



Decision and Reasons for Decision

Citation:	<i>Moore and Brisbane City Council</i> [2017] QICmr 35 (18 August 2017)
Application Number:	312930
Applicant:	Moore
Respondent:	Brisbane City Council
Decision Date:	18 August 2017
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - application for information related to meetings regarding a property - applicant contends additional documents exist - whether agency has taken all reasonable steps to locate documents but the documents cannot be found or do not exist - sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Brisbane City Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to a range of information generally related to meetings held regarding a development site (**Property A**).
2. Council located 485 responsive pages and decided¹ to:
 - release 374 pages and parts of 5 pages; and
 - refuse access to 106 pages and parts of 5 pages, on the grounds that the information was exempt information² or its disclosure would, on balance, be contrary to the public interest.
3. The applicant sought³ an internal review of Council's decision. On internal review, Council decided⁴ to grant access to some of the information it had refused but otherwise affirmed its original decision.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review, seeking access to the refused information and contending that all relevant documents had not been located.

¹ On 17 June 2016.

² As it was subject to legal professional privilege or its disclosure would found an action for breach of confidence.

³ On 8 July 2016.

⁴ On 5 August 2016.

5. For the reasons set out below, I vary Council's internal review decision and find that access to the additional documents the applicant contends should have been located may be refused on the ground that they are nonexistent or unlocatable.

Background

6. A number of residents, including the applicant, have made extensive, joint submissions to the Queensland Ombudsman. These submissions raise concerns about Council's conduct in dealing with issues raised by residents concerning Property A and seek an investigation (**Ombudsman submission**).⁵ The applicant has raised concerns similar to those identified in the Ombudsman submission in correspondence to Council's Chief Executive Officer.⁶
7. A number of residents, including the applicant, have also made access applications to Council seeking various types of information related to Property A. The applicant has indicated to OIC that he has accessed documents that have been disclosed by Council in response to other residents' access applications.

Reviewable decision

8. The decision under review is Council's internal review decision dated 5 August 2016.

Issue for determination

9. During the review:
 - Council accepted⁷ OIC's view that disclosure of one page and small portions of information on four pages would not, on balance, be contrary to the public interest and Council released that information to the applicant; and
 - the applicant accepted OIC's views that some information may be refused on the ground that other access to it was available, and disclosure of the remaining information refused by Council would, on balance, be contrary to the public interest.⁸
10. Taking into consideration the views accepted by the external review participants,⁹ and the matters therefore resolved informally during the review process, the remaining issue for determination is whether access to the additional documents that, in the applicant's view, should have been located by Council, may be refused under section 47(3)(e) of the RTI Act on the ground that they are nonexistent or unlocatable.

⁵ The applicant provided a copy of the Ombudsman submission to OIC with the external review application. A copy of a spreadsheet titled '*Qld Ombudsman Submission and expected BCC RTI released documents*' was provided to OIC with the applicant's 7 December 2016 submissions. A further copy of the Ombudsman submission, together with a document titled '*Addendum*' was provided with the applicant's 27 October 2016 submissions and a further copy of the spreadsheet was provided with the applicant's 26 April 2017 submissions.

⁶ The applicant's submissions dated 27 October 2016 included a copy of a letter dated 11 September 2016 to Council's Chief Executive Officer and others. Also, the applicant's email dated 10 February 2017 to Council's Chief Executive Officer and titled '*Information that BCC Prior Knowledge of Development Condition Breach on [Property A]*' was copied to OIC.

⁷ On 14 February 2017.

⁸ OIC conveyed a preliminary view on a number of issues to the applicant on 24 March 2017. The applicant was advised that if he did not respond to the preliminary view within a specified period, he would be taken to have accepted the preliminary view. Apart from submissions concerning the sufficiency of Council's searches and the refusal of access to certain information within 10 pages, the applicant did not respond to OIC's preliminary view within the specified period, and has not since provided a response. OIC conveyed a further preliminary view to the applicant on 7 July 2017 concerning a number of issues, including the refusal of access to the 10 pages. The applicant was advised that if he did not respond to the preliminary view within a specified period, he would be taken to have accepted the preliminary view. The applicant did not respond to OIC's preliminary view regarding the refusal of access to information in the 10 pages within the specified period, and has not since provided a response.

⁹ As set out in paragraph 9 above.

Evidence considered

11. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
12. The applicant provided a number of submissions to OIC, together with extensive supporting information.¹⁰ I have summarised and addressed the applicant's submissions below, to the extent they are relevant to the issue for determination.
13. Under the RTI Act, OIC's role on external review is limited to merits review¹¹ of specific government decisions about access to and, where relevant, amendment of government held information. In respect of the applicant's submissions that are not relevant to the issue for determination, these generally:
 - seek answers to a series of questions
 - raise concerns about the decision-maker's processing of the access application; and
 - relate to the applicant's concerns about perceived delay in holding a requested prelodgement meeting, the recording of information in Council's record keeping systems and Council's conduct (and the conduct of various officers) in providing information to and interacting with a number of residents concerning Property A.
14. OIC's jurisdiction under the RTI Act relates only to access to and, where relevant, amendment of documents held by agencies, and does not extend to any consideration of these questions and concerns.

