



Decision and Reasons for Decision

Citation:	<i>E76 and Queensland Police Service</i> [2025] QICmr 63 (30 September 2025)
Application Number:	318494
Applicant:	E76
Respondent:	Queensland Police Service
Decision Date:	30 September 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - recordings - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant alleges further documents should exist - whether agency has taken all reasonable steps to locate relevant documents - whether further documents are nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (QPS) under the former *Information Privacy Act 2009* (Qld) (IP Act)² for 'QLiTE',³ audio, and body worn camera (BWC) recordings made by named QPS officers during an attendance at the applicant's former residence on 24 August 2023.
2. QPS located seven video and one audio recording relevant to the application. QPS decided⁴ to:
 - release parts of six of the video recordings, and part of the one audio recording; and
 - fully refuse access to the 7th video recording.

¹ Access application dated 18 April 2024.

² See paragraphs 7-8.

³ A system providing 'frontline officers with access to mobile applications to assist in daily duties that improve the capabilities and safety of officers...': <https://mypolice.qld.gov.au/news/2017/04/20/new-gps-qlite-capability-introduces-spot-banning-notices/> (accessed 11 September 2025).

⁴ Decision dated 25 February 2025 – the reviewable decision.

3. QPS' decision to refuse access to information as summarised above – the '**Information in Issue**' – was on the grounds that disclosure of that information would, on balance, be contrary to the public interest.⁵
4. The applicant applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision. The applicant contested QPS' decision to refuse access to information. The applicant further questioned the sufficiency of QPS' searches for information – whether it had located all documents relevant to his access application, specifically, QLITE recordings, and footage of an officer '*shaking*' her vest to '*simulate a physical struggle*'.⁷
5. For the reasons stated below, I consider QPS' decision to be correct. To the extent QPS decided to refuse the applicant access to information, that decision was justified on the basis disclosure would, on balance, be contrary to the public interest. Further, I am satisfied QPS has taken all reasonable steps to locate documents the subject of the applicant's access application. Access to any further documents may be refused, on the grounds those documents are nonexistent.⁷
6. In reaching this decision, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ A decision-maker in my position will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act when applying the law prescribed in the former IP Act and the RTI Act.⁹ I have done so 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:¹⁰ '*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.*'¹¹ I note that the Queensland Civil and Administrative Tribunal has considered and endorsed the manner in which I have approached HR Act obligations, as set out above.¹²

Relevant law

7. The law as discussed in these reasons is that as applied before 1 July 2025. On 1 July 2025 significant parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) commenced which, among other things removed from the IP Act the right to access documents of an agency.¹³
8. Applications made, but not finalised, before 1 July 2025, however, are to be dealt with as if the IPOLA Act had not been enacted.¹⁴ The access application the subject of this review is an application of that kind. References in these reasons, therefore, to the IP Act and the RTI Act are to provisions of each of those Acts as in force prior to 1 July 2025.

⁵ Under section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁶ External review application dated 5 March 2025.

⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ **XYZ** at [573].

¹² *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹³ From 1 July 2025, all access applications are made under the RTI Act.

¹⁴ Chapter 8, part 3 of the IP Act as it now stands – see particularly sections 215 and 217. Subsection (2) of the latter provides that the '*former IP Act continues to apply in relation to the application or purported application as if the amendment Act had not been enacted.*'

Refusal of access – Information in Issue – disclosure contrary to the public interest

Law and principles

9. Under the former IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁵ While the legislation is to be administered with a pro-disclosure bias¹⁶, the right of access is subject to certain limitations, including grounds for refusing access, as set out in the former IP Act and the RTI Act.¹⁷ Relevantly, access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁸
10. 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. 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.¹⁹
11. The RTI Act requires a decision maker to undertake certain steps in determining where the balance of the public interest lies.²⁰ Schedule 4 of the RTI Act non-exhaustively lists factors that may be relevant in determining where the balance of the public interest lies in a particular case.

Discussion

12. Copies of the eight recordings dealt with in QPS' decision were obtained by OIC and reviewed, together with a submission supplied by QPS in an email dated 26 March 2025 concerning searches undertaken for information responsive to the applicant's access application.
13. By letter dated 12 June 2025, I wrote to the applicant, explaining my preliminary view on the issues in this review – i.e., whether QPS was entitled to refuse access to the Information in Issue, and the sufficiency of its search efforts. Regarding the former, my letter outlined the nature of the Information in Issue, and identified considerations favouring its disclosure:²¹

Having conducted a preliminary assessment of the recordings in issue, it appears that relevant footage has, to the extent it features you, generally been released. The redactions applied to the recordings involve discussion of or conversations involving persons other than you, and constitute the personal information of those other individuals. The only significant factors I can identify favouring release of this redacted information is that release would contribute to some degree to the transparency and accountability of QPS's operations, and that some of it may comprise your personal information.

