



Decision and Reasons for Decision

Citation:	<i>U93 and The Public Trustee of Queensland [2025] QICmr 69 (10 October 2025)</i>
Application Number:	318351
Applicant:	U93
Respondent:	The Public Trustee of Queensland
Decision Date:	10 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits further documents should exist - whether agency has taken reasonable steps to locate relevant documents - whether agency can be satisfied further documents do not exist - section 52(1)(a) of the <i>Right to Information Act 2009 (Qld)</i> - whether access to further documents may be refused under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and section 47(3)(e) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Background

1. The applicant applied¹ to the Public Trustee of Queensland (**PTQ**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**)² for access to administration orders, financial records and correspondence pertaining to him personally, including associated metadata.
2. The PTQ decided³ to refuse access to all requested documents under section 47(3)(e) and 52(1)(a) of the RTI Act on the basis they were nonexistent.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the PTQ's decision.⁵ In his application, the applicant submitted that *'it appears the documents I have requested have not been looked for properly or are being*

¹ Access application dated 11 October 2024, validated on 17 October 2024.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting significant changes to the IP Act and *Right to Information Act 2009 (Qld)* (**RTI Act**). References in this decision to the IP and RTI Acts, however, are to those Acts as in force prior to 1 July 2025. This is in accordance with Chapter 8 Part 3 of the IP Act and Chapter 7 Part 9 of the RTI Act, comprising transitional provisions requiring that access applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted.

³ Decision dated 21 November 2024. The PTQ delegated power under section 50 of the IP Act to the Director-General of the Department of Justice (**Department**) to deal with applications made under the IP Act for access to documents in the PTQ's possession or control. In these reasons, I have referred to PTQ as the respondent agency, noting that the Department participated in the review, on behalf of the PTQ.

⁴ Section 67(1) of the IP Act provides that access to information may be refused on the same grounds as set out in section 47(3) of the RTI Act.

⁵ External review application dated 5 December 2024.

exempted'. During the review, the applicant provided further submissions in support of his contentions that documents should have been located, and pointing to additional searches which he considered would be reasonable for the PTQ to undertake.⁶

4. The issue for determination in this review is whether access may be refused to the requested documents on the basis they are nonexistent.⁷ In making my finding on this issue, I have examined whether the PTQ has taken all reasonable steps to locate documents responsive to the terms of the application.
5. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as set out in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information⁸ and in doing so, I have acted in accordance with section 58(1) of the HR Act.⁹
6. For the reasons set out below, I affirm the PTQ's decision to refuse access to the requested information on the basis it does not exist.¹⁰

Relevant law

7. Under the IP Act, an individual has a right to be given access to documents in the possession or under the control of an agency to the extent they contain their personal information.¹¹ The legislation is to be administered with a pro-disclosure bias,¹² however, the right of access is subject to certain limitations, including grounds for refusing access.¹³
8. Access to a document may be refused if it is nonexistent or unlocatable.¹⁴ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁵ 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.¹⁶
9. 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.¹⁷ After considering relevant factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency. If searches are relied on to justify a decision that the documents do not exist, all

⁶ Submissions dated 29 May 2025.

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

⁸ Section 21 of the HR Act.

⁹ OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹⁰ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹¹ Section 40 of the IP Act.

¹² Section 64 of the IP Act.

¹³ 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.

¹⁴ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁵ Section 52(1)(a) of the RTI Act.

¹⁶ Section 52(1)(b) of the RTI Act.

¹⁷ These factors are identified in *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* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (**PDE**). 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) [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) [19].

reasonable steps must be taken to locate the documents.¹⁸ What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.

10. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all possible steps)¹⁹ to identify and locate documents applied for by applicants.²⁰ On an 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. However, where the issue of missing documents is raised, the applicant bears a practical onus of 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

Searches, evidence and submissions

11. The terms of the access application are set out below:²³

1. a. Administration orders.
b. Meta-data for documents returned from request item 1(a).
2. a. Financial records.
b. Meta-data for documents returned from request item 2(a).
3. a. Correspondence concerning myself.
b. Meta-data for documents returned from request item 3(a).