Relevant law

15. Under the RTI Act, a person has a right to be given access to documents of an agency, unless access would, on balance, be contrary to the public interest.¹² There are some limitations on this right of access, including grounds for refusal of access.¹³
16. An agency may refuse access to a document if the document is nonexistent or unlocatable.¹⁴ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.¹⁵ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.¹⁶
17. To be satisfied that documents are *nonexistent*, the Information Commissioner has previously recognised that a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors. These key factors include:
 - the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)

¹⁰ As set out in the Appendix.

¹¹ Which is an administrative reconsideration of a case that can be described as 'stepping into the shoes' of the primary decision-maker, to determine what is the correct and preferable decision.

¹² Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.

¹³ Set out in section 47(3) of the RTI Act.

¹⁴ Sections 47(3)(e) and 52 of the RTI Act.

¹⁵ Section 52(1)(a) of the RTI Act.

¹⁶ Section 52(1)(b) of the RTI Act.

- the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s; and
 - the nature of the government activity to which the request relates.¹⁷
18. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. This is the case in circumstances where it is ascertained that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
19. Searches may also be relied on to satisfy the decision-maker that a document does not exist. If searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.¹⁸ What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
20. To determine whether a document exists, but is *unlocatable*, the RTI Act requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.¹⁹ In answering these questions, regard should again be had to the circumstances of the case and the key factors.²⁰

Preliminary issues

21. Before considering the issue for determination, it is necessary to deal with a number of procedural issues raised by the applicant.
22. During the external review, the applicant:
- requested a meeting with the Information Commissioner to discuss the '*extensive systemic nature of the RTI issues identified*' across a number of access applications lodged with Council, including those lodged by other individuals;²¹ and
 - contended that the release of documents to another individual in response to their access application '*objectively demonstrates the falsehood that the requested information has not been located, is nonexistent or unlocatable from BCC*'.²²
23. I do not accept that the release of documents in response to a separate application is evidence that Council is withholding documents from OIC in this review or that it raises '*some very fundamental issues for OIC and its relationship with BCC*' as the applicant

¹⁷ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (**PDE**). The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). 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 here.

¹⁸ As set out in *PDE* at [49]. See also section 130(2) of the RTI Act.

¹⁹ Section 52(1)(b)(ii) of the RTI Act.

²⁰ *Pryor* at [21].

²¹ External review application.

²² Submission dated 1 August 2017.

contends.²³ Nor do I accept it is evidence that '*OIC have not implemented the necessary procedures to prevent the potential asymmetric bias risk that BCC has now demonstrated that it is prepared to use*' or that Council is '*selectively releasing documents depending on which staff member in OIC is doing the review*'.²⁴ To the extent that information relating to Property A has been released to another individual, as contended by the applicant, and such information falls within the scope of the applicant's application, the sufficiency of Council's searches is addressed below (see paragraphs 38 and 61 in particular). Otherwise, I consider it relevant to note that access applications relating to the same or a similar subject matter (in this case Property A) may, nevertheless, give rise to different issues and outcomes, when they are made by different applicants and often framed in different terms. Each external review received by OIC must be decided on its own facts and circumstances. Accordingly, in this decision, I am unable to deal with information and considerations relevant to access applications other than the applicant's application which is the subject of this external review.

24. The applicant also indicated he was '*prepared to sit down with OIC and BCC staff and go through each of the activities in the request for external review in an attempt to proactively and timely identify the documents which BCC should have retained and be expected to have released*'.²⁵
25. Section 24(2) of the RTI Act sets out the criteria that an applicant must meet in order to have a valid RTI application. Of relevance here is the requirement that the applicant give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents. Previous decisions of the Information Commissioner specify that the terms of an application will set the parameters for an agency's search efforts.²⁶
26. In this review, the terms of the access application are clear. The applicant seeks access to three discrete categories documents, covering the period July 2013 to 13 April 2016,²⁷ namely:
 - (i) *documents associated and referred to in requests for prelodgement meetings, and prelodgement meetings held, for Property A*
 - (ii) *documents associated with the preparation, holding and actioning of matters regarding the 22 January 2016 meeting with Councillor Cooper, including advice provided to Councillor Cooper and instructions to BCC officers concerning Councillor Cooper's letter CO32852-2015 handed to another individual at the meeting; and*
 - (iii) *correspondence CO32850-2015 to CO32855-2015 and the BCC postal procedure for issuing and verifying outwards correspondence.*
27. My consideration of the issue for determination is limited to the additional information raised by the applicant which falls within the scope of the access application. As the terms of the access application are clear, it was not necessary that OIC meet with the applicant, as he proposed, to determine the documents identified in his sufficiency of search submissions which fall within the scope of the access application.

