



Decision and Reasons for Decision

Citation:	O12 and Public Sector Commission [2026] QICmr 97 (10 June 2026)
Application Number:	318730
Applicant:	O12
Respondent:	Public Sector Commission
Decision Date:	10 June 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - information about an agency's staffing, recruitment and workplace performance - whether disclosure would, on balance, be contrary to the public interest - 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 submits further documents should exist - whether agency has taken reasonable steps to locate relevant documents - whether access to further documents may be refused because they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)

DECISION

1. Under section 110(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**), I affirm the decision under review by finding that access to documents may be refused under sections 47(3)(b) and 49 of the RTI Act on the ground that their disclosure would, on balance, be contrary to the public interest.
2. In addition, I find that access to other documents may be refused under section 47(3)(e) of the RTI Act because they are nonexistent or unlocatable.

3. My reasons for the decision follow.



R Moss
Principal Review Officer

Date: 10 June 2026

REASONS FOR DECISION

Summary

4. The applicant applied¹ to the Public Sector Commission (**PSC**) under the RTI Act² for access to all emails for a 10 month period that were:
 - sent to a named individual by the applicant
 - received by the named individual and copied to the applicant; and
 - sent by the named individual to the applicant or copied to the applicant.
5. PSC located 37 responsive pages and decided³ to give full access to eight pages (subject to deletion of irrelevant information) and to refuse access in full to 29 pages on public interest grounds.
6. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of PSC's decision to refuse access in full to 29 pages. During the course of the review, some additional information was released to the applicant, both under the RTI Act,⁵ and administratively. The applicant also contended that there were missing documents, thereby raising a sufficiency of search issue.

Background

7. During the timeframe referred to in the access application, the applicant was employed in a government agency (**Agency**).⁶ The emails to which the applicant seeks access were sent or received by the applicant in their capacity as an officer in the Agency during the relevant period.

Reviewable decision

8. The decision under review is the decision of PSC dated 30 May 2025.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken

¹ Application made compliant on 13 May 2025.

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 RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's application was made before this change, the RTI Act and IP Act as in force prior to 1 July 2025 remain applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts as in force prior to 1 July 2025.

³ Decision dated 30 May 2025. The decision was made on behalf of PSC by Department of the Premier and Cabinet (**DPC**) pursuant to a delegation made under sections 30(3) and 30(4) of the RTI Act. While OIC has mostly dealt directly with DPC rather than PSC throughout the external review, all references in these reasons will be to PSC as the respondent agency.

⁴ Application received 23 June 2025.

⁵ Parts of pdf pages 14–16 in the folder titled 'COMBINE – part 1 and 2 of scope', duplicated at pdf pages 8–9 in the folder titled 'COMBINE – part 3 of scope'.

⁶ See section 14 of the RTI Act.

account of the applicant's submissions⁷ to the extent they are relevant to the issues for determination in this review.

10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation: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

Information in issue

11. The information in issue comprises all or parts of 29 pages of emails (**Information in Issue**).

Issues for determination

12. The issues for determination are:
- whether access to the Information in Issue may be refused under the RTI Act on the grounds that its disclosure would, on balance, be contrary to the public interest; and
 - whether the searches and inquiries carried out to locate all responsive documents have been reasonable in all the circumstances.

Relevant law – public interest balancing test

13. Under the RTI Act, a person has a right to be given access to documents of an agency.¹² However, this right is subject to provisions of the RTI Act including the grounds on which access to documents may be refused.¹³ One of the grounds upon

⁷ As contained in the applicant's external review application and in their emails of 19 December 2025, 5 March 2026 and 12 May 2026.

⁸ Section 21(2) of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573], endorsed in Queensland by *Deemal-Hall v Office of the Director of Prosecutions* [2024] QCATA 131.

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

¹¹ **XYZ** at [573].

¹² Section 23 of the RTI Act.

