to where the balance of the public interest would lie, were requested documents to exist. This involves a notional application of the public interest balancing test prescribed in section 49 of the RTI Act, including identifying public interest factors that would favour disclosure and nondisclosure, assuming the existence of requested documents.[65]

56. 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.[66]

Submissions

57. In Part 6 of the access application, the applicant requested access to:

> *6. correspondence exchanged authored by* [two named individuals] *regarding boundary fencing between* [applicant's property] *and* [named individual's] *property including correspondence exchanged with and by Crown Law.*

58. QT's decision was to neither confirm nor deny the existence of these documents, on the basis that if such documents existed, they would contain prescribed information.

59. During external review, OIC conveyed a preliminary view to the applicant that QT's decision was justifiable.[67] The applicant disagreed with this view and provided submissions[68] in support to their position – particularly:

> *…disclosing the information will assist in ensuring that the government moving forward is accountable for its actions and decisions. No support has been provided by the State two years post the catastrophic impact of the fire.*
> *… requiring disclosure of the information will promote accountability to help ensure that government agencies and officials are accountable for their actions and decisions.*

60. To the extent these submissions relate to QT's reliance on section 55 of the RTI Act and/or the hypothetical public interest balancing test, I have considered them in this decision.

---

[65] *Nadel and Queensland Police Service* [2020] QICmr 19 (6 April 2020) at [15].
[66] Section 87(1) of the RTI Act.
[67] Letter dated 9 September 2025.
[68] Submissions dated 3 October 2025.

61. QT's decision[69] explained that '*any response given by Queensland Treasury to part 6 of your request would reveal personal information of individuals. There is a strong public interest in protecting the privacy of individuals. As such, I consider that answering part 6 of your application would not be in the public interest*'.

Findings

62. Nothing in these Reasons for Decision should be taken to confirm nor deny that the documents sought in the access application exist.

63. For section 55 of the RTI 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 '*prescribed information*'. As noted at paragraph 53 above, one type of prescribed information is personal information, the disclosure of which would, on balance, be contrary to the public interest.

Would the documents (if they exist) comprise or contain personal information?

64. In terms of the 'personal information' element of this type of prescribed information, as I am making findings in relation to a 'neither confirm nor deny' issue, I am limited in the level of detail I can provide; however, given the wording of Part 6, it is reasonable to expect that, if the requested documents exist, they would confirm that certain named individuals have engaged with QT and/or Crown Law. It is likely that they would contain correspondence between the named individuals and QT and/or Crown Law including detail of their communications and, in doing so, would identify these individuals and comprise the personal information of those individuals.

Would disclosure of the documents (if they exist) be contrary to the public interest?

65. In terms of the 'disclosure of which would, on balance, be contrary to the public interest' element of this type of prescribed information, the RTI Act explains the steps that the decision-maker must take in deciding the public interest.[70] It also identifies a non-exhaustive list of factors in Schedule 4 that may be relevant to deciding the balance of the public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.

66. I do not consider any irrelevant factors[71] arise in this case and I have not taken any into account in making this decision.

67. I acknowledge that if documents as requested by Part 6 exist, their disclosure could reasonably be expected to reveal actions taken by QT, reveal reasons and background information in relation to the named individual's dealings with QT and

[69] Decision dated 11 June 2025.
[70] Section 49(3) of the RTI Act.
[71] Schedule 5, part 1, items 1-4 of the RTI Act.

Crown Law and enhance the government's accountability to some extent[72] and I therefore afford these factors moderate weight.

68. However, if QT were to process the request for documents at Part 6, rather than neither confirming nor denying the existence of the requested information, QT would confirm whether or not the named individuals have had dealings and have interacted with Crown Law or QT. If such communications exist, the factors favouring nondisclosure - namely the personal information and privacy factors[73] protecting the personal information of the named individuals and their interactions with QT – would carry significant weight.

69. The applicant submitted[74] that access to the information requested at Part 6 would be expected to contribute to allowing or assisting inquiry into possible deficiencies in the conduct or administration of an agency or official.[75] In this regard, I note that the applicant, throughout the external review has raised a number of concerns about the conduct of public officers and about the actions of specific government agencies and persons, including QT officers. I acknowledge that the information sought (if exist) could assist the applicant in conducting further enquiries to some extent. However, there is nothing before me to indicate that QT officers were engaging in misconduct, improper or unlawful conduct or that there are any deficiencies in their conduct. As such, I only afford this factor low to no weight.

70. The applicant's submissions suggest that the applicant is aware of the personal contact details for the named individuals and rely on the factors favouring disclosure of the information requested. While I acknowledge that some such information may be known to the applicant, this does not, of itself, warrant further disclosure of information under the RTI Act, where there can be no restriction on its use, dissemination or re-publication.[76] I do not consider that, in the circumstances of this matter, the weight of the nondisclosure factors is in any way reduced.

71. On balance, I am satisfied that the factors favouring nondisclosure carry determinative weight in the circumstance of this case and therefore, if the documents sought by the applicant did exist, they would contain personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act. Accordingly, QT was entitled to neither confirm nor deny the existence of the documents to which access is sought under section 55 of the RTI Act.

Conclusion

72. The above are the reasons for my decision set out at page 2.

---

[72] Giving rise to the factors favouring disclosure at schedule 4, part 2, items 1, 3 and 11 of the RTI Act.
[73] Schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.
[74] External review application dated 25 June 2025.
[75] Schedule 4, part 2, item 5 of the RTI Act.
[76] *FLK and Information Commissioner* [2021] QCAT 46 at [17].