



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>O85 and Queensland Police Service [2023] QICmr 40 (28 August 2023)</i></b>
<b>Application Number:</b>	<b>316732</b>
<b>Applicant:</b>	<b>O85</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>28 August 2023</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - information relating to traffic offences and driving history - personal information and privacy of an individual other than the applicant - whether disclosure of information would, on balance, be contrary to public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE - whether agency has taken all reasonable steps to locate documents - whether access to information may be refused under sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information<sup>2</sup> concerning a fatal motor vehicle accident. The applicant requested a range of information about QPS's investigation into the accident, charges against and prosecution of the at-fault driver and information about the driver's traffic history subsequent to the accident.<sup>3</sup>
2. QPS decided<sup>4</sup> to refuse access to all information responding to the application on the ground that disclosure would, on balance, be contrary to public interest. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of QPS's refusal of access decision.

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<sup>1</sup> Access application dated 8 February 2022.

<sup>2</sup> For the period 27 July 2017 (date of the motor vehicle accident) to 8 February 2022.

<sup>3</sup> The application expressly excluded witness statements, photos/CCTV, autopsy and coroner reports.

<sup>4</sup> Decision dated 27 May 2022.

<sup>5</sup> External review application dated 31 May 2022.

3. During the external review, QPS reconsidered its disclosure position on the originally located documents<sup>6</sup> and agreed to release some of that information to the applicant. QPS also undertook additional searches and located further documents<sup>7</sup> which it also agreed to release, partially, to the applicant. Agreement was also reached with the applicant not to pursue access to certain information, but he maintained his position that the driver should not be entitled to privacy with respect to his traffic history/offence information, and that it should therefore, be released in its entirety. The applicant also remains generally concerned about the adequacy of QPS's searches.
4. For the reasons explained below, I vary QPS's original decision. I find that access to the information remaining in issue may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest. I also find that QPS has taken reasonable steps to locate all documents requested by the applicant, and that access to any further documents may be refused on the ground they are nonexistent or unlocatable.

## Background

5. The applicant's daughter was a pedestrian when she was fatally injured by a motor vehicle in late July 2017. QPS charged the driver of the vehicle, and the driver later pled guilty to the relevant charge and was sentenced in open court in early 2019.
6. The applicant applied to QPS to access any information held about the investigation and prosecution of the driver in relation to the accident. The applicant also requested access to information about the investigation and prosecution of other charges appearing on the driver's traffic history, including in relation to a subsequent incident in August 2018 (**2018 incident**).<sup>8</sup>
7. The applicant made a separate RTI Act access application to the Office of the Director of Public Prosecutions (**ODPP**), also seeking access to information about the prosecution of the driver. That review<sup>9</sup> involves different documents<sup>10</sup> that were located by ODPP however, the reviews have been considered concurrently as they raise similar public interest considerations. I have today issued a separate decision on the ODPP review.<sup>11</sup>

## Reviewable decision

8. The decision under review is QPS's decision dated 27 May 2022 refusing access to information under section 47(3)(b) of the RTI Act, on the ground that it comprises information the disclosure of which would, on balance, be contrary to public interest.

## Evidence considered

9. Significant procedural steps relating to the external review are set out in the appendix to these reasons. In reaching my decision, I have had regard to the submissions, evidence, legislation, and other material referred to throughout these reasons (including footnotes and appendix).

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<sup>6</sup> 577 pages were originally located by QPS.

<sup>7</sup> 38 pages.

<sup>8</sup> The applicant provided OIC with an unredacted copy of the first page of the driver's traffic history for the period up to 23 April 2021 with his submission dated 29 May 2023, advising that he 'was able to obtain [it] from another source'.

<sup>9</sup> External Review No. 316744.

<sup>10</sup> Noting however, there are some duplicated between the two matters.

<sup>11</sup> F86 and Office of the Director of Public Prosecutions [2023] QICmr 41 (28 August 2023).