¹³ Section 47 of the RTI Act.

which access may be refused is where disclosure would, on balance, be contrary to the public interest.¹⁴

14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.
15. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,¹⁵ together with all other relevant information, in reaching my decision. I have also applied the RTI Act's pro-disclosure bias¹⁶ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.¹⁷
16. In making this decision, I have not taken into account any irrelevant factors.¹⁸

Submissions

17. At the commencement of the review, PSC was asked to provide further and better particulars of the reasons for its decision that disclosure of the Information in Issue would, on balance, be contrary to the public interest. The additional statement of reasons provided by PSC in response to this request was then communicated to the applicant.
18. In summary, PSC accepted that disclosure of the Information in Issue could reasonably be expected to enhance government accountability and transparency in terms of revealing reasons for various decisions taken by the Agency and/or PSC, and that a small portion of the documents could be regarded as the applicant's personal information. However, PSC argued that these factors favouring disclosure were, on balance, outweighed by:
 - the public interest in protecting the personal information and right to privacy of the various individuals discussed in the Information in Issue in the context of staff management and work performance issues; and

¹⁴ Sections 47(3)(b) and 49 of the RTI Act. The 'public interest' '...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

¹⁵ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance. I note that the lists in Schedule 4 are non-exhaustive.

¹⁶ Section 44 of the RTI Act.

¹⁷ Section 47(2) of the RTI Act.

¹⁸ Including any set out in schedule 4, part 1 of the RTI Act.

- the prejudice that could reasonably be expected to be caused to the Agency's staff management functions, and its ability to obtain confidential information in the context of managing workplace issues arising in the Agency.
19. In response, the applicant made submissions dated 19 December 2025. The applicant's central arguments were as follows:
- they had not been provided with sufficient information about the contents of the Information in Issue to satisfy them that access had been properly refused
 - given the lack of detail about the Information in Issue, it was not possible for the applicant to be satisfied that all responsive documents had been located
 - it was not reasonable to expect that every part of the Information in Issue was entirely about, or inextricably linked to, '*sensitive third party performance issues*'; and
 - insufficient weight had been given to the '*extreme loss of transparency*' that resulted from refusing access in full.
20. The applicant raised the following public interest factors favouring disclosure:
- enhancing government accountability
 - assisting with inquiries into possible deficiencies in the conduct or administration of any agency or official
 - potentially revealing or substantiating that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct; and
 - advancing the fair treatment of individuals in accordance with the law in their dealings with agencies.
21. After considering the submissions of both parties, OIC expressed a preliminary view to the applicant that access to the Information in Issue could be refused on public interest grounds.¹⁹ The applicant rejected OIC's preliminary view and provided submissions in response.²⁰ In addition to continuing to argue that they had been provided with insufficient details about the Information in Issue and that partial access at least should be possible, the applicant submitted that there were missing documents, thereby raising a sufficiency of search issue. I will discuss this issue and the applicant's submissions, further below.
22. OIC expressed a further preliminary view to the applicant about the Information in Issue.²¹ However, the applicant continued to press for access and reiterated their complaint that the refused emails had not been specifically identified and that they should be provided with details as to author, addressees, nature of communication, and date. The applicant submitted that this was not sensitive information and it would not be contrary to the public interest to disclose it. The applicant also contended that:

¹⁹ Letter to applicant dated 18 February 2026.

²⁰ On 5 March 2026.

²¹ By email on 28 April 2026.

- the access application sought documents relating to the applicant's communication with their former manager over a ten-month period, and not to third-party information
- the applicant had consented to the deletion of sensitive third-party information
- no direct communication between the applicant and their former manager had been released
- OIC had acknowledged that not all information was contrary to the public interest to disclose
- even if the applicant was not the author or the primary recipient of many of the emails, the issues discussed therein significantly impacted the applicant
- the applicant was not satisfied that partial access to the emails was not possible; and
- procedural fairness required that the applicant be provided with the specific identity of the Information in Issue.

Findings

23. Turning firstly to the applicant's complaints about not being provided with a specific description of the Information in Issue, I am satisfied that the applicant has been provided with sufficient information to enable them to understand the nature of the Information in Issue, and the general topics discussed in the relevant emails. In OIC's preliminary view letter dated 18 February 2026, the following was stated:

Having reviewed the emails in question, I can confirm that they primarily contain the personal information of persons other than you, and discuss issues concerning performance, secondments, recruitment, transitioning and management of staff other than you. With the exception of two emails dated [date provided], and one email dated [date provided], you have simply been copied into (or are a secondary recipient) to email exchanges that are mostly between [relevant parties], and that mostly concern a particular staff member and that person's work performance.