²³ Submissions dated 1 August 2017.

²⁴ Submissions dated 1 August 2017.

²⁵ Submissions dated 27 October 2016.

²⁶ *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013) at [21], citing *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]. See also *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 at [14].

²⁷ Being the date the application was received by Council.

28. The applicant also submitted that OIC should '*independently verify whether documents exist when BCC state they do not*'.²⁸
29. The manner in which an external review is conducted is, subject to the RTI Act, at the Information Commissioner's discretion, and the overriding obligation on the Information Commissioner is to ensure that the procedures adopted in an external review are fair to all participants.²⁹ I do not consider it necessary that OIC undertake an independent verification exercise before I may conclude that the additional documents sought by the applicant do not exist or cannot be located, or to otherwise afford him procedural fairness. Given Council has relied on searches by its officers to demonstrate that all relevant documents have been located, the question I must consider is whether Council has taken *all reasonable steps* to locate documents responsive to the access application. This entails consideration of whether Council has required appropriate staff to conduct sufficient searches of all locations where the documents in question could reasonably be expected to be found.
30. The applicant also raised a concern that Council's decision not to provide the requested information stems from a '*strategy adopted by the CEO as reflected in the Brisbane City Legal Practice internal memorandum of 13 April 2016*'.³⁰ There is no evidence before me, including in the memorandum referred to by the applicant, which would give sufficient reason to consider the actions of Council's officers were as the applicant alleges.³¹
31. I will now turn to the substantive issue to be determined in this review.

Additional documents the applicant believes Council failed to locate

32. The applicant submits that Council '*has not supplied key documents relating to its decisions/actions at meetings regarding [Property A]*'.³² The information that he believes exists, but has not been located by Council, is extensive.³³
33. OIC sought clarification from the applicant about the '*key documents*' that, in his view, had not been located by Council. The applicant's response indicated that his sufficiency of search concerns related to the following 13 types of information:³⁴
- the requests lodged for the prelodgement meetings covered by the access application
 - the entries in Council's DART system recording such requests
 - any reports generated in Council's DART system for use by Council officers in those requested prelodgement meetings
 - any other documents or advice presented for use by Council officers in those requested prelodgement meetings
 - any DART summary reports created and sent to Councillors for those requested pre-lodgement meetings
 - minutes created for those requested prelodgement meetings

²⁸ Submissions received 26 April 2017.

²⁹ Sections 95(1) and 97(2)(a) of the RTI Act.

³⁰ Submissions received 26 April 2017.

³¹ If I considered there was such evidence, the actions specified in section 113 of the RTI Act would be taken.

³² External review application.

³³ Submissions received 26 April 2017.

³⁴ On 23 November 2016, I informed the applicant that I understood his sufficiency of search submissions, as identified in his 27 October 2017 submissions and the extensive information provided as attachments to those submissions, related to these 13 types of information, and invited the applicant to identify any further, specific information which he considered exists and should have been located by Council.

- any emails/correspondence which arose from those requested prelodgement meetings
 - any reports prepared by Council representatives which arose from those requested prelodgement meetings and which relate to the boundary error issue
 - any document which records a review of the proposal by a specified Council officer (**Officer X**), as referenced in the meeting record for a prelodgement meeting that occurred on 23 December 2015 (**23 December 2015 Meeting**)³⁵
 - any documented briefing by Council senior staff regarding the 23 December 2015 Meeting and a direction to stop work on the quote for that meeting
 - the advice given to Councillor Cooper about the boundary error as referred to in her letter to another individual dated 17 December 2015³⁶
 - any documents or advice presented for use by Councillor Cooper in a meeting on 22 January 2016 (**22 January 2016 Meeting**); and
 - any record of directions given by Councillor Cooper to Council staff and/or ward staff which are covered by the access application.
34. The applicant subsequently provided additional sufficiency of search submissions,³⁷ which indicated his sufficiency of search concerns were limited to the following five specific documents, which he believes exist, but have not been located by Council:
- standard prelodgement meeting documents for the 23 December 2015 Meeting
 - requests to Council's Strategic Planning Section made after 19 October 2015, asking for '*clarification on the inconsistency in the [Property A] boundary*' for the 23 December 2015 Meeting
 - a '*properties on the web – applications/site histories*' report obtained and used in January 2016
 - notes taken by meeting attendees other than a specified Council officer (**Officer Y**) regarding the 22 January 2016 Meeting; and
 - a Council postal procedure for issuing and verifying outward correspondence.
35. Finally, the applicant provided further sufficiency of search submissions about the documents specified in paragraph 34 and additional documents released by Council to another individual, which he believed were relevant to his access applicant and had not been located.³⁸

Steps taken by Council to locate documents

36. During the review, on a number of occasions³⁹ OIC requested that Council make enquiries and conduct further searches for information responsive to the access application, including the information specified in paragraphs 33 and 34 above. Council located one additional document responsive to the access application, which has been released to the applicant.⁴⁰

³⁵ The Prelodgement Meeting Record for the 23 December 2015 Meeting (attached to the applicant's submissions dated 27 October 2016) states '[Officer X] (reviewed proposal but did not attend meeting)'.