10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>12</sup> I consider a decision-maker will be *'respecting, and acting compatibly with'* that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act. I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>13</sup> *'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.'*<sup>14</sup>

### Information in issue

11. QPS originally located 577 pages in response to the access application (**Original Documents**). During the review, QPS agreed to give the applicant access to some of the Original Documents.<sup>15</sup> Following further searches on review, QPS located more information (**Additional Documents**) and agreed to give the applicant access to some of that information.<sup>16</sup>
12. OIC conveyed a preliminary view on the remaining refused information to the applicant.<sup>17</sup> The applicant did not contest OIC's preliminary view that certain information could be excluded on the basis of irrelevance.<sup>18</sup> Accordingly, those pages do not form part of the information in issue and are not considered in these reasons.
13. OIC held a telephone conference with the applicant on 27 June 2023 in which he provided further submissions in support of his case.<sup>19</sup> He confirmed that he was primarily interested in obtaining access to any information held by QPS in relation to the 2018 incident and related investigation documents/correspondence. In that conversation, the applicant accepted<sup>20</sup> OIC's view that QPS had not located any logbooks in connection with the driver's Special Hardship Order<sup>21</sup> and also confirmed that he was not seeking access to personal information of third parties including witness statements, victim impact statements or photographs, nor instances in the partially released documents where his daughter's name had been redacted.<sup>22</sup>
14. For the reasons set out in paragraphs 11 to 13 above, the information which forms the subject of this decision has been significantly reduced. I would observe that despite the applicant having ongoing and significant concerns with the QPS investigation, he readily engaged in productive negotiations with OIC to focus his submissions on the particular information of interest to him, enabling OIC to refine the issues for consideration. As a result, the information which is the subject of this decision is limited to the 20 pages held

<sup>12</sup> Section 21 of the HR Act.

<sup>13</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>14</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw *'no reason to differ'* from our position).

<sup>15</sup> Including parts of the QPRIME occurrence report and records created by the Forensic Crash Unit (20 full pages and parts of 53 pages).

<sup>16</sup> 38 pages were located of which QPS granted access to 12 full pages and parts of 6 pages relating to the July 2017 accident, including the QPRIME occurrence report, a QPS officer's witness statement and a QPS property receipt. The remaining 20 pages relate to the August 2018 incident (to which full access was refused and which remain in issue in this review).

<sup>17</sup> During a telephone conversation on 30 March 2023, in a letter dated 24 April 2023 and confirmed on 27 June 2023 in a telephone conversation.

<sup>18</sup> Including the extracted contents of the driver's mobile phone which was obtained by QPS as evidence. That extraction report comprised over 330 pages, with only one page containing information relevant to the time of the accident. The applicant did not seek to pursue access any part of the extraction report.

<sup>19</sup> The applicant provided submissions in relation to both reviews but for the purpose of these reasons for decision, I will deal only with those submissions pertaining to QPS documents.

<sup>20</sup> Later confirmed to the applicant in an email dated 28 June 2023.

<sup>21</sup> The documents disclosed to the applicant in the ODPP review revealed that at the time of the accident, the driver was subject to a Special Hardship Order due to previous driving offences.

<sup>22</sup> I have therefore, not reached a view on refusal of access to that information, under the RTI Act, in these reasons.

by QPS in connection with the 2018 incident (**Information in Issue**).<sup>23</sup> QPS maintains that disclosure of that information would on balance, be contrary to the public interest.

15. The RTI Act constrains me from describing the particular nature of the Information in Issue.<sup>24</sup> However, the remaining documents under consideration can generally be described as information created by QPS in relation to the 2018 incident including:
- a QPRIME report<sup>25</sup>
  - a property receipt<sup>26</sup>
  - two witness statements of QPS officers;<sup>27</sup> and
  - a court brief.<sup>28</sup>

### Issues for determination

16. The issues for determination are whether:
- access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act on the ground that disclosure would, on balance, be contrary to public interest; and
  - QPS has taken all reasonable steps to locate documents responding to the access application and access to further documents may be refused under section 47(3)(e) of the RTI Act on the ground they are nonexistent or unlocatable.

### Refusal of access - contrary to public interest

#### Relevant law

17. The RTI Act gives a person a right of access to documents of a Queensland government agency.<sup>29</sup> This right is however, subject to other provisions of the RTI Act, including grounds on which access to information may be refused. Relevantly, access to information may be refused if disclosure would, on balance, be contrary to the public interest.<sup>30</sup>
18. To decide whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act requires a decision maker to:<sup>31</sup>
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
19. 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. I have

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<sup>23</sup> Pages 19 to 38 of the Additional Documents.

<sup>24</sup> Section 108 of the RTI Act.

<sup>25</sup> Pages 19-24 of the Additional Documents.

<sup>26</sup> Pages 25-27 of the Additional Documents.

<sup>27</sup> Pages 28-34 of the Additional Documents.

<sup>28</sup> Pages 35-38 of the Additional Documents.

