



Decision and Reasons for Decision

Citation: *A28 and WorkCover Queensland* [2026] QICmr 135 (3 August 2026)

Application Number: 00022104

Applicant: A28

Respondent: WorkCover Queensland

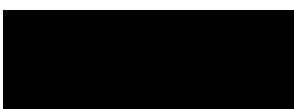
Decision Date: 3 August 2026

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – request for claim file – documents released through administrative access scheme – applicant submits further documents should exist – whether agency has conducted all reasonable searches – refusal of access to nonexistent documents – sections 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

DECISION

I vary the reviewable decision of WorkCover Queensland (**WorkCover**) and find that access may be refused to any further documents under section 67(1) of the *Information Privacy Act 2009* (Qld) (**IP Act**) and section 47(3)(e) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis further documents do not exist, pursuant to section 52(1)(a) of the RTI Act.¹

My reasons for the decision follow.



Kristen McGuire
Acting Manager, Right to Information

Date: 3 August 2026

¹ Under section 123(1)(b) of the IP Act in accordance with the delegation under section 139 of the IP Act.

REASONS FOR DECISION

Summary

1. The applicant applied to WorkCover under the IP Act² for access to: *'all information and documents. All communication incoming, outgoing and internal which is relevant to my file'*.³
2. WorkCover requested a number of extensions to the processing period under the IP Act due to the impact of its *'very heavy workload'* on its ability to process applications within the statutory timeframe.⁴ The applicant agreed to grant several extensions,⁵ however, WorkCover ultimately did not make a decision within the time required under the IP Act and was therefore, deemed to have refused access to all requested information.⁶ The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of WorkCover's deemed decision.⁷
3. During the review, WorkCover located 1482 pages and 2 audio files and released 64 pages and parts of 61 pages under the IP Act, and 1357 pages and 2 audio files in accordance with WorkCover's administrative access scheme (**Released Documents**).⁸ On review, the applicant did not contest the partial redactions and made submissions solely in relation to the issue of sufficiency of search.
4. The issue for determination in this review is whether access to further documents may be refused under sections 67(1) of the IP Act and 47(3)(e) of the RTI Act on the basis that further documents responding to the terms of the application are nonexistent.
5. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression⁹ which includes the right to seek and receive information. I consider a decision-maker will be acting compatibly with this right when applying the law prescribed in the RTI Act¹⁰ and, therefore, I have acted in accordance with section 58(1) of the HR Act.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and RTI Act. As the application was made before this change, the IP Act and RTI Act as in force prior to 1 July 2025 remain applicable in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act. Accordingly, references in this decision are to those Acts in force prior to the IPOLA Act commencing: <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> respectively.

³ Access application dated 7 February 2025.

⁴ WorkCover email to the applicant dated 19 June 2025.

⁵ Following requests made by WorkCover under section 55 of the IP Act.

⁶ Under section 66(1) of the IP Act. The deemed decision is the *reviewable decision* for the purpose of this review.

⁷ External review application dated 11 July 2025.

⁸ Information had previously been administratively released to the applicant prior to lodgement of his external review application.

⁹ Section 21 of the HR Act.

¹⁰ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573].

Relevant law

6. An individual has a right, under the IP Act, to be given access to documents to the extent they contain the individual's personal information.¹¹ However, this right is subject to the provisions of the IP Act and RTI Act, including grounds for refusing access to information.¹²
7. Access to a document may be refused if it is nonexistent or unlocatable.¹³ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁴ A document will be 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.¹⁵
8. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures, and the nature and age of requested documents.¹⁶ By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such a case, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are explained. Where searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
9. 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.¹⁷ The Information Commissioner also has the power to require additional searches be conducted on an external review.¹⁸ However, the RTI Act *'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents'*, rather, the Information Commissioner relies on the agency's officers to search for relevant documents.¹⁹
10. On external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.²⁰ However, where the issue of missing documents is raised, the applicant bears a practical onus of

¹¹ Section 40 of the IP Act.

¹² Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

¹³ Sections 47(3)(e) and 52 of the RTI Act.

