



Decision and Reasons for Decision

Citation:	<i>Z61 and Queensland Police Service [2023] QICmr 42 (31 August 2023)</i>
Application Number:	316975
Applicant:	Z61
Respondent:	Queensland Police Service
Decision Date:	31 August 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - workplace rehabilitation documents - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents may be refused on the ground they are nonexistent or unlocatable under 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 *Right to Information Act 2009* (**RTI Act**) for access to a range of documents generally relating to his workplace rehabilitation.²
2. QPS located and released six pages to the applicant: his leave history, an authorisation to access medical information, medical certificates and details of his QPS Rehabilitation Coordinator. QPS refused access to any further documents on the ground that they are nonexistent.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision on the basis that further documents should have been located.
4. For the reasons set out below, I affirm QPS's decision and find that access to further documents may be refused on the ground they are nonexistent.

Background

5. Significant procedural steps taken during the external review are set out in the Appendix.

¹ Application dated 2 August 2022.

² QPS provided the applicant with an opportunity to deal with his application under the *Information Privacy Act 2009* (Qld), however the applicant chose to proceed with the application under the RTI Act (applicant's email to QPS dated 17 October 2022).

³ Application dated 1 November 2022.

Reviewable decision

6. The decision under review is QPS's decision dated 21 October 2022.

Evidence considered

7. Evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁴ 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.⁵ 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 similar pieces of Victorian legislation:⁶ '*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.*'⁷

Issue for determination

9. The issue for determination is whether access to further documents responsive to the access application may be refused on the ground they are nonexistent.

Jurisdiction of OIC

10. During the review, the applicant raised concerns about QPS's policies and processes in dealing with him as an employee.⁸ OIC's jurisdiction under the RTI Act is limited to conducting merits review of agencies' decisions relating to access to documents under the RTI Act and deciding whether to affirm, vary or set aside those decisions.⁹ The RTI Act does not require an agency to answer questions about its actions except to the extent that it is relevant to OIC deciding whether to affirm, vary or set aside the agency's decisions under the RTI Act.

Relevant law

11. The primary object of the RTI Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.¹⁰ The Act must be applied and interpreted to further this primary object.¹¹
12. Section 23 of the RTI Act gives effect to the primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,¹² including grounds on which the access may be refused, which are to be interpreted

⁴ Section 21(2) of the HR Act.

⁵ *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]. I further note that OIC's approach to the HR Act 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 McGill saw '*no reason to differ*' from our position).

⁶ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁷ *XYZ* at [573].

⁸ Including submissions dated 27 February 2023 and 3 March 2023.

⁹ Section 110(1) of the RTI Act.

¹⁰ Section 3(1) of the RTI Act.

¹¹ Section 3(2) of the RTI Act.

¹² Section 23(1) of the RTI Act.

narrowly.¹³ One of these grounds permits an agency to refuse access to a document if the document is nonexistent or unlocatable.¹⁴

13. A document is nonexistent if there are reasonable grounds to be satisfied that the document does not exist.¹⁵ To be satisfied documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:¹⁶
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities
 - the agency's practices and procedures (including, but not limited to, its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant (including the nature and age of the requested documents).
14. If searches are relied on to justify a decision that documents do not exist, all reasonable steps must be taken to locate the documents.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.

Applicant's submissions

15. The applicant's concerns on review arise from:
- a. a letter he received from QPS in response to a complaint outside of the RTI process¹⁸ (**Complaint Letter**) which includes the following statement:

... I am of the opinion that the policies and processes employed during the course of your injury management, were in compliance with the policies and procedures available at the time...
 - b. a document called *2012/18 Workplace Rehabilitation Policy*¹⁹ (**WR Policy**) which the applicant provided to OIC, which states:

7.4 Health and Safety Coordinators

...

Health and Safety Coordinators are to:

...

- *provide regular rehabilitation reports to regional management and requested information to the Health and Safety Section within required timeframes;*

...

7.6 Rehabilitation Coordinators

...

¹³ Section 47(2)(a) of the RTI Act.

¹⁴ Section 47(3)(e) of the RTI Act.

¹⁵ Section 52(1)(a) of the RTI Act and *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [43], adopted in *Tedesco and Queensland Police Service* (Unreported, Queensland Information Commissioner, 13 December 2013) at [11]. *PDE* related to section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

¹⁶ *PDE* at [37] – [38] adopted in *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15].

¹⁷ *PDE* at [47] – [49] adopted in *Alsop and Redland City Council* [2017] QICmr 27 (2 August 2017) at [41].

¹⁸ Dated 29 November 2021.

¹⁹ Dated 11 May 2012. QPS advised that the WR Policy was '*... not a current policy*' (submission dated 30 December 2022); however, QPS did not dispute the applicant's submission that it was relevant at the time of his employment in 2012/2013.

In relation to individual case management, the Rehabilitation Coordinator is to:

...