³⁶ A copy of the letter dated 17 December 2015 was provided with the external review application. Paragraph 3 of that letter relevantly states: '*Following investigations by Council, I am advised that [Properties B and C] were included in [Property A] due [to] what has been explained to me as an unintended mapping error. This error will be corrected in the Plan in the next amendment package. At this time, the next amendment package is anticipated as being presented to Council in the first half of next year. I am advised that this correction is a "minor" amendment which means that once it has been reviewed and endorsed by Full Council, it will be immediately effective*'.

³⁷ Submissions received 7 December 2016 and 26 April 2017.

³⁸ Submissions received 28 July 2017 and 1 August 2017.

³⁹ As set out in the Appendix.

⁴⁰ See paragraphs 38 and 61.

37. On external review, in response to a request by OIC, Council provided OIC with a copy of its initial search records and enquiries⁴¹ which, in summary, demonstrate that:
- a number of Council officers conducted searches in relation to the access application; and
 - searches of Council's electronic databases (TRIM, DART and CMX) and records held by Councillors Cooper and Wines, the Lord Mayor's office and Council's Development Assessment department were undertaken.
38. In response to OIC's requests for further searches and enquiries, Council confirmed that it had conducted further searches of Council's electronic databases (TRIM, DART and CMX) and made enquires of relevant Council officers to determine if they held any relevant documents. Council also provided further information regarding its postal procedure. Further, in light of the applicant's submissions about information relating to Property A that had been released to another individual, Council conducted further searches for documents responsive to the access application, including searches of the documents that Council had released to the other individual. Council provided OIC with a copy of its search records and enquiries in this regard.⁴² The only document that was located as a result of this process was the document raised in the applicant's submissions.⁴³ For sake of completeness, this was released to the applicant.
39. As set out above, the applicant provided extensive submissions regarding the sufficiency of Council's searches on a number of occasions and Council has relied on searches by its officers to demonstrate that all relevant documents have been located. The question I must therefore consider is whether Council has taken *all reasonable steps* to locate documents relevant to the access application, including the additional information requested by the applicant. This does not require OIC to deal separately with each of the applicant's sufficiency of search submissions or to make separate findings about Council's search efforts in relation to each of the categories of additional documents the applicant believes exist.⁴⁴

Findings - documents responsive to items (i) and (ii) of the access application

40. As noted above,⁴⁵ at items (i) and (ii) of his access application, the applicant sought:
- (i) *documents associated and referred to in requests for prelodgement meetings, and prelodgement meetings held, for Property A*
 - (ii) *documents associated with the preparation, holding and actioning of matters regarding the 22 January 2016 meeting with Councillor Cooper, including advice provided to Councillor Cooper and instructions to BCC officers concerning Councillor Cooper's letter CO32852-2015 handed to another individual at the meeting.*
41. Initially, the applicant submitted that the DART system contains the '*current development approvals and the BCC files in which the approvals can be found but this information has not been released*'.⁴⁶ While I accept that Council's DART system may contain development approval information, I also note that items (i) and (ii) of the applicant's access application seek documents '*associated with and referred to*' in meetings

⁴¹ A certification regarding these searches and enquiries dated 6 December 2016 was completed by a senior Council officer.

⁴² A certification regarding these searches and enquiries dated 18 July 2017 was completed by a senior Council officer.

⁴³ That is, the handwritten notes of a Council officer. Of the two other documents raised by the applicant, one had been released to him, and the other was among the documents that he had accepted could be refused (as noted at paragraph 9 above).

⁴⁴ Refer to *Goodman and Department of Justice and Attorney-General* [2014] QICmr 4 (6 February 2014) at [23]. See also *F60XCX and Public Service Commission* [2016] QICmr 29 (2 August 2016) at [67] and *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [77].

⁴⁵ At paragraph 26.

⁴⁶ Submissions dated 27 October 2016.

regarding Property A. The access application does not, on its face, seek any '*current development approvals*' regarding Property A. Further, on careful consideration of items (i) and (ii) of the application, I do not consider it reasonable to construe the application's reference to documents '*associated with or referred to*' in the said meetings as sufficient to extend the scope of the application to include current development approvals. Accordingly, I do not accept that such documents are responsive to the applicant's application, and it follows that I do not consider that any sufficiency of search concerns arise in relation to them. It appears that the applicant accepts this position, given his subsequent submissions in this review focussed on documents created for use in, or as a consequence of, the meetings.