<sup>29</sup> Section 23(1)(a) of the RTI Act.

<sup>30</sup> Sections 47(3)(b) and 49 of the RTI Act. 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. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>31</sup> Section 49(3) of the RTI Act.

considered these lists of factors,<sup>32</sup> together with other relevant information in reaching my decision. I have had regard to the RTI Act's pro-disclosure bias<sup>33</sup> and Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.<sup>34</sup> Also, I have not taken any irrelevant public interest factors into account in making this decision.

## Findings

### **Factors favouring disclosure**

20. The applicant is dissatisfied with the QPS investigation and the subsequent prosecution of the driver. He alleges that QPS failed to adequately collect relevant evidence and also argues that relevant evidence was not presented to the Court at the driver's sentencing hearing.<sup>35</sup> The applicant submits that the information he is seeking will demonstrate whether or not certain steps were taken during the investigation.<sup>36</sup> He is also seeking to establish dates of particular communications between QPS and the ODPP and find out the reasons why decisions were (or were not) made.<sup>37</sup> He submits that the requested information is needed to support future complaints he intends to make in relation to the conduct of the QPS investigation and prosecution.<sup>38</sup> The applicant also submits that the release of the documents sought '*should be automatic*' and that the driver should not be entitled to a right to privacy in the circumstances.<sup>39</sup>
21. Taking into account the applicant's submissions and the nature of the Information in Issue, I find that there are several relevant factors favouring disclosure; I examine these, as they apply in the circumstances of this case, below.
22. I accept that disclosure of the Information in Issue would provide the applicant with a more complete picture of what is held by QPS in relation to the driver and his traffic history, though noting the information is limited to the circumstances of the 2018 incident. This would, I consider, advance the accountability<sup>40</sup> and transparency of QPS to the extent that it would show how QPS deals with particular traffic incidents, the type of evidence gathered by QPS and generally inform the community of QPS's operations.<sup>41</sup> I also observe however, because the Information in Issue is limited to the 2018 incident, it does not show how QPS conducted the investigation into the July 2017 accident, nor how it communicated with the ODPP in relation to the prosecution of the driver.
23. It is reasonable to expect that information regarding an investigation into a fatal motor vehicle accident would be likely to generate a significant level of community interest.<sup>42</sup> However, as stated above, the Information in Issue relates *exclusively* to the 2018 incident. While the 2018 incident *preceded* the date of the driver's sentencing for the 2017 accident<sup>43</sup>, the Information in Issue does not reveal any information about the

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<sup>32</sup> I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below.

<sup>33</sup> Section 44 of the RTI Act.

<sup>34</sup> Section 47(2)(a) of the RTI Act.

<sup>35</sup> Submission to OIC verbally on 27 June 2023. The sentencing hearing was in February 2019.

<sup>36</sup> Submissions to OIC dated 29 May 2023.

<sup>37</sup> Submissions to OIC dated 31 May 2022.

<sup>38</sup> Submissions to OIC dated 29 May 2023 and verbally on 27 June 2023.

<sup>39</sup> Submission to OIC dated 29 May 2023 and verbally on 27 June 2023.

<sup>40</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>41</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>42</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>43</sup> In February 2019.

accident investigation or decisions made by QPS in relation to that investigation.<sup>44</sup> I observe that some information about the investigation appears within the published reasons for judgment of the Court of Appeal.<sup>45</sup> As set out above, the applicant has also obtained access to some information through this review process, and through his application to the ODPP. In my view, the information already available to the applicant has served to discharge the accountability and transparency factors to a significant degree. For the reasons set out in this and the preceding paragraph, I afford moderate weight to these factors.

24. I acknowledge that the applicant is seeking to access any information to substantiate his concerns about the perceived shortcomings of the investigation and prosecution. With this in mind, I have considered whether disclosure of the Information in Issue could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency<sup>46</sup> or reveal the reason for a government decision or background contextual information.<sup>47</sup> As stated above, the Information in Issue does not reveal any information about the investigation process nor any communications between QPS and the ODPP regarding submission of evidence. I accept however, that disclosure of the Information in Issue would allow the applicant to scrutinise how the 2018 incident was handled by QPS, and reveal information that was available to QPS prior to the driver's sentencing. I afford these factors moderate weight in favour of disclosure.
25. I note the applicant's concern that certain evidence was not presented to the Court at sentencing. While it is beyond my jurisdiction to express a view on that issue, I acknowledge that the applicant intends to pursue future complaint processes to ventilate his broader concerns about the investigation and prosecution. In the circumstances, I consider that disclosure of the Information in Issue would, to some extent, contribute to the administration of justice generally<sup>48</sup> as it would enable the applicant to examine information about the 2018 incident and incorporate any information that *he considers* to be relevant, in future complaint processes.<sup>49</sup> For these reasons, I afford the administration of justice factor low weight.

