

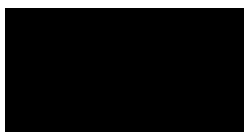


Decision and Reasons for Decision

Citation:	M18 and Queensland Ombudsman [2026] QICmr 123 (10 July 2026)
Application Number:	319214
Applicant:	M18
Respondent:	Queensland Ombudsman
Decision Date:	10 July 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits agency did not locate all relevant documents - whether agency has conducted all reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

DECISION

I affirm¹ the reviewable decision of the Queensland Ombudsman (**QO**) and find that access to further documents sought by the applicant may be refused on the basis that the documents were nonexistent at the time the application was made.² This means that no further information will be released to the applicant. My reasons for the decision follow.



K Zaidiza
Manager, Right to Information

Date: 10 July 2026

¹ Under section 110(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

² Under sections 47(3)(e) and 52(1) of the RTI Act.

REASONS FOR DECISION

Background

1. The applicant applied to QO on 22 November 2025 under the RTI Act for access to documents relating to a service delivery complaint made by the applicant on 20 November 2025 about an Assistant Queensland Ombudsman, including:

all internal communications, emails, notes, drafts, memos and Teams/IM messages
all internal statements or recollections provided by staff
all internal advice sought or received by the Deputy Ombudsman
all briefings, drafts, risk assessments or internal quality-assurance notes
any consultation material or internal discussions regarding the handling of my service-delivery complaint
all documents identifying which officers were consulted or contributed material
all internal conflict-of-interest or procedural-fairness considerations
any preparatory material for the Deputy Ombudsman's decision
any documents created since my complaint was acknowledged
any internal material concerning this RTI request.

2. QO conducted searches and located eight pages responsive to the access application and decided³ to give full access to the eight pages and to refuse access to any further documents on the ground that further documents did not exist at the time the access application was made.⁴

3. The applicant applied⁵ to the Office of the Information Commissioner (OIC) for external review of this decision contesting the sufficiency of the searches conducted by QO and submitted:

The decision concludes that no documents existed other than my own correspondence. This finding is factually implausible and legally erroneous.

Decision frustrates the object of the RTI Act – The approach adopted would, if accepted, render all active complaint processes immune from RTI scrutiny, undermining transparency and accountability.

4. On external review, OIC conveyed⁶ a preliminary view to the applicant that, having considered the released documents, QO's decision, the results of the searches undertaken by QO and the date of the access application, reasonable steps have been taken to locate all documents relevant to the applicant's request and access to any further documents may be refused under the RTI Act on the ground that they did not exist at the time the access application was made.

5. The applicant disagreed with OIC's preliminary view⁷ and submitted:

³ Decision dated 17 December 2025. This is the *reviewable decision*.

⁴ While QO acknowledged it had a discretion to provide access to 'post application' documents, QO considered this impractical while the complaint process remained ongoing.

⁵ External review application dated 17 December 2025.

⁶ Letter dated 15 May 2026.

⁷ Email from applicant to OIC dated 17 May 2026.

My primary challenge concerns the adequacy and reasonableness of the searches conducted by the QO.

The preliminary view indicates that only 8 pages were identified as falling within scope, on the basis that records created after 22 November 2025 are outside the temporal scope of the application. I respectfully submit that the searches conducted appear incomplete, insufficiently particularised, and inadequately explained.

6. Therefore, the issue for determination in this review is whether QO has taken all reasonable steps to locate documents responsive to the applicant's access application, and whether access to any further documents can be refused on the basis that the documents the applicant seeks were nonexistent at the time the access application was made under sections 47(3)(e) and 52(1)(a) of the RTI Act.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes).
8. 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.

Relevant law – nonexistent documents

9. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.¹⁰ A person seeking access to documents may apply to the relevant agency,¹¹ and their application is taken only to apply to documents that are or may be in existence on the day the application is received.¹²
10. For such documents, while the legislation is to be administered with a pro-disclosure bias,¹³ the right of access is subject to certain limitations, including grounds for refusing access.¹⁴
11. Relevantly, access to a document may be refused if it is nonexistent or unlocatable.¹⁵ A document will be nonexistent if there are reasonable grounds to be satisfied that it does not exist.¹⁶ 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,

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act (as set out in this paragraph) was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member DJ McGill SC saw 'no reason to differ' from OIC's position).

¹⁰ Section 23 of the RTI Act.

¹¹ Section 24 of the RTI Act.

¹² Section 27 of the RTI Act.

¹³ Section 44 of the RTI Act.

¹⁴ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.

¹⁵ Sections 47(3)(e) and 52 of the RTI Act.