42. In this regard, the applicant has provided extensive submissions to support his contentions that:

- further standard prelodgement meeting documents for the 23 December 2015 Meeting should exist
- as Council officers were aware of the 23 December 2015 Meeting as early as 19 October 2015, there should be documents recording requests by [a specified Officer - **Officer Z**] to the Council's Strategic Planning Section asking for clarification about the Property A boundary
- a '*properties on the web – application/site histories*' report would have been '*obtained and the contents used by [Officer Z] before to identify and obtain files and information to [another individual] on 19 January 2016*';⁴⁷ and
- further notes of the 22 January 2016 Meeting exist, as all officers attending the meeting took notes.

43. The applicant's submissions:

- refer to a large number of example documents, relating to other prelodgement meetings, provided in support of the submissions;⁴⁸ and
- reflect the applicant's belief that, if Council followed the steps in what he considers to be standard Council processes or procedures for prelodgement meetings (based on his '*reengineering*' of such processes from various Council documents), further standard documents would exist and should be produced by Council.

44. The applicant identified the *standard steps* he considers are involved in Council's standard prelodgement meeting processes and procedures as:⁴⁹

1. *Accepting a prelodgement meeting request.*
2. *Determining who is going to be the Manager for the process.*
3. *Providing a fee quote*
4. *Getting all of the site data - this is the 10 pus data searches undertaken to get the necessary information for the BCC staff to become informed about the site. (Appears to be an admin task with 13 reports in 58 pages printed out in less than 10 minutes for prelodgement meeting A004089815)*
5. *Determining the meeting date*
6. *Exchanging information by email regarding any specific issues identified or raised in any documentation submitted by the Applicant*
7. *Having the Meeting*

⁴⁷ The applicant refers to the following entry in the released document titled 'DA - Notes from [Officer Y]' in support of this submission: '[Officer Z] – 85, 87, 87 Approvals, Plans'.

⁴⁸ Primarily being documents provided by the applicant on 26 April 2017, which include summaries titled '*Example 1 – Documents in Prelodgement meeting file A004089815 (chronological order)*' and '*Example 2 – Documents in Prelodgement meeting file A-0003566591 (chronological order)*'. Some of these documents had been provided by the applicant on 5 April 2017 as well.

⁴⁹ Submissions received 26 April 2017 submissions, at page 8 of a letter dated 24 April 2017.

8. Post meeting activity including meeting minutes or follow up of information or questions discussed.

45. The applicant also identified what he considers to be *standard documents* in the prelodgement processes and procedures by reference to '9 Convening Prelodgement Meeting Documents'⁵⁰ as:

1) A prelodgement request either written, electronic or both, 2) the BCC prelodgement meeting criteria 3) An assessment by a BCC officer of whether the request meets the BCC rules, 4) A decision by a BCC Officer to have the meeting, 5) An estimate of the costs of the meeting made and provided to the party requesting the meeting, 6) Confirmation of the time and place for the meeting. If the meeting request is not acted on (declined or avoided) there would be 7) BCC decision not acting on the request, 8) the reasons as to why the meeting has not been granted and 9) a document which shows the objective evidence and reasons for noncompliance with BCC requirements.

46. I note that the information Council has released to the applicant includes a number of documents which comprise what the applicant has identified as standard prelodgement meeting documents for the 23 December 2015 Meeting. For example, the released information includes:

- a number of emails and letters exchanged, including with the Lord Mayor's office and Councillor Wines' office, regarding requests for meetings with community members, including a letter from another individual to Councillor Wines and Dr Lynham which notes that '*BCC does not need to prepare for the meeting*' and '*BCC will only need to confirm the site constraints already identified for the site*'
- emails which reference fees for the prelodgement meeting
- the Honourable Dr Lynham's meeting request dated 8 December 2015 (being the development assessment enquiry form) and a number of emails about that request and fees for the meeting
- a letter dated 22 December 2015 to Dr Lynham confirming the date of the prelodgement meeting and a number of emails concerning proposed attendance by Dr Lynham and Councillor Wines at that meeting
- minutes of the 23 December 2015 Meeting (including signed and draft versions) and internal council emails circulating draft and final minutes; and
- emails sent in January 2016 attaching files to be uploaded to the prelodgement file.

47. OIC sought general information from Council about its record keeping systems and Council provided the following information:

- Council's records are not solely found in one electronic system. Records are kept in a number of electronic systems (such as TRIM, DART and CMX) and also in hard copy form.
- The form of record storage is generally dependent on the age of the records. By way of example, development approval records since 2010 are entirely recorded on Council's electronic systems.
- There is duplication of certain types of information currently stored across Council's multiple electronic record keeping systems.
- Hard copy records are stored at an offsite facility and must be retrieved and manually searched.
- The DART system does not retain a record of the reports generated from it.

⁵⁰ Appearing on page 5 of the spreadsheet titled '*Ombudsman Submission and expected BCC RTI related documents*' attached to the applicant's submissions received on 7 December 2016 and 26 April 2017.