¹⁵ Section 40 of the former IP Act.

¹⁶ Section 64 of the IP Act.

¹⁷ Section 67(1) of the IP Act and section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: section 67(2) of the IP Act.

¹⁸ Sections 47(3)(b) and 49 of the RTI Act.

¹⁹ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, '*The Public Interest: We Know It's Important, But Do We Know What It Means*' (2006) 48 AIAL Forum 12, 14.

²⁰ Section 49(3) of the RTI Act. The steps include: identify and disregard any irrelevant factors, identify any factors favouring disclosure, identify any factors favouring nondisclosure; and decide whether, on balance, disclosure of the information would be contrary to the public interest.

²¹ Footnotes omitted from this and all following extracts from my 12 June 2025 letter.

14. I went on in this letter to note my obligation under section 49 of the RTI Act to balance considerations favouring disclosure against those favouring nondisclosure, before discussing the latter and my preliminary view as to the balance of the public interest:

In this case, as the information in issue involves the personal information of other persons, the RTI Act presumes that its disclosure would give rise to a public interest harm. It is also my preliminary view that release of this redacted information could reasonably be expected to prejudice the protection of an individual's right to privacy. These are important public interests that weigh heavily against disclosure of information – noting that, to the extent some of this redacted footage may comprise your personal information, it is not possible to release this information to you without disclosing third party personal information and causing public interest harm. There would ordinarily need to be a very strong public interest case to justify release of another person's personal information. I cannot, on a preliminary basis, identify such a case in this matter.

Additionally, routine disclosure of footage of individuals assisting QPS investigations could, in my preliminary view, reasonably be expected to discourage persons from providing information to police or cooperating with future inquiries. Disclosure of this type of information could, accordingly, prejudice the flow of information to police: another factor favouring nondisclosure, warranting relatively significant weight.

On balance, it is my preliminary view that the considerable public interest in protecting personal information, safeguarding individual privacy and preserving the flow of information to police outweighs any considerations favouring disclosure of the information in this case.

15. The applicant replied,²² submitting:²³

...by withholding the requested information the Queensland Government is making it impossible to not only resolve a number of issues that have been lodged with the Queensland Human Rights Commission, but it has also had drastically affected my health and has caused and continues to cause severe financial hardships including homelessness. The QPS made a person with... [several significant impairments edited in the interests of privacy, including a condition resulting] from a workplace injury ... homeless and refused to allow me to have my vehicle which also meant I didn't have access to my disabled parking permit which I still could have used in other vehicles if been driven somewhere due to not being allowed to have my own vehicle. I have also suffered discrimination, bullying and abuse.... The video that has been provided to me is completely useless due to how heavily it has been edited. In particular the conversation between the officers while for the door to be answered, part of the audio has been removed from the video and it could be relevant to the attitude of the officers and as such the treatment that I received. By not providing me with the information I have requested I believe the RTI and OIC are both in breach of Section 58 of the Human Rights Act Queensland 2019 and as such additional information has been added to my existing case with the Queensland Human Rights Commission which is not only about the QPS but also about a number of other issues that have risen due to the actions of the QPS and decisions made by the QPS.

16. While I have carefully considered the above submission, it contains nothing to dissuade me from the preliminary view set out in my 12 June 2025 letter, and extracted at paragraphs 13-14 above. Reasons follow.

Irrelevant factors

17. I have neither identified, nor had regard to, any irrelevant factors in making this decision.

²² By email dated 22 August 2025.

²³ The extract below has been edited slightly for privacy reasons; I have carefully considered the unedited original submission in making my decision.

Factors favouring disclosure

18. As stated in my 12 June 2025 letter, I acknowledge disclosure of the Information in Issue – including footage particularised by the applicant in the above submission – may promote the transparency of QPS operations, and its accountability for those operations.²⁴ I further accept that some of that information may comprise the applicant's personal information.²⁵
19. In addition to those factors, I am, in view of the applicant's submission, also prepared to accept disclosure of some of the Information in Issue may to some extent advance fair treatment of individuals in their dealings with agencies.²⁶ Further, I note disclosure of some of this information may reveal background or contextual information informing QPS officer actions and decisions during the attendance in question.²⁷
20. I acknowledge the applicant is dissatisfied with the amount of information disclosed by QPS. Objectively assessed, however, my view is that he has had access to relatively substantial parts of relevant recordings,²⁸ discharging to a considerable degree the various factors favouring disclosure discussed above and thereby diminishing to some extent the weight each attracts.