As to the three emails mentioned above which you either sent or received directly on [date provided], these also discuss issues concerning the performance of the particular staff member referred to in the previous paragraph, and are from the staff member to you [date provided] or between you and the PSC (one email on [date provided] and one email on [date provided]).

24. This was reiterated in OIC's email of 13 May 2026.
25. I reject the applicant's assertion at paragraph 22 above that they sought access only to communications with their manager and not to sensitive third party information. The terms of the access application (as set out in paragraph 4 above) are not limited in that way. The applicant sought access to *any* emails involving the applicant and the named person during the relevant timeframe. As is to be expected, emails covering a range of topics were responsive to the broad terms of that request,²² including sensitive information about other individuals employed in the Agency at

²² Emails released to the applicant dealt with topics such as, for example, upcoming changes to RTI fees, transitioning back to the workplace following the easing of COVID-19 restrictions, and changes to the process for recruitment requests.

the relevant time, and about staffing of the Agency more generally. I note that the subject line of many of the emails consists of the name of other officers of the Agency in the context of a discussion about their employment and/or work performance. I remain satisfied that the description of the email subject matter that was provided to the applicant provides a fair summary of the nature of the Information in Issue, and is sufficient to enable the applicant to understand the reasons for the preliminary views that were communicated by OIC during the review regarding the application of the public interest balancing test. Moreover, while I acknowledge the age of the emails in question, the applicant was a party to all of them and it is reasonable to expect that the applicant would have some recollection of the topics under discussion, given their nature. As such, I am satisfied that the applicant has been afforded procedural fairness. To the extent that the applicant is concerned about whether any of the emails discuss or relate directly to the applicant's own work performance or to any discussion with, or by, the applicant's former manager of that nature,²³ there are none that fit that description contained within the Information in Issue (this was confirmed to the applicant during the course of the review).

26. I note the applicant's contentions about the possibility of being given partial access to emails so as to enable the applicant to be satisfied about the emails' contents, and on the basis that at least some of the information, including emails headers, cannot comprise contrary to the public interest information. Section 75 of the RTI Act provides that, if an access application is made for a document containing contrary to the public interest information, and it is practicable to give access to a copy of the document from which that information has been deleted, the agency must do so. The applicant's contention is predicated on a finding that disclosure of parts of the emails would not, on balance, be contrary to the public interest. As was explained to the applicant during the review, and for the reasons set out again below, with the exception of the applicant's own email address, I am not satisfied that this is the case. In my view, the emails comprise communications the disclosure of which would, on balance, be contrary to the public interest.
27. Based on the applicant's submissions and the decision under review, the public interest factors favouring disclosure of the Information in Issue that arise for consideration are as follows:
 - enhance the accountability and transparency of government and provide background or contextual information that informed government decision-making²⁴
 - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official²⁵
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct²⁶

²³ Noting that, in raising an issue about missing emails, the applicant focused on the existence of emails that the applicant contended directly involved the applicant and their manager, and that concerned a disagreement between them.

²⁴ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²⁵ Schedule 4, part 2, item 5 of the RTI Act.

²⁶ Schedule 4, part 2, item 6 of the RTI Act.

- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;²⁷ and
 - the information is the applicant's personal information.²⁸
28. The relevant public interest prejudice and harm factors that favour nondisclosure are:
- causing a public interest harm through disclosing the personal information of another person²⁹
 - prejudice the protection of that person's right to privacy³⁰
 - prejudice an agency's ability to obtain confidential information;³¹ and
 - prejudice the management function of an agency.³²
29. An assessment must be made of whether disclosure of the Information in Issue could '*reasonably be expected to*' have the effect provided for in each of these factors.³³
30. I accept that disclosure of the Information in Issue would give insight into issues affecting the Agency during the relevant period, and thereby enhance government accountability and transparency regarding the way in which these issues were handled, the reasons for the related decisions that were made, and the impact upon the discharge by the Agency of its core functions. As noted, these issues primarily concerned staff and staff performance, and discussions about what actions to take to address the effects of these issues. These matters extended to discussions about transfers and secondments.
31. I acknowledge that the performance issues identified in the Information in Issue had potentially significant consequences for the efficient discharge of the Agency's functions. However, I also note that the events in question occurred nearly six years ago. I do not understand the issues to have any continuing relevance or impact on the Agency. Similarly, the other staff management and recruitment issues discussed in the emails are no longer current and I do not consider that their disclosure would enhance the accountability and transparency of the Agency to any significant extent, either generally, or more specifically in relation to the Agency's decision-making and the contextual information that informed it. For these reasons, I afford low to moderate weight to these public interest factors favouring disclosure.