48. Council's publicly available information identifies the general nature of prelodgement meetings;⁵¹ however, given the applicant's submissions, OIC sought further information from Council about prelodgement meeting processes. The publicly available information and the further information provided by Council indicate that, generally:

- Prelodgement meetings are required to be held within a short timeframe following any prelodgement meeting request. By way of example, meetings requested for prepurchase purposes are to be held within five business days and meetings requested for other purposes are to be held within 10 business days
- Prelodgement meetings are not intended to provide a full or detailed assessment of a development proposal or determine the likely outcome of an assessment process. Matters to be discussed at requested prelodgement meetings are limited to the matters identified in the meeting request
- Given the timeline requirements for holding requested meetings, the information that is obtained by officers in preparation for a prelodgement meeting is not a comprehensive set of documents recording the entire development approval history for the site in question. Rather, it is targeted to address the matters raised in the meeting request
- Prelodgement meetings do not replace the in-depth investigation associated with formally assessing an application and considering any public submissions; and
- While advice is given in good faith at prelodgement meetings, it in no way binds a decision made by Council.

49. Council's development enquiry assessment form, which is generally used to request prelodgement meetings, indicates that prelodgement meetings may be requested for a number of reasons, including '*level of assessment confirmation*' about potential development applications and conceptual or detailed discussions about proposed development applications. I note that the prelodgement meeting request for the 23 December 2015 Meeting was lodged as a pre-purchase enquiry and identified four key issues for discussion, being land use (type, sensitivity, height and amenity), traffic (local traffic issues), vegetation (preservation) and historical significance. On external review, the applicant has advised OIC that one of the main purposes of the 23 December 2015 Meeting was to obtain '*the same information regarding the development constraints and opportunities for a development of a similar nature as that proposed by the owners of the site*'.⁵²

50. The applicant has submitted that:

*In a similar way to an RTI, BCC would be required to exchange information in its possession consistent with information already released by BCC at previous prelodgement meetings.*⁵³

51. Taking into account the general nature of prelodgement meetings, and the processes for them, as set out at paragraph 48 above, I do not consider that information generated by Council officers in relation to a particular prelodgement meeting will necessarily include all, or all the same types of, information that may have been obtained regarding previous prelodgement meetings for the same property. Rather, I consider it reasonable to conclude that the level of information lodged by meeting requesters and generated by Council for requested meetings will differ, depending on the nature of the enquiry and the issues the requester identifies for discussion in the relevant meeting request. While there may be some consistency in information generated for prelodgement meetings

⁵¹ Council factsheet titled '*Development assessment prelodgement advice*'.

⁵² Submissions received 26 April 2017.

⁵³ Submissions dated 27 October 2016.

about the same property, the information will not necessarily be of the same level of detail for all meetings. Certainly, this appears to be the case regarding the 23 December 2015 Meeting, relative to the other prelodgement meetings referred to in the applicant's submissions. In particular, I note that the summaries and copies of documents provided by the applicant concerning Council documents generated for other prelodgement meetings indicate that those other prelodgement meetings differed both in their nature and the issues identified for discussion.

52. The applicant has also made extensive submissions predicated on his belief that Council's DART system does, in fact, retain reports generated in response to meeting requests. The applicant's submissions⁵⁴ point to a specific entry in the DART system about the request for the 23 December 2015 Meeting as evidence that reports generated in the system for that meeting will exist. While I have carefully considered this entry, I am satisfied that neither it, nor any other material before me, provides any support for a finding that Council's advice about its DART system—specifically that the DART system does not retain a record of the reports generated from it—is incorrect.
53. Taking into consideration the general information provided by Council concerning the prelodgement process, it does not follow that all the types of documents contained in the example prelodgement files provided by the applicant must have been created for the 23 December 2015 Meeting. While I have carefully considered the applicant's submissions about Council processes (as '*reengineered*' by him), and the summaries and copies of documents about other prelodgement meetings files:
 - I am unable to conclude that the material provided by the applicant supports a finding that certain processes are, as the applicant contends, standard prelodgement meeting processes
 - accordingly, I am unable to conclude that such processes did, in fact, occur regarding the 23 December 2015 Meeting; and
 - it follows that I cannot conclude that certain documents were, as the applicant contends, created or generated during such processes.
54. The applicant also submitted that, if what he considers to be the standard prelodgement meeting procedure did not occur, '*this would be exceptional and not normal*'.⁵⁵ OIC's jurisdiction does not extend to determining whether Council failed to follow what the applicant considers to be the standard prelodgement meeting processes and procedures. In this review, I am only required to determine if there are reasonable grounds to expect that the documents do not exist or cannot be located.
55. The applicant further submitted that, if what he considers to be the standard prelodgement meeting procedure did not occur, Council would have reviewed whether it had complied with its established systems and processes and, if it had not, would have implemented its noncompliance procedures. On this basis, he has submitted that Council should locate all documents which will explain why Council varied the '*normal processes and systems*'.⁵⁶ These submissions are again predicated on the applicant's belief, based on his '*reengineering*' of processes from Council documents, that there are standard Council processes for prelodgement meetings. However, the applicant's submissions in this regard are not asserting that the processes he considers to be standard processes were followed, and gave rise to certain documents.