#### ***Factors favours nondisclosure***

26. As outlined in paragraph 15 above, the Information in Issue exclusively relates to the 2018 incident. Due to information previously disclosed to the applicant, he is aware of the basic circumstances of that incident to the extent that it involved the driver and is in connection with a traffic offence for which the driver was later charged, and prosecuted (separately and subsequently to the prosecution for the offence pertaining to the 2017 accident).
27. While the RTI Act prevents me from describing the Information in Issue in particular detail,<sup>50</sup> I observe that it identifies the driver by name and photograph, contains extensive details about the driver's personal circumstances, details of the traffic offence and reveals the nature of interactions between the driver and QPS officers at the time of the

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<sup>44</sup> Released documents reveal that the indictment was originally presented in court against the driver on 16 July 2018. I further observe that this preceded the 2018 incident, and therefore, it is not unreasonable to conclude that the QPS investigation was complete at the time the indictment was presented. While the driver was not sentenced until February 2019, there is no evidence to suggest QPS conducted further investigations during the intervening period.

<sup>45</sup> Both the driver and the Attorney-General lodged appeals against sentence; both appeals were dismissed.

<sup>46</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>47</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>48</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>49</sup> I do not however, make any finding as to whether the Information in Issue establishes grounds for complaint or supports the applicant's assertions.

<sup>50</sup> Section 108 of the RTI Act.

incident. I am satisfied that the Information in Issue comprises the driver's *personal information*.<sup>51</sup>

28. The RTI Act recognises that disclosure of another individual's personal information could reasonably be expected to cause a public interest harm.<sup>52</sup> In conjunction with safeguarding a third party's personal information, the RTI Act also seeks to protect an individual's right to privacy from prejudice that could arise from disclosure.<sup>53</sup> The concept of privacy is not defined in the RTI Act, but it can be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>54</sup>
29. The applicant has provided OIC with evidence demonstrating he is aware of certain details regarding the 2018 incident.<sup>55</sup> The applicant also has had information about the driver disclosed to him in connection with the 2017 accident, investigation and prosecution through the RTI Act, and other avenues. I consider this existing knowledge lessens the weight of the privacy factor, but only to some degree. The fact remains that the Information in Issue contains extensive personal details about the driver and circumstances of a later, separate traffic incident for which the driver has been through a court process, and sentenced. In the circumstances, I am satisfied that the driver is entitled to have his personal information and private details, as they appear in the Information in Issue, protected from further scrutiny.
30. The applicant has argued that due to the driver's involvement in the 2017 accident, the driver should not be afforded privacy in relation to the subsequent 2018 incident. I understand that the applicant is grieving the loss of his daughter in tragic circumstances. However, the Information in Issue does not contain any shared personal information about the applicant's daughter<sup>56</sup> because the 2018 incident is separate to the 2017 accident. While I acknowledge the applicant considers both events are interrelated because they involve the same driver and traffic related offences, the circumstances of the 2018 incident do not involve the applicant's daughter as the 2017 accident did. Therefore, I find that any reduction in the weight of the privacy factor which was relevant to disclosure of information relating to the 2017 accident, does not apply in relation to the 2018 incident information.
31. The Information Commissioner has consistently found that individuals who are involved in QPS investigations are entitled to have their personal information and privacy protected due to the sensitive context in which the information appears.<sup>57</sup> I consider these factors apply here to favour nondisclosure of the information about the driver in connection with the 2018 incident. I have also taken into account that where information is released under the RTI Act, there can be no restriction or limitation on its further dissemination.<sup>58</sup>

<sup>51</sup> '*Personal information*' is '*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*' – see definition in schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld).

<sup>52</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>53</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>54</sup> *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22] 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 11 August 2008, at paragraph 1.56. The report is available at [https://www.alrc.gov.au/wp-content/uploads/2019/08/108\\_vol1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf).

<sup>55</sup> A copy of the driver's traffic record was provided to OIC by the applicant on 29 May 2023.