²⁷ Schedule 4, part 2, item 10 of the RTI Act.

²⁸ Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the IP Act defines 'personal information' for the purpose of the RTI Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

²⁹ Schedule 4, part 4, section 6 of the RTI Act.

³⁰ Schedule 4, part 3, item 3 of the RTI Act.

³¹ Schedule 4, part 3, item 16 of the RTI Act.

³² Schedule 4, part 3, item 19 of the RTI Act.

³³ The term '*could reasonably be expected to*' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

32. The applicant has argued that, even if they were not the author or the primary recipient of many of the emails, the issues discussed therein nevertheless significantly impacted the applicant personally. I accept that the issues may have impacted the applicant due to the applicant's role in the Agency at the relevant time, and that the efficient and effective functioning of the Agency would have been of concern to the applicant in that role. However, to the extent that any issue discussed in the emails directly involved or impacted the applicant personally, this would appear to be limited to one email to the applicant from another officer that sets out that officer's account of an interaction with the applicant (and which email the applicant then forwarded to their manager, in association with a discussion about other issues concerning the officer).³⁴
33. I acknowledge that the email referred to in the preceding paragraph contains sensitive shared personal information of the applicant and the other officer. The RTI Act recognises a strong public interest in an individual accessing their own personal information as held by government. However, it also recognises an equally strong public interest in protecting the personal information of other individuals from disclosure under the RTI Act, and in protecting their associated right to privacy. I will discuss these nondisclosure factors further below. In terms of the email in question, I am satisfied that the personal information of the applicant is inextricably intertwined with the personal information of the other officer, such that the applicant's personal information cannot be severed and access given to it alone.
34. As to the remaining public interest nondisclosure factors relied upon by the applicant, the applicant has not, in their submissions, explained precisely how they contend that these factors apply to the Information in Issue. In terms of advancing the applicant's fair treatment, I acknowledge that this factor recognises that the public interest necessarily comprehends an element of justice to the individual.³⁵ In appropriate cases, this means that a particular applicant's interest in obtaining access to particular documents is capable of being recognised as a facet of the public interest, which may justify giving a particular applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received and, if not, to pursue any available means of redress, including any available legal remedy. However, the Information in Issue does not disclose that the applicant experienced any adverse consequences as a result of the matters discussed in the emails, such that disclosure could reasonably be expected to advance the applicant's fair treatment in their future dealings with an agency, or enable the applicant to pursue an available means of redress.³⁶ I am therefore not satisfied, on the information before me, that this factor applies to the Information in Issue.
35. In terms of revealing or substantiating that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct, I have noted that the

³⁴ These are the three emails described in paragraph 23 above.

³⁵ Sometimes referred to as an applicant's 'justifiable need to know'.

³⁶ *Pemberton and The University of Queensland* (1994) 2 QAR 293 at [190]. The Information Commissioner's comments were made in the context of the repealed *Freedom of Information Act 1992* (Qld) but provide guidance on the interpretation of this factor under the RTI Act. While it appears that the applicant is aggrieved by certain actions and decisions that were taken regarding their employment at the Agency, there is nothing in the Information in Issue to indicate that the events discussed therein were related to those actions and decisions.

Information in Issue discusses performance issues with potentially significant impacts upon the discharge of the Agency's functions. However, the Information in Issue does not disclose whether any formal findings were made about the conduct, whether the performance issues were substantiated, or whether any disciplinary action was taken. To that extent, I do not consider that disclosure of the Information in issue could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.