⁵⁴ Submissions received 26 April 2017.

⁵⁵ Submission dated 24 April 2017.

⁵⁶ Submission dated 24 April 2017.

56. Instead, the applicant is contending documents about *noncompliance* with such processes exist and should have been located by Council. In fact, the applicant submits that '*BCC have deliberately not used their standard systems and processes in many situations*'.⁵⁷ In this regard, I reiterate (as stated at paragraph 53 above) that I am unable to conclude that the material provided by the applicant supports a finding that certain processes are, as the applicant contends, standard prelodgement meeting processes. Given this position:
- there is nothing before me to suggest that any review by Council of its noncompliance with what the applicant considers to be standard prelodgement meeting processes did, in fact, occur; and
 - it follows that I cannot conclude that any documents about noncompliance with the processes posited by the applicant were, as the applicant contends, created or generated during such a review.
57. The applicant has submitted that, even if what he considers to be standard prelodgement meeting processes were not followed, a '*properties on the web – application/site histories*' report would have been '*obtained and the contents used by [Officer Z] before to identify and obtain files and information to [another individual] on 19 January 2016*'.⁵⁸
58. In response to OIC's enquiries regarding a report of this nature, Council searched its records and systems, specifically including the DART system; however, Council did not locate any such report. Apart from the applicant's submissions, I am unable to identify any material supporting the position that a report of this nature was obtained and used in January 2016. I also note that, had such a report been obtained and used, Council has advised that its DART system does not retain a record of the reports generated from it. In these circumstances, taking into consideration the information provided by Council about its record keeping systems and the steps taken by Council during the external review, I consider that Council conducted searches and made enquiries reasonably likely to identify the report; however, no such document was located.
59. The applicant has also submitted that, as Council officers were aware of the 23 December 2015 Meeting as early as 19 October 2015, there should be documents recording requests by Officer Z to the Council's Strategic Planning Section asking for clarification about the Property A boundary.
60. However, apart from the applicant's submissions, there is no evidence before OIC to support the position that any requests of this nature were made before the 23 December 2015 Meeting. In light of the information provided by Council about its record keeping systems and the searches Council undertook to locate documents relevant to the access application,⁵⁹ I consider that Council conducted searches and made enquiries reasonably likely to identify any requests made to Council's Strategic Planning Section and responses received from that section in respect of Property A's boundaries; however, no such documents were located.
61. In terms of notes of the 22 January Meeting, Council released notes taken by one Council officer who attended the 22 January 2016 Meeting. On external review, in support of his submissions about information relating to Property A that had been released to another individual but not to him, the applicant provided OIC with a copy of another Council's officers handwritten notes of the 22 January 2016 Meeting. As a result, OIC requested

⁵⁷ Submissions dated 7 December 2016.

⁵⁸ Submissions dated 24 April 2017. The applicant has referred to the following entry in the released document titled 'DA - Notes from [Officer Y]' in support of this submission: '[Officer Z] – 85, 87, 87 Approvals, Plans'.

⁵⁹ More specifically, searches conducted for further documents, advice or reports sought by or sent to Council officers for the 23 December 2015 meeting.

that Council conduct further searches for documents responsive to applicant's access application, including searches of the documents that Council had released to the other individual. This request included any notes of the 22 January 2016 Meeting. The only document located as a result of this process was the copy of the Council officer's notes provided with the applicant's submission. Council also made enquiries of the other meeting attendees to identify if any additional notes of the meeting exist and no additional notes were located.

62. I note that the applicant has now received the notes taken by two of the Council officers who attended the 22 January 2016 Meeting. Taking into consideration the information provided by Council about its record keeping systems and the steps taken by Council during the external review, I consider that Council conducted searches and made enquiries reasonably likely to identify any further notes of the 22 January 2016 meeting; however, no such documents were located.

Conclusion

63. I have carefully considered:

- all of the applicant's submissions (including the extensive material the applicant provided in support of his submissions)
- the extent and nature of the information that has been located by Council and either released to the applicant or refused access
- Council's submissions, particularly in relation to its administrative systems for the types of documents to which the applicant seeks access and explanations as to why particular documents do not exist or cannot be located
- the nature and extent of the searches and enquiries conducted by Council in processing the access application and on external review; and
- the signed search certifications provided to OIC by Council officers.

64. Based on all of the material before me, I consider that Council has conducted searches of all relevant locations where it was reasonable to expect that the types of information requested in items (i) and (ii) of the access application, including those raised in the applicant's sufficiency of search submissions, would be found and ensured that relevant staff have undertaken appropriately targeted searches for such information.