¹⁴ Section 52(1)(a) of the RTI Act.

¹⁵ Section 52(1)(b) of the RTI Act.

¹⁶ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and WorkCover of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]–[38].

¹⁷ Section 130(2) of the RTI Act.

¹⁸ Under section 102 of the RTI Act.

¹⁹ *Webb v Information Commissioner* [2021] QCATA 116 at [6].

²⁰ Section 87(1) of the RTI Act.

demonstrating that the agency has not discharged its obligation to locate all relevant documents.²¹ Suspicion and mere assertion will not satisfy this onus.²²

Submissions

11. In his access application, the applicant outlined as follows:

It seems possible that there are some documents and file notes missing from the information provided as an administrative release process and so it is also possible that other information as yet unknown is missing.

Stakeholders have mentioned communication and information regarding WorkCover claim which I have so far been unable to locate in the administrative release files.

There has previously been cause for concern that WorkCover have confused the records of myself and at least one former colleague.

No reason has yet been provided for why WorkCover made two different reports to the ATO under my TFN.

No outcome has yet been provided for complaints I have made to WorkCover.

12. After considering the Released Documents, the applicant submitted as follows:²³

In February 2025 WorkCover asserted that communications with a CTP insurer provided “evidence” in support of its incorrect claims about my relevant medical history. Those communications do not appear in the released material I have been able to locate. I also cannot locate any internal notes, file notes, emails, attachments, summaries, or decision-making documents recording, describing, transmitting, or relying on those CTP communications. The only item I have identified is a brief reference (e.g., within a Teams message), without the underlying communications attached or reproduced.

As WorkCover relied on such communications in their prejudicial mishandling of my claim, records should exist and should be identifiable and produced (subject to any lawful redactions). If WorkCover now contends they do not exist, I request that WorkCover state this clearly. Given WorkCover represented these communications as evidentiary, the existence (or non-existence) of records is directly material to the completeness of the release

13. WorkCover provided OIC with a submission about the searches undertaken on the application²⁴ and in summary, submitted that ‘No further documents can be searched for or subsequently located because documents in scope of the application are contained on the claim file and the entire claim file has already been released’. WorkCover’s search records revealed that:²⁵

- searches were conducted by relevant WorkCover staff who had contact with the applicant or were involved in dealing with his claim

²¹ See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

²² *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

²³ Email to OIC dated 22 January 2026.

²⁴ On 19 April 2026.

²⁵ Provided on 20 April 2026.

- additional searches were conducted in Corporate Affairs for documents not comprising part of the claim file, including emails, Teams messages and complaint documents; and
 - locations searched include Outlook, Teams and the Corporate Affairs Database.
14. WorkCover also confirmed²⁶ that documents comprising communications exchanged between the compulsory third party (CTP) insurer and WorkCover sought by the applicant appear at pages 860–923 of the relevant claim file which was administratively released to the applicant on 11 January 2026.
15. In response to the preliminary view issued to the applicant during the external review,²⁷ the applicant narrowed his sufficiency of search concerns to a particular category of correspondence, namely further communications between WorkCover and the CTP insurer, and submitted²⁸ as follows:

My remaining concern is narrow. OIC's preliminary view states that WorkCover located CTP insurer communications at pages 860–923 of the claim file. I have reviewed those pages. I cannot identify any document in those pages containing, recording, transmitting, or substantiating the particular information which [WorkCover officer] indicated during telephone discussions in February 2025 had originated from Suncorp.

If pages 860–923 are said to comprise the whole of the relevant communications and records relied upon by WorkCover before 7 February 2025, I ask that this be stated expressly. If the information [WorkCover officer] referred to came from another Suncorp communication, call record, file note, internal summary, email, Teams message, attachment, or other record, then that document or record does not appear to be accounted for by the preliminary view.

My concern is therefore not limited to whether some external CTP communications appear somewhere in the claim file. It is whether WorkCover has accounted for the particular record or source of the information attributed to Suncorp, including any internal notes, file notes, emails, attachments, summaries, Teams messages, transmittal records, telephone recordings, call logs, call metadata, contact-centre records, diary notes, or decision-making records recording, transmitting, summarising, or relying upon that information.