Factors favouring nondisclosure

21. Factors favouring nondisclosure, on the other hand, in my view merit substantial weight. The Information in Issue in the main comprises footage of QPS interactions with an individual other than the applicant.²⁹ I am satisfied this information comprises the personal information³⁰ of that individual, disclosure of which the RTI Act presumes would give rise to a public interest harm.³¹ As canvassed in my 12 June 2025 letter to the applicant, I am further satisfied that disclosure of this information could reasonably be expected to:³²
 - prejudice the protection of an individual's right to privacy;³³ and
 - prejudice the flow of information to police.³⁴

²⁴ Schedule 4, part 2, items 1 and 3 of the RTI Act. See too the general public interest in promoting access to government-held information, implicit in the object of the RTI Act.

²⁵ Schedule 4, part 2, item 7 of the RTI Act.

²⁶ Schedule 4, part 2, item 10 of the RTI Act.

²⁷ Schedule 4, part 2, item 11 of the RTI Act (noted in my 12 June 2025 letter - see footnote 7 of that letter). The applicant's application for external review and his 22 August 2025 email may also be read as submissions that disclosure of the Information in Issue could reasonably be expected to allow/assist inquiry into possible QPS administrative or conduct deficiencies, and/or reveal QPS officer misconduct/negligent, improper/unlawful conduct - factors favouring disclosure: schedule 4, part 2, items 5 and 6 of the RTI Act. I do not consider either applies – there is nothing in the Information in Issue, nor other probative material before me, to suggest the conduct of relevant QPS officers was otherwise than in accordance with their duties and obligations.

²⁸ For completeness, I note that the BWC recordings in issue begin with 30 seconds of silence: this is not a refusal of information that may be the subject of external review, but a technical limitation of the BWC devices used by QPS – this was explained to the applicant by QPS in its decision letter dated 25 February 2025: *'The first 30 seconds of any BWC contains no audio. This is called the pre-event buffer. The camera is configured to back-capture thirty seconds of video immediately prior to when the recording was activated. The 30 second pre-event buffer captures video but not audio. Audio commences at the 30 second mark of the video being the point in time when the camera recording was activated.'* This would appear to address the applicant's 22 August 2025 submission concerning 'removal' of audio from certain BWC recordings – the silence in the first 30 seconds of a BWC recording is not the result of a 'removal' of audio, but a consequence of the fact such audio is not captured.

²⁹ And in the case of the audio recording, that individual's residential address.

³⁰ Section 12 of the IP Act relevantly defines personal information as *'information or opinion... 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.'*

³¹ Schedule 4, part 4, section 6 of the RTI Act.

³² The phrase *'could reasonably be expected'* requires a decision-maker to distinguish *'between what is merely possible ... and expectations that are reasonably based'* and for which *'real and substantial grounds exist'*: *B and Brisbane North Regional Health Authority* [1994] QICmr 1, [154]-[160] (a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld)). Other jurisdictions have similarly interpreted the phrase *'as distinct from something that is irrational, absurd or ridiculous'*: See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21, [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19, [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180, [190].

³³ Schedule 4, part 3, item 3 of the RTI Act. Providing information to law enforcement authorities is a *'private action'* enlivening this privacy factor: *Van Kuijk and Queensland Police Service* [2014] QICmr 35, [37].

³⁴ Schedule 4, part 3, item 13 of the RTI Act.

Balancing the public interest

22. I recognise the importance of the public interest considerations favouring disclosure of the Information in Issue, as discussed above. There is, however, a strong public interest in safeguarding individual privacy, as there is in avoiding public interest harm by protecting personal information, and in preserving the free flow of information to QPS. Balancing competing public interest considerations against one another, I consider that disclosure of the Information in Issue³⁵ would be contrary to the public interest. Access to this information may, therefore, be refused.
23. As for the applicant's reference to section 58 of the HR Act, paragraph 6 explains the manner in which this important obligation applies in the context of the information access regime prescribed in the former IP and RTI Acts; in summary, observance of the public interest balancing framework, as I have done in this decision, ensures compliance and is consistent with those HR Act obligations.