12. In its decision, the PTQ outlined the process it took to undertake searches, and obtain relevant details from the applicant, as follows:²⁴

On 21 October 2024, OQPT advised RTI and Privacy they were unable to locate any documents relating to you as a QPT customer.

On the same date, RTI and Privacy emailed you requesting more details about the services or interactions you have had with QPT, such as which QPT office you have interacted with, when the interactions occurred and whether any other QPT customers were involved.

On 7 November 2024, you provided the names of two "representatives / other customers involved", six "known addresses" and a time period of 23 September 2012 to 11 October 2024.

On 12 November 2024, OQPT advised that after conducting extensive searches of their databases and their records team with the additional information you have provided, they are still unable to locate the any information responsive to your request.

In this case, following searches conducted and certification from the OQPT, I have determined that QPT holds no documents recording the information you seek.

¹⁸ In *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6], McGill J observed that this does not extend to all 'possible' steps.

¹⁹ *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

²⁰ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb* at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

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

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

²³ For the time period 23 September 1994 - 11 October 2024.

²⁴ At page 2.

13. Search records completed by the PTQ²⁵ reveal that searches were conducted of its Client Information Management System (**CIMS**), Complaints Management System, and Content Manager (its corporate recordkeeping system) using variations of the applicant's name and another individual, and various addresses which the applicant provided to the PTQ to support his request.

14. The PTQ also submitted²⁶ as follows:

Given the date range supplied, if QPT had records of this customer, we would expect them to be located in CIMS.

CIMS is our Client Information Management System (CIMS) which was implemented at QPT from 1994 – 1998 with our Protective Management Customers being the first to be migrated into CIMS in 1994/95. Prior to CIMS we had the DMS system to manage Customer Records (active between 1982 – 1998).

The CIMS system has a record of customers who were active in the DMS system through the ACSRQ screen.

For this search request we were able to determine that no records relating to [the applicant] were found when using the provided search terms in CIMS inclusive of DMS customers.

The CIMS system has ... screens which include CLCOR (Client Correspondence) and CLNOT (Client Notes). The searches that were conducted did not locate a customer and therefore no CLCOR (Client Correspondence) or CLNOT (Client Notes) were discovered.

No search of Queensland State Archives (QSA) was conducted as it was determined from the date range that the file would not have been transferred to QSA.

Content Manager is our corporate recordkeeping system.

15. Following a request from OIC,²⁷ the PTQ also provided the following clarification:²⁸

The acronym ACSRQ refers to 'Activity Inquiry'. This is in the Client Information Management System (CIMS) as a module and includes a spreadsheet containing the names of Queensland Public Trustee clients prior to the introduction of DMS/CIMS. If the name of a client is identified in this module a client card can be requested from Queensland State Archives (where the cards are stored).

... regarding the Complaints Management System (CMS), this is a module within the CIMS (as are CLCOR and CLNOT). The searches conducted in CIMS (search return provided 26 January 2025) included searches of ACSRQ, CMS, CLCOR, CLNOT and DMS.

16. The applicant submitted²⁹ to OIC that he held outstanding concerns about the PTQ's searches and in summary, raised the following points:

- 1. It appears CIMS was the only system searched ...*
- 2. QPT did not conduct searches using the names of the individuals I had provided to it...*
- 3. QPT did not conduct searches of physical files...*
- 4. The QPT did not consider any of the documents I had requested would have been transferred to QSA...*
- 5. The QPT did not identify any of its backup systems...*
- 6. The QPT did not look for administrative / legal documents...*

²⁵ A PTQ completed search request form was provided to the Department on 12 November 2024. A further copy of the search request form, containing more comprehensive search details was provided to OIC on 26 January 2025.

²⁶ PTQ completed search request form provided to OIC on 26 January 2025.

²⁷ By email dated 23 September 2025.

²⁸ Submission dated 2 October 2025.