- collect all documentation from members of the rehabilitation team/other Service personnel and place them in a sealed envelope which is to be marked with the member's name, type of injury, workers' compensation claim number (if relevant), rehabilitation dates and Rehabilitation Coordinator's name. The sealed envelope is to be placed in the member's personnel file;

...

10.4 Records Management

...

Rehabilitation records are to be retained as per s. 25.7.2: 'Retention and Disposal of HR Records' in the HRM Manual.

...

- c. an appendix to the WR Policy, which refers to the following forms associated with the rehabilitation process:

- QP 333 Rehabilitation File Cover Sheet
- QP 522 Letter to Injured Member
- QP 338 Authorisation for Release of Medical Information
- QP 520 Letter of Introduction to Medical Practitioner - Letter 1
- QP 339 Letter of Introduction to Medical Practitioner – Letter 2
- QP 332 Work Capabilities Checklist – Police Officer
- QP 521 Work Capabilities Checklist – Staff Member
- QP 334 Return to Work Plan
- QP 333 A Case Notes
- QP 336 Rehabilitation Case Closure
- QP 337 Rehabilitation Feedback Form

16. The applicant submitted that QPS had not located all relevant documents because the documents referred to in the WR Policy had not been located despite the Complaint Letter stating that QPS complied with 'policies and procedures'.²⁰

17. The applicant was also concerned that there were references to 'medical retirement',²¹ but QPS had not located any documents concerning a medical retirement process.²²

QPS's submissions

18. In its decision, QPS explained that:

- Enquiries and extensive searches have been undertaken by the QPS Health Safety and Injury Management (HSIM) Unit for documents relevant to your request. These searches resulted in advice that the specific documents you are seeking access to do not exist.
- Extensive searches have been undertaken of your physical HR personnel file and your previous rehabilitation file (to ensure nothing had been misfiled) and no documents relevant to your request were located.
- HSIM have advised that if the documents did exist, they would be held by HSIM. There is no other Unit [where] the documents sought would be located.
- More specifically, in relation to your request for the report requested from [named Doctor] by AC Tony Wright 23/10/2012, this report does not exist as you were

²⁰ External review application dated 1 November 2022.

²¹ See reference to applicant being 'medically retired' in QPS's decision and search records, extracted at paragraphs 18 and 20 below.

²² Submission dated 27 February 2023.

medically retired before [named Doctor] could complete the report. A report was therefore, not provided to the QPS by the Doctor.

- *In relation to the QSuper Part A form, this type of document is not usually retained by HSIM as they are sent to QSuper.*
- *In relation to your request for Shared Service Agency – Part B form, this is not a document of this agency. You may wish to consider contacting Queensland Shared Services in relation to this particular document.*

Further, since no such documents exist or are expected to exist in current databases, I consider that no such document would be kept in or be retrievable from a backup system.

19. QPS provided OIC with a copy of its search records (i.e. emails requesting searches and the responses to these emails) which show that searches were conducted in the Human Resources and Safety, Wellbeing and Central Panel divisions. QPS also provided a signed Document Search Declaration which stated that searches were conducted in the QPS Case Management Database and personnel file and certified that ‘a thorough search for all documents relevant to this request has been conducted’.²³
20. The search records include the following statement from an Advisor, Worker’s Compensation and Systems in the Safety, Wellbeing and Central Panels division:²⁴

The specific documents [the applicant] is requesting copies of do not exist. I have gone through all parts of his physical personnel file thoroughly – on both this occasion and also in August (see attached email to HR in response to a request from [the applicant] in July). The form numbers he is requesting could potentially be sourced from the Forms Select archives as blank forms.

There are documents similar to those he is requesting, however, they are for his previous rehabilitation file for a non-work related injury (date of injury...) and not for the timeframe he has specified. I also checked through the previous rehab file to make sure nothing had been mis-filed and there is definitely nothing. There is no other place the documents he is requesting will be located.

He was medically retired before the report was provided by the Dr that he refers to in his request. There is a brief note on the file to state the report would not be forth-coming due to his pending medical retirement...

Findings

21. The applicant questioned why documents in the WR policy were not located, when the Complaint Letter stated that QPS complied with ‘*policies and procedures*’, and when he was asked to provide authority for QPS to contact health professionals for workplace rehabilitation purposes.
22. The WR Policy indicates that:
 - Health and Safety Coordinators are to provide regular rehabilitation reports to regional management
 - the Rehabilitation Coordinator is to collect all documentation from members of the rehabilitation team and place these documents in a sealed envelope on the member’s personnel file; and
 - the forms in the Appendix are to be used at various stages in the rehabilitation process.

²³ Dated 13 April 2023.

²⁴ Email dated 7 October 2022.