<sup>56</sup> For this reason, the 'eligible family member' factor in schedule 4, part 3, item 5 does not apply and I have not taken it into account.

<sup>57</sup> *L80 and Queensland Police Service* [2023] QICmr 28 (19 June 2023); *E41 and Queensland Police Service* [2022] QICmr 13 (17 March 2022); and *WL1T8P and Queensland Police Service* [2014] QICmr 40 (16 October 2014).

<sup>58</sup> Noting that '*there is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination*' – see *FLK v Information Commissioner* [2021] QCATA 46 at [17] per McGill J.

32. For the reasons set out above, I afford significant weight to the public interest factors favouring nondisclosure.

### ***Balancing the public interest***

33. In balancing the factors for and against disclosure<sup>59</sup> of the Information in Issue, I have taken into account the pro-disclosure bias and several relevant factors favouring disclosure. I have afforded moderate weight to the public interest factors associated with enhancing QPS' accountability and transparency, allowing or assisting inquiry into possible deficiencies in QPS conduct, and providing background/contextual information to decisions made by QPS. I also find that there is low weight to be afforded to the public interest in administration of justice generally.
34. Weighing against the pro-disclosure factors are two key factors favouring nondisclosure: prejudice to the driver's right to privacy and the public interest harm in disclosing personal information of the driver. In the particular circumstances of this case, I am satisfied that these factors carry significant and determinative weight to support a conclusion favouring nondisclosure of the Information in Issue.
35. On balance, I find that disclosure of the Information in Issue would be contrary to public interest and that access to it may therefore be refused under the RTI Act.

### ***Sufficiency of search***

36. The second issue for determination in this review is whether QPS has taken reasonable steps to locate all documents responding to the application. This has been an ongoing concern of the applicant throughout the review process despite QPS locating the Additional Documents. While the applicant has accepted OIC's view on the nonexistence of certain documents (see paragraph 13 above), I have considered below the sufficiency of searches undertaken by QPS for documents responding to this application, in particular, the request for the copy of the driver's traffic history record that was presented to the presiding judge at sentencing (**Traffic History Request**).<sup>60</sup>

### ***Relevant law***

37. 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.<sup>61</sup> The Information Commissioner has previously found that an applicant alleging missing documents has a practical onus to demonstrate there is a reasonable basis to request that the agency conduct further searches.<sup>62</sup>
38. Access to documents may be refused where they do not exist or cannot be located.<sup>63</sup> A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.<sup>64</sup> To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, including the agency's record-keeping

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<sup>59</sup> Section 49(3) of the RTI Act.

<sup>60</sup> Email to OIC dated 28 June 2023.

<sup>61</sup> 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.

<sup>62</sup> *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016) at [15]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *A51 and Office of the Health Ombudsman* [2020] QICmr 17 (24 March 2020) at [15].

<sup>63</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

<sup>64</sup> Section 52(1)(a) of the RTI Act. For example, a document has never been created.



practices and procedures.<sup>65</sup> By considering those 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 by the agency.

39. The Information Commissioner may also take into account the searches and inquiries conducted by an agency in determining whether a document is nonexistent. The key question then is whether those searches and inquiries amount to '*all reasonable steps*'.<sup>66</sup> What constitutes reasonable steps will vary from case to case as the search and inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.<sup>67</sup>
40. The RTI Act also contemplates circumstances where a document should exist (or has existed) but is *unlocatable*. Determining this requires an agency to demonstrate that it has taken all reasonable steps to find the document having regard to the circumstances of the case and the key factors mentioned in paragraph 38 above.

## Findings

41. The Original Documents related primarily to the dangerous driving charge, and therefore, OIC asked QPS to conduct further searches to locate information about other charges against the driver.<sup>68</sup> QPS located the Additional Documents through those further searches and provided<sup>69</sup> OIC with information about its searches, including tracer forms and responses from staff involved in completing the searches. QPS's search records reveal that searches were conducted at the relevant Station, Sunshine Coast District (**SCD**) Prosecutions and SCD Forensic Crash Unit for all records relating to the death of the applicant's daughter, charges against the driver, and any related correspondence between QPS and ODPP.
42. The applicant had submitted<sup>70</sup> that he was particularly concerned about the absence of documents relating to the 2018 incident. As demonstrated above, documents about the 2018 incident were located and form part of the Additional Documents. These are however, the 20 pages which constitute the Information in Issue and which I have found would, on balance, be contrary to the public interest to disclose.
43. The applicant remains concerned that the Traffic History Request has not been located.<sup>71</sup> The applicant submits that it was not provided to him by ODPP in response to that application and for this reason he considers it should be in the possession of QPS. Based on the information available to me, the Traffic History Request is not a document which it would be reasonable to expect to be held in QPS's possession. Having considered a traffic history request which was disclosed to the applicant by ODPP,<sup>72</sup> the

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<sup>65</sup> *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* addresses the application of section 28A of the now repealed FOI Act. Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant.