²⁹ Submissions dated 29 May 2025.

7. The QPT did not look for financial documents...

17. The applicant submitted³⁰ that further information about PTQ's searches and records management systems and practices should be obtained by OIC, and that further searches should be undertaken of:

1. Content Manager.
2. QPT's Brisbane, Southport and Brendale offices.
3. CIMS (for correspondence and file notes).
4. QSA.
5. Backup systems.

Findings

18. I have examined the terms of the access application, the PTQ's decision, search records and submissions provided by the PTQ, the external review application and the applicant's submissions made to OIC during the review.

19. As outlined above, when an agency determines, based on the searches and inquiries that it has conducted, that requested documents are nonexistent, the only issue for OIC to determine is whether the agency has taken all reasonable steps to locate the documents. A finding that all reasonable steps have been taken by an agency is open to reach *'even if, at least in theory, further and better searches might possibly disclose additional documents.'*³¹ Therefore, the issue upon which I must make a finding in this review is whether the PTQ has taken all *reasonable* steps to identify documents, as opposed to all *possible* steps.

20. Having reviewed the search records and submissions of the PTQ, I accept that CIMS and Content Manager are the recordkeeping systems where it would be reasonable to expect records to be located in relation to an individual who has had engagement with the PTQ. However, the search results provided by the PTQ reveal that no records were located in either system under the applicant's name (including multiple variations of his name), nor in connection with other identifying details provided in support of his application.

21. I am satisfied that by using a variety, and combination of relevant search terms in conducting electronic searches across CIMS and Content Manager, it is reasonable to expect that if records pertaining to the applicant were held, they would have been identified through those searches. I consider that, if any responsive documents were to exist in the PTQ's possession or control, it is reasonable to expect that those searches and inquiries would have located such documents, or, at the very least, located information that may have identified other relevant avenues of search or inquiry for the PTQ to pursue.

22. The applicant considers searches of physical records should also have been conducted. However, taking into account that CIMS has been the relevant recordkeeping system since 1994,³² and the date range applicable to the application was 1994 to 2025, I do not consider it would be reasonable to also conduct physical searches. I am satisfied that the electronic searches of CIMS and Content Manager represent reasonable steps in the circumstances of this case. I am further satisfied that, where extensive electronic searches of an agency's primary recordkeeping system/s reveal no information whatsoever in connection with an applicant (as is the case here) that will generally be

³⁰ Submissions dated 29 May 2025.

³¹ *Webb* at [6].

³² See PTQ's submissions in paragraph 14 and 15.

sufficient to establish reasonable grounds to be satisfied that information relating to that individual does not exist within the records of that agency.

23. I acknowledge that the lack of any responsive documentation has not met the applicant's expectations. However, while he put forward comprehensive submissions supporting his case, I do not consider any of those submissions discharge the practical onus upon him to demonstrate that the PTQ has not taken reasonable steps to locate relevant information. In making this finding, I have taken into account that the applicant has not pointed to any tangible evidence demonstrating the nature of his interactions with the PTQ which would justify requesting the PTQ to undertake any further searches.
24. For completeness, based on the evidence available to me in this review, I am satisfied that it would not be reasonable for the PTQ to make inquiries with Queensland State Archives, nor would it be reasonable for PTQ to undertake searches of its backup system.³³
25. For the reasons set out above, I find that the PTQ has taken all reasonable steps to locate documents relevant to the access application and access to responsive documents may be refused on the basis that they do not exist.³⁴

DECISION

26. For the reasons set out above, I affirm the reviewable decision³⁵ to refuse access to all documents responding to the terms of the application on the basis they do not exist.³⁶
27. 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.



K Shepherd
Assistant Information Commissioner

Date: 10 October 2025

³³ Therefore, the requirement under section 52(2) of the RTI Act is not enlivened.

³⁴ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

³⁵ Under section 123(1)(a) of the IP Act.

³⁶ Under section 67(1) of the IP Act, section 47(3)(e) and 52(1)(a) of the RTI Act.