23. Further, QPS's Retention and Disposal Schedule provides that any rehabilitation records relating to the applicant should have been retained for 70 years from the date of the applicant's birth.²⁵
24. Documents QPS released to the applicant under the RTI Act show that the applicant applied for an adjustment to his working arrangements based on medical advice in 2012. He signed a form titled '*AUTHORISATION TO ACCESS MEDICAL INFORMATION Workplace Rehabilitation Program*'. This form authorised QPS's Injury Management Coordinator, Human Resources Manager and Rehabilitation Coordinator to obtain relevant medical information about him from health professionals. This consent was stated to be to '*... assist with my workplace rehabilitation, management of my absence and my return to work.*' QPS provided this authority to the applicant's doctor and requested answers to various questions relating to the applicant's condition and abilities.
25. QPS has explained that there is no record of a response from the doctor because the applicant had left QPS before any report was provided. The absence of this, and other documents listed in the WR Policy, appears to be consistent with documentary evidence indicating the rehabilitation process was interrupted by the applicant's retrenchment. The time frame of the application was for documents after 21 October 2012, and the applicant advises that he separated from QPS about a year later, on 25 October 2013. However, case notes previously released to the applicant²⁶ show that QPS's Rehabilitation Coordinator contacted the applicant's doctor on 14 January 2013 and agreed that a response to the request for information in late October 2012 was no longer required because the applicant's position '*... has been abolished and he is being made redundant.*'
26. While the applicant considers that these case notes raise the question '*Is the QPS admitting... I went a whole year without any rehabilitation?*',²⁷ the question in this review relates to the existence of responsive documents. In this regard, I am satisfied that any rehabilitation process had only recently begun when the decision to retrench the applicant was made, and consider that this shortens the likely timeframe for responsive documents to less than three months, i.e. after 21 October 2012 to around 14 January 2013.
27. QPS submitted to OIC its prior references to '*medical retirement*' were a mistake in terminology and the reason for the applicant's separation was retrenchment.²⁸ This accords with the abovementioned case notes referring to his position as being abolished and the applicant being made redundant²⁹ and, in my view, adequately explains why there are no documents concerning the applicant's medical retirement.
28. QPS relied on searches in making its decision to refuse access on the basis that the requested documents are nonexistent. To determine whether there were reasonable grounds for QPS to reach this conclusion, I am required to consider whether, in conducting these searches, QPS took all reasonable steps to find the documents.
29. I am satisfied that:

²⁵ Page 47 of QPS's Retention and Disposal Schedule, Version 7, 12 September 2008: for '*Records relating to rehabilitation case management files/records maintained at QPS' 'Retain for 70 years from date of birth or 7 years from date of separation, or resignation, whichever is later*'.

²⁶ In response to an earlier access application to QPS which also became the subject of an external review.

²⁷ Submission dated 27 February 2023.

²⁸ QPS's submission dated 28 April 2023.

²⁹ Case note dated 14 Jan 2013.

- the material before me, namely QPS's submissions and contemporaneous case notes, indicates that any rehabilitation process was interrupted by the retrenchment of the applicant
- consequently, the likely timeframe in which responsive documents could have been created was less than three months, i.e. after 21 October 2012 to around 14 January 2013
- QPS provided a satisfactory explanation, consistent with contemporaneous case notes, as to why it would not expect to find any documents relating to 'medical retirement'
- QPS conducted searches in two different divisions: Human Resources and Safety, Wellbeing and Central Panel
- both physical and electronic searches were conducted including the applicant's personnel file and the Case Management Database; and
- having regard to QPS's structure, function, responsibilities, practices and procedures, i.e. the key factors set out at paragraph 13 above, the searches conducted appear to have been appropriately targeted, methodical and comprehensive.

30. In these circumstances, I am satisfied that QPS has taken all reasonable steps to locate further documents, as raised by the applicant. Accordingly, I consider that there are reasonable grounds to be satisfied that such documents are nonexistent, and find that access to them may be refused on this ground.

DECISION

31. For the reasons set out above, as a delegate of the Information Commissioner under section 145 of the RTI Act, I affirm QPS's decision and find that further documents may be refused on the ground that they do not exist.³⁰

A Rickard
Assistant Information Commissioner

Date: 31 August 2023

³⁰ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
1 November 2022	OIC received the application for external review. OIC requested preliminary documents from QPS.
24 November 2022	OIC received preliminary documents from QPS.
1 December 2022	OIC advised the applicant and QPS that the application for external review had been accepted. OIC requested information from QPS about its searches.
30 December 2022	OIC received a submission from QPS.
3 January 2023	QPS provided OIC with a record of its searches.
23 January 2023	OIC requested further documents from the applicant by telephone. OIC received the requested further documents from the applicant.
23 February 2023	OIC conveyed a preliminary view to the applicant.
27 February 2023	OIC received a submission from the applicant.
2 March 2023	OIC contacted the applicant by telephone.
3 March 2023	OIC contacted the applicant by email and the applicant provided a submission in response.
16 March 2023	OIC requested further information from QPS.
21 April 2023	OIC received a submission from QPS.
24 April 2023	OIC requested further information from QPS.
28 April 2023	OIC received a submission from QPS.