'Missing' recordings – sufficiency of search – documents nonexistent or unlocatable

24. As noted, in his application for external review the applicant questioned the sufficiency of QPS' searches for requested recordings: an issue that may be considered by OIC on external review.³⁶ Sections 47(3)(e) and 52 of the RTI Act further allow for an agency to refuse access to documents, where those documents are nonexistent or unlocatable.
25. Under the RTI Act, a document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.³⁷ A document is unlocatable if it has been or should be in an agency's possession and all reasonable steps have been taken to find the document but it cannot be found.³⁸ Principles relevant to the interpretation and application of these provisions have been discussed in a number of OIC decisions.³⁹
26. I addressed the issue of 'missing' recordings in my 12 June 2025 letter. Acknowledging the applicant's contentions that additional recordings should exist, including '*footage of an officer shaking her vest to simulate a physical struggle*', I went on to advise:

QPS has explained that no QLITE recordings exist, and there is nothing currently before me to call this explanation into question. Additionally, the information in issue itself – the recordings QPS did locate – appears to capture your full interaction with QPS and there is no indication of a QLITE device being shaken by an officer that I can identify.

Without further information pointing to the existence of relevant recordings, my preliminary view is that QPS may refuse access to same, on the basis they are nonexistent or unlocatable.

27. QPS bears the formal onus in this matter.⁴⁰ It provided OIC with a submission during the review confirming the searches which were undertaken and explaining the absence of any additional recordings.⁴¹ That submission indicates searches were undertaken of relevant

³⁵ Including the applicant's own personal information, to the extent the Information in Issue comprises same – noting that, as explained in my 12 June 2025 letter to the applicant, it is not possible to disclose this information without disclosing third party personal information and therefore causing public interest harm.

³⁶ Section 137(2) of the former IP Act, which provides that OIC functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.

³⁷ Section 52(1)(a) of the RTI Act.

³⁸ Section 52(1)(b) of the RTI Act.

³⁹ See for example *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].

⁴⁰ Section 100 of the former IP Act.

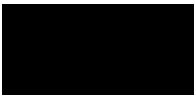
⁴¹ QPS email dated 26 March 2025, noted above, which included records advising of appropriate search steps. This email states that all footage captured by attending officers was located, and which footage did not include QLITE recordings – the email further stating that QLITE devices are not routinely used by QPS officers, BWC devices (recordings generated by which were located and

operational areas, using appropriate search terms. Having regard to that submission, and my own review of the eight recordings located, I am satisfied that QPS has taken all reasonable steps to locate requested recordings, and that there are no reasonable grounds to believe further recordings exist. In these circumstances, there falls to the applicant a practical onus of demonstrating that QPS has not discharged its obligation to locate all relevant documents.⁴²

28. The applicant's 22 August 2025 email,⁴³ however, contains nothing to suggest further relevant documents exist, nor any submissions contesting the reasoning stated in my 12 June 2025 letter. There is nothing otherwise before me to cause me to revisit my preliminary view in this regard. Accordingly, I adopt that view as final for the purposes of this decision. I am satisfied QPS has taken all reasonable steps to locate requested recordings, and there is nothing before me to suggest any further recordings exist. Access to any additional recordings may be refused, on the basis they are nonexistent.⁴⁴

DECISION

29. For the reasons set out above, I concur with the reviewable decision⁴⁵ to refuse access to the Information in Issue. Given, however, it is necessary for me to also make findings regarding 'missing' recordings raised by the applicant on external review, I consider I must vary the reviewable decision, and find that:
- access may be refused to the Information in Issue on the basis disclosure of that information would, on balance, be contrary to the public interest under section 67(1) of the former IP Act and 47(3)(b) of the RTI Act; and
 - access to any additional recordings may be refused under section 67(1) of the former IP Act and 47(3)(e) of the RTI Act, on the basis those recordings are nonexistent.
30. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.



Jim Forbes
Assistant Information Commissioner

Date: 30 September 2025

dealt with in QPS' decision) being the primary means by which officer activities are recorded. I have no reason to question this submission, which I accept.

⁴² Which obligation was canvassed by me in footnote 12 of my letter to the applicant dated 12 June 2026.

⁴³ Relevant text of which is set out in paragraph 15.

⁴⁴ And noting there is nothing in the circumstances of this case I can identify that would require QPS to undertake a backup system search under section 52(2) of the RTI Act. For completeness, I note that the BWC recordings in issue begin with 30 seconds of silence: this is not a refusal of information that may be the subject of external review, but a technical feature of the BWC devices used by QPS – this was explained to the applicant by QPS in its decision letter dated 25 February 2025: 'The first 30 seconds of any BWC contains no audio. This is called the pre-event buffer. The camera is configured to back-capture thirty seconds of video immediately prior to when the recording was activated. The 30 second pre-event buffer captures video but not audio. Audio commences at the 30 second mark of the video being the point in time when the camera recording was activated.' This would appear to address the applicant's 22 August 2025 submission concerning 'removal' of audio from certain BWC recordings – the silence in the first 30 seconds of a BWC recording is not the result of a 'removal' of audio, but a consequence of the fact such audio is not captured.

⁴⁵ Under section 123(1)(b) of the IP Act.