65. In these circumstances, I am satisfied that:

- Council has taken all reasonable steps to locate documents responsive to items (i) and (ii) of the access application; and
- there are reasonable grounds to be satisfied that any additional documents responsive to items (i) and (ii) of the access application are nonexistent or unlocatable, and such information may be refused on this basis.⁶⁰

Findings - documents responsive to item (iii) of the access application

66. As noted above,⁶¹ at item (iii) of his access application, the applicant also sought:

(iii) correspondence CO32850-2015 to CO32855-2015 and the BCC postal procedure for issuing and verifying outwards correspondence.

⁶⁰ Under sections 47(3)(e) and 52 of the RTI Act.

⁶¹ At paragraph 26.

67. On external review, the applicant has accepted that the correspondence specified by him may be refused.⁶² He maintains⁶³ that a Council postal procedure for issuing and verifying outgoing correspondence exists and has not been located by Council.⁶⁴
68. During the external review, OIC requested that Council conduct further searches for Council's postal procedure for issuing and verifying outgoing correspondence. Council did not locate any such postal procedure.
69. OIC also made enquiries with Council about its correspondence procedures and Council provided the following information:
- Council has a correspondence management procedure relating to incoming correspondence but does not have a separate procedure relating to outgoing correspondence
 - incoming correspondence, of a type required to be entered in Council's CMX system, is allocated a CMX number and such numbers are allocated automatically and sequentially to the incoming correspondence
 - Council responses to incoming correspondence carry the CMX number which was previously allocated to the incoming correspondence to which the response relates
 - apart from outgoing correspondence sent by express or registered post, Council does not track outgoing correspondence and there is no record of when outgoing correspondence enters the Australia Post system; and
 - Council processes an extremely large volume of outgoing correspondence each week (between 10,000 and 11,000 outgoing envelopes).
70. Based on the information before me, I am satisfied that Council has taken all reasonable steps to locate postal procedure documents responsive to item (iii) of the access application, and there are reasonable grounds to be satisfied that any such documents are nonexistent, and may be refused on this basis.⁶⁵

DECISION

71. I vary Council's decision and find that access to the additional documents raised by the applicant may be refused under section 47(3)(e) of the RTI Act as it is nonexistent or unlocatable under section 52(1) of the RTI Act.
72. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

A Rickard
Assistant Information Commissioner

Date: 18 August 2017

⁶² As set out in paragraph 9 above.

⁶³ Submissions dated 24 April 2017.

⁶⁴ These submissions were made in the context of seeking information about when a letter dated 17 December 2015 was sent by Council, given the applicant's concern that it was not received by its recipient before the 22 January 2016 Meeting, which the applicant attended. The letter did not refer to a postal address; rather, it was, on its face, to be sent to an email address.

⁶⁵ Under sections 47(3)(e) and 52 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
19 August 2016	OIC received the application for external review.
30 August 2016	OIC notified the applicant and Council that it had accepted the external review application and asked Council to provide additional information.
16 September 2016	OIC received the requested information from Council.
17 October 2016	OIC asked the applicant to clarify his sufficiency of search submissions.
27 October 2016	OIC received the submissions from the applicant clarifying his sufficiency of search submissions, including in excess of 200 pages of supporting documentation.
23 November 2016	OIC requested that Council conduct further searches for information responsive to the access application, including the additional information identified in the applicant's sufficiency of search submissions. OIC advised the applicant that Council had been asked to conduct further searches.
6 December 2016	OIC received a response from Council regarding the further searches.
7 December 2016	OIC received further sufficiency of search submissions from the applicant, including spreadsheet titled ' <i>Qld Ombudsman Submission and expected BCC RTI related documents</i> '.
31 January 2017	OIC conveyed a preliminary view to Council.
14 February 2017	OIC received Council's advice that it accepted the preliminary view.
2 March 2017	OIC staff met with Council staff to obtain general information about Council's record keeping systems and processes for prelodgement meetings.
24 March 2017	OIC conveyed a preliminary view to the applicant.
4 and 5 April 2017	OIC received submissions from the applicant, including in excess of 900 pages of supporting information.
5 April 2017	An OIC staff member spoke with the applicant about the preliminary view.
26 April 2017	OIC received further submissions from the applicant, including in excess of 400 pages of supporting information.
29 June 2017	OIC requested that Council provide further information concerning Council's postal procedure. OIC received submissions from Council in this regard.
7 July 2017	OIC conveyed a further preliminary view to the applicant and responded to the applicant's request for copies of Council's submissions to OIC.
28 July 2017	OIC received further submissions from the applicant.
1 August 2017	OIC confirmed the preliminary view to the applicant. OIC received further submissions from the applicant.
4 August 2017	OIC requested that Council conduct further searches for documents responsive to the access application that Council had released to another individual but not located in response to the applicant's application.
11 August 2017	OIC received a response from Council regarding the further searches.
15 August 2017	OIC confirmed the preliminary view to the applicant.