<sup>66</sup> As set out in *PDE* at [49].

<sup>67</sup> As set out in *PDE* at [38].

<sup>68</sup> Letter to QPS dated 1 December 2022.

<sup>69</sup> Submissions to OIC dated 6 February 2023 and 14 March 2023.

<sup>70</sup> Submission dated 29 May 2023.

<sup>71</sup> Submission to OIC dated 29 May 2023 and 28 June 2023 and verbally on 27 June 2023.

<sup>72</sup> In his submission to OIC dated 29 May 2023, the applicant identified that the traffic history request disclosed to him by ODPP appears at page 49 of File 4 of the ODPP documents. A copy of the ODPP documents have been provided to OIC in relation to external review 316744.

nature of that type of document is such that it comprises a request made by ODPP to Queensland Transport for the provision of a traffic history for a nominated person. I consider it is reasonable to expect that such a document would be held by the ODPP, rather than QPS. In any event, if QPS was ever in possession of the Traffic History Request sought by the applicant, having regard to the extensive searches that have been conducted to date on this application and during the review process, I find that the document cannot be located.

44. Given the terms of the application and taking into account QPS's knowledge and experience of its own record-keeping practices, I consider it is reasonable to be satisfied that the locations searched by QPS both originally and on review, would have captured any responsive information if it existed or could be located in QPS databases and physical locations. My findings in this regard are informed by the scope of the request being for documents regarding an investigation that was conducted by officers located at the relevant Station and the SCD Forensic Crash Unit and prosecution by SCD Prosecutions; the search records of QPS demonstrate that officers of these units all conducted searches for documents responding to the application.
45. In summary, based on the evidence available to me, I am satisfied that QPS has undertaken searches of the locations where it would be reasonable to expect that the requested information would be kept and it is reasonable to expect that if the documents sought existed, they would have been located. I am also satisfied that the searches were conducted by QPS staff familiar with applicable recordkeeping practices for the documents sought.
46. Having regard to all the matters discussed above, I am satisfied that QPS has undertaken all reasonable steps to locate the requested documents, and that access to further documents, including the Traffic History Request, may be refused on the ground they are nonexistent or unlocatable.<sup>73</sup>

## DECISION

47. I vary the decision of QPS by finding that:
  - access to the Information in Issue may be refused under section 47(3)(b) as disclosure would, on balance, be contrary to public interest; and
  - QPS has taken reasonable steps to locate all documents relevant to the application and access to further information may be refused on the ground that any further documents, including the Traffic History Request, do not exist or cannot be located under sections 47(3)(e) and 52 of the RTI Act.
48. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 28 August 2023**

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<sup>73</sup> Section 47(3)(e) of the RTI Act.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
31 May 2022	OIC received the application for external review.
1 June 2022	OIC requested QPS provide preliminary information.
4 June 2022	OIC received the preliminary information from QPS.
7 June 2022	OIC requested QPS provide further preliminary information. OIC received the further preliminary information.
1 July 2022	OIC advised the applicant and QPS that the application for external review had been accepted. OIC requested that QPS provided copies of the information in issue.
19 July 2022	OIC received copies of the information in issue from QPS.
1 December 2022	OIC communicated a preliminary view to QPS regarding the release of some information and requested QPS provide information about the searches conducted to locate the information in issue.
6 February 2023	QPS advised OIC it accepted the preliminary view and provided information about the searches conducted, including additional documents located as a result of further searches.
14 March 2023	OIC received additional information from QPS about the further searches.
30 March 2023	OIC requested QPS arrange disclosure of information to the applicant. OIC communicated a preliminary view to the applicant.
24 April 2023	OIC confirmed the preliminary view in writing to the applicant.
29 May 2023	OIC received submissions from the applicant.
27 June 2023	OIC discussed the issues remaining in the review with the applicant.
28 June 2023	OIC confirmed the issues remaining in the review in writing to the applicant. OIC received a submission from the applicant clarifying one of the issues remaining in the review.