¹⁶ Section 52(1)(a) of the RTI Act.

but it cannot be found.¹⁷ What constitutes reasonable steps will vary from case to case, as the search and inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.¹⁸

12. 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.¹⁹
13. 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.²⁰
14. 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.²¹ 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. Suspicion and mere assertion will not satisfy this onus.²²

Findings

15. As noted in paragraph 1 above, the applicant made an access application to QO on 22 November 2025 for access to documents relating to a service delivery complaint made by the applicant on 20 November 2025.
16. The evidence before me indicates that:
 - on 20 November 2025 the applicant made a service delivery complaint
 - on 22 November 2025 the applicant made an access application seeking access to documents relating to the service delivery complaint; and
 - in response, QO conducted searches to locate documents relating to the complaint between 20 November 2025 and 22 November 2025 and located eight pages responsive to the access application. These documents comprised:

¹⁷ Section 52(1)(b) of the RTI Act.

¹⁸ As set out in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [38].

¹⁹ 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* 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].

²⁰ 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 v Information Commissioner* [2021] QCATA 116 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 Section 87(1) of the RTI Act.

²² *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

- the applicant’s service delivery complaint about an Assistant Queensland Ombudsman, made on 20 November 2025
 - an acknowledgement of the applicant’s service delivery complaint; and
 - emails from the applicant, received by QO on 22 November 2025.
17. QO conducted searches in its QO case management system and specific searches were also conducted in the Deputy’s Ombudsman’s email account, Microsoft Teams, hard drive and document management system. Having reviewed the searches and inquiries conducted by QO, I am satisfied that those were reasonable in the circumstances and were successful in locating eight pages of responsive information, which have been released in full to the applicant.
18. On external review, the applicant provided a copy of a complaint outcome letter dated 18 December 2025 to demonstrate that further documents existed²³ and submitted:
- the Acting Ombudsman’s letter demonstrates that:*
- *evaluative consideration occurred*
- ...
- This strongly suggests that documents of the type I sought — including internal communications, deliberative material, supervisory input, quality-assurance records, drafts, notes, or decision-making records — either:*
- a) existed at the time of the RTI application but were not identified or located, or*
 - b) were created in the ordinary course shortly thereafter as part of a process that had already commenced, contrary to the narrow application of section 27 adopted in the RTI decision.*
19. In this particular case, the applicant’s scope was limited by the date their access application was received by QO – that is, 22 November 2025. The Information Commissioner has previously expressed the view that the scope of an original application sets the parameters for the agency’s searches.²⁴ The RTI Act itself provides that a right to access information extends only to documents that existed at the time the access application was made.²⁵ Accordingly, documents created after the date of the application are outside the scope of the application and are not documents to which a right of access exists under the access application lodged on 22 November 2025.²⁶
20. In the circumstances, QO was not required to consider the release of documents created after the access application was received. The access application was lodged only two days after the complaint by the applicant was made, when QO’s consideration of the matter was at a very early stage. At that time, the complaint

²³ Email dated 18 December 2025.

²⁴ *Cannon and Australian Quality Egg Farms Ltd (1994) 1 QAR 491* at [8]; *O8OPCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010)* at [33]; *Van Veenendaal and Queensland Police Service [2017] QICmr 36 (28 August 2017)* at [15].

²⁵ Section 27 of the RTI Act.

²⁶ Similarly, I note the applicant’s request for metadata on external review. However, this was not requested with the initial access application. In this regard, section 28 of the RTI Act states that an access application is taken not to include an application for metadata, unless the access application expressly states that it does. Consequently, this external review is not able to consider the applicant’s request for metadata.

remained in the intake stage and had not progressed to substantive assessment or investigation. While QO may consider giving access to post-application documents,²⁷ I accept QO's position²⁸ that, in the particular circumstances of this matter, requiring it to identify and consider any subsequently created documents would have been impracticable given the evolving nature of the complaint and the early stage of its assessment. I also note that QO advised the applicant that if they wished to make a further application for documents, once their service delivery complaint had been decided, they were entitled to do so.

21. In considering whether documents are nonexistent or unlocatable, the relevant issue to consider is whether the agency has taken all reasonable steps to locate documents that fall within the scope of the access application and whether there are reasonable grounds for being satisfied that any further documents either do not exist or cannot be located. As set out at paragraph 17, I am satisfied that all reasonable searches have been directed at locating relevant documents – that is documents in existence as at the time of the access application. There is no obligation on the agency to undertake further searches for documents generated after that date.
22. Taking into consideration that QO received the applicant's complaint on 20 November 2025 and their access application was made on 22 November 2025, the searches conducted by QO at the time were limited by the timeframe of the access application. Whilst the outcome letter provided by the applicant demonstrates the complaint has now been assessed and therefore further documents exist, any of these documents created after 22 November 2025 would be outside the scope of their application at the time it was made.

Conclusion

23. I am satisfied that the remaining documents the applicant is seeking access to had not been created at the time of their access application. Accordingly, further documents, falling within the terms of the applicant's access application, are nonexistent under sections 47(3)(e) and 52(1)(a) of the RTI Act noting that any documents created after 22 November 2025 are outside the scope and as such there is no requirement for QO to conduct further searches.
24. These are the reasons for my decision set out at page 1 above.

²⁷ Section 27(2) of the RTI Act.

²⁸ Decision dated 17 December 2025.