36. Lastly, I accept that disclosure of some Information in Issue could reasonably be expected to allow or assist inquiry into possible deficiencies in the administration of the Agency with respect to the circumstances under which the performance issues arose. Again, however, given the age of the Information in Issue, the fact that any deficiencies are no longer current, and the lack of evidence before OIC as to any adverse consequences that arose from the possible deficiencies, I afford this factor low to moderate weight.
37. Turning to the factors favouring nondisclosure, I afford significant weight to the public interest in protecting the personal information, and the associated right to privacy, of those individuals who are discussed in the Information in Issue. As noted above, the information in question is not routine work information. It includes sensitive discussions about work performance (in association with sensitive information about the functions of the Agency), a workplace interaction, movements/secondments of named staff, and the staffing needs of the Agency. I acknowledge that, as a party to the emails at the relevant time (mostly as a secondary recipient who was copied into the emails), the applicant would be aware of the matters discussed. However, when considering the weight to be given to the public interest in protecting the personal information and right to privacy of individuals under the RTI Act, account must be taken of the fact that there are no restrictions upon what may be done with information disclosed under the RTI Act, including the possibility of further distribution or dissemination.³⁷
38. As discussed at paragraph 32 above, I recognise that one email that was sent to the applicant by another officer concerns the applicant more directly. As noted, where an applicant is already aware of information, this may, in certain circumstances, serve to lessen the public interest in protecting the relevant right to privacy of others concerned with that information. However, it does not extinguish the right. Given the sensitivity of the information, the fact that it recorded the other officer's account of a workplace interaction with the applicant, and again having regard to the fact that there are no restrictions upon what a person may do with information that is disclosed to them under the RTI Act, I consider that the public interest in protecting the personal information and right to privacy of the author of the email remains significant.
39. I also afford significant weight to the public interest in protecting the ability of agencies to efficiently and effectively manage their staff. I am satisfied that

³⁷ As Judicial Member McGill SC of QCAT observed '*... the effect of the... [RTI Act] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17].

disclosure of the Information in Issue under the RTI Act, given its sensitive nature and the issues it discusses, could reasonably be expected to prejudice this management function by discouraging both the reporting of workplace issues and grievances, as well as the confidential exchange of information between managers about staffing and workforce performance issues impacting the efficient functioning of an agency (and options for addressing these issues). In my view, it was reasonable for the various individuals involved in the Information in Issue to expect that the matters discussed would be kept confidential, and not be subject to unrestricted disclosure under the RTI Act. I consider that disclosure of information of this nature could reasonably be expected to substantially erode confidence in staff management processes and procedures. The Information Commissioner has previously recognised that there is a strong public interest in protecting the flow of information to agencies regarding the conduct and competency of employees paid with public monies.³⁸

40. For the reasons discussed above, I afford significant weight to each of the factors favouring nondisclosure of the Information in Issue. After balancing the factors favouring disclosure and nondisclosure, I am satisfied that those favouring nondisclosure outweigh those favouring disclosure. As such, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest. Access under the RTI Act may therefore be refused pursuant to sections 47(3)(b) and 49 of the RTI Act.

Relevant law – sufficiency of search

41. The RTI Act permits an agency to refuse access to information where the requested information is non-existent or unlocatable.³⁹ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.⁴⁰ 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.⁴¹
42. 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.⁴² 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

³⁸ *Hansen and TAFE Queensland* [2017] QICmr 58 (19 December 2017) at [70].

³⁹ Sections 47(3)(e) and 52(1) of the RTI Act.

⁴⁰ Section 52(1)(a) of the RTI Act.

⁴¹ Section 52(1)(b) of the RTI Act.

⁴² 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].

documents do not exist, all *reasonable* steps must be taken to locate the documents.⁴³ What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.

43. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all possible steps)⁴⁴ to identify and locate documents applied for by applicants.⁴⁵ 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.⁴⁶ Suspicion and mere assertion will not satisfy this onus.⁴⁷

Submissions

44. As noted at paragraph 21 above, the applicant raised the issue of missing documents during the review.⁴⁸ The applicant provided copies of correspondence between the applicant and PSC in March 2021. In the letter from the applicant to PSC, the applicant referred to certain events that they recalled as having occurred '*approximately 12 months ago*' (that, is early 2020) and that involved an exchange of emails between the applicant and PSC about staffing of the Agency. The applicant submitted that this gave rise to reasonable grounds for expecting that additional responsive emails from 2020 should exist.
45. The applicant's submission regarding missing documents was communicated to PSC. PSC was asked to provide details of the document searches it had carried out when processing the access application and, if necessary, to conduct any additional searches or inquiries in an effort to locate any additional responsive documents.⁴⁹
46. In response, PSC advised that, at the time of processing the access application, DPC's IT Manager⁵⁰ conducted searches of Outlook to locate any emails within the relevant timeframe. These were then provided to PSC to review and to identify those that fell within the terms of the access application. Following receipt of the applicant's submission about missing documents, DPC's IT division again searched

⁴³ In *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6], McGill J observed that this does not extend to all '*possible*' steps.

⁴⁴ *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].

⁴⁵ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review. 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.

⁴⁶ See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) [13].

⁴⁷ *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].

⁴⁸ Applicant's letter dated 5 March 2026.

⁴⁹ OIC's email on 5 March 2026.

⁵⁰ DPC provides IT services to PSC.

Outlook across a wider timeframe and the located emails were again provided to PSC to review for relevance. As a result of those searches, some additional emails were located that appeared to be relevant to the applicant's contentions and to match the topics that the applicant had raised in their March 2021 correspondence with PSC. However, these emails were sent or received in 2019 (rather than in early 2020, as per the applicant's recollection) and therefore fell outside the scope of the access application. Nevertheless, PSC agreed to give the applicant administrative access to the emails (that is, outside the scope of the RTI Act) except for references to some personal information.⁵¹

47. OIC expressed the preliminary view⁵² to the applicant that, having regard both to the terms of the access application (which requested access to emails only), and to PSC's two searches of Outlook, PSC had taken all reasonable steps in an effort to locate responsive documents. On the information available to OIC, no additional searches or inquiries that it would be reasonable to ask PSC to undertake could be identified. The applicant therefore bore the practical onus of demonstrating that PSC had not discharged its reasonable search obligations.
48. While the applicant did not accept OIC's preliminary view and continued to argue that additional responsive emails should exist that included 'personal accusations' against the applicant, the applicant did not identify any further searches or inquiries that they contended it would be reasonable for PSC to undertake in an effort to locate such emails.

Findings

49. The issue for OIC's determination is whether PSC had discharged its obligation under the RTI Act to take all reasonable steps in an effort to locate documents responding to the terms of the access application.
50. I acknowledge the applicant's belief that additional responsive emails should exist. I also acknowledge that the letter that the applicant provided to OIC referred to events and communications that, according to the applicant's '*best recollection*', occurred approximately 12 months before. As I have noted, the additional out of scope emails from 2019 that PSC located after conducting further searches appear to deal with these events and communications. However, the applicant maintains that these are not the relevant emails, and that others from 2020 should exist.⁵³
51. In any event, regardless of whether or not the out of scope emails are, in fact, those that the applicant recalled, or whether additional responsive emails from 2020 ought reasonably be expected to exist, I am unable to identify any further searches or inquiries that I consider it would be reasonable to ask PSC to undertake. The scope of the access application is limited to emails only, and PSC/DPC have attested to the fact that two searches of Outlook have been undertaken. I consider it is

⁵¹ On 6 May 2026.

⁵² OIC's email to the applicant on 28 April 2026.

⁵³ Confusingly, the applicant stated in their submission that the emails they sought '*preceded*' the out of scope emails located by PSC. However, the out of scope emails are dated June 2019 and the applicant contends that the emails that they are seeking were sent or received in 2020.

reasonable to expect that those searches would have located all responsive documents.

52. For the reasons explained above, I am satisfied that PSC has discharged its obligation to take all reasonable steps to locate documents falling within the scope of the access application. I find that access under the RTI Act to the requested documents may be refused on the grounds that they are nonexistent or unlocatable under section 47(3)(e) and section 52(1) of the RTI Act.

Conclusion

53. The above are the reasons for my decision set out in paragraphs 1 and 2 above.
54. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.