In particular, I ask OIC to clarify whether WorkCover's searches included recorded telephone calls, call logs, call metadata, contact-centre records, claim notes, file notes, diary notes, or other records of telephone communications between WorkCover and Suncorp, the CTP insurer, or any agent, representative, investigator, solicitor, or other person acting for or on behalf of Suncorp or the CTP insurer, where those calls or records existed, or may have existed, on or before 7 February 2025.

The preliminary view refers to correspondence and records located in the claim file, and to searches of Outlook, Teams, the Corporate Affairs database, complaint documents, and the claim file. It is not clear whether WorkCover searched any telephone, contact-centre, claims-management, or call-recording systems where call records, call metadata, or telephone notes would ordinarily be held.

²⁶ Submission dated 19 April 2026.

²⁷ By letter dated 25 May 2026.

²⁸ Email to OIC dated 9 July 2026.

I do not ask OIC to require “all possible” searches. I ask OIC to consider whether the search evidence actually accounts for the categories I identified. The summary provided to me does not identify the relevant custodians, search terms, date limits, whether attachments and forwarded messages were searched, whether telephone records or call logs were searched, or whether records of internal reliance on the CTP material were separately considered.

I also ask OIC to address whether the proper characterisation is “nonexistent” rather than “unlocatable”. If WorkCover’s position is that no internal records of receipt, transmission, summary, telephone communication, or reliance ever existed, I ask that this be stated clearly. If such records may have existed but cannot now be found, that appears to raise a different question under section 52.

If OIC remains satisfied that WorkCover has taken all reasonable steps, I ask that a formal decision under section 123 address the above matters expressly, including why the search evidence is sufficient to account for the specific categories of records I identified. The significance of these records is that [WorkCover officer] indicated during telephone discussions in February 2025 that particular information affecting my statutory workers’ compensation claim had originated from Suncorp or the CTP insurer. I am not asking OIC to determine whether there was improper interference in my claim. I am asking OIC to determine whether WorkCover has taken all reasonable steps to locate records which would show whether that information was received, recorded, transmitted, summarised, relied upon, or otherwise documented before 7 February 2025.

Findings

16. I have examined the Released Documents, including the located bundle of CTP communications, and the records of WorkCover’s searches and inquiries conducted on the application. I am satisfied that in undertaking searches in response to the access application, WorkCover contacted the relevant areas and officers involved in dealing with his claim, including the particular named officer identified by the applicant as corresponding with the CTP insurer. I am also satisfied that searches were undertaken of relevant record keeping systems that WorkCover maintains in relation to claim files.
17. Having considered the content of the Released Documents and WorkCover’s submissions, I consider it was reasonable for WorkCover to undertake searches of the locations identified at paragraph 13 based on the scope of the application and this is further confirmed by the fact that a significant number of documents were located through those searches, including communications with the CTP insurer. I accept WorkCover’s submission that its usual practice is to keep all correspondence on the claim file. Aside from the applicant’s submissions, there is also no material before me to suggest that any further documents exist which would provide a reasonable basis for requesting WorkCover undertake the further searches of ‘telephone, contact-centre, claims-management, or call-recording systems where call records, call metadata, or telephone notes’ as requested by the applicant.
18. I acknowledge that the documents located by WorkCover have not met the applicant’s expectations regarding the extent of CTP communications. However, OIC does not have jurisdiction to interrogate WorkCover’s record keeping practices, nor the actions taken by WorkCover when dealing with a claim. The issue for me to

consider is whether WorkCover has taken reasonable steps to locate all relevant documents responding to the application.

19. Taking into account the scope of the application, the documents located by WorkCover, and WorkCover's searches and record keeping practices, I am satisfied that WorkCover has undertaken reasonable searches in this case, and that access to further documents can be refused on the basis they do not exist, in accordance with sections 47(3)(e) and 52(1)(a) of the RTI Act.
20. The above are the reasons for my decision set out at page 1.