



Decision and Reasons for Decision

Application Number: 270008

Applicant: Pryor

Respondent: Logan City Council

Decision Date: 8 July 2010

Catchwords: ADMINISTRATIVE LAW - APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS - UNLOCATABLE DOCUMENTS - applicant sought access to information relating to investigation of dog attacks - applicant contended additional information should have been located - whether the agency has taken all reasonable steps to locate the documents - whether there are reasonable grounds to be satisfied that additional documents should be in the agency's possession - whether access to documents can be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(e) and 52(1)(b) of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant contended that Logan City Council (**Council**) failed to locate all documents applied for under the *Information Privacy Act 2009* (Qld) (**IP Act**). The documents Council failed to locate are photographs relating to a dog attack the applicant had complained about.
2. Council's decision is varied to refuse access to the further documents sought by the applicant under section 67(1) of the IP Act and section 47(3)(e) and section 52(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that all reasonable steps were taken to find the documents, which should be in Council's possession but could not be found.

Background

3. In 2009, the Applicant was the subject of two reported dog attacks by the same dog at the same location the Logan area.¹ The reported attacks occurred on 26 March 2009 (**First Attack**) and 26 May 2009 (**Second Attack**). The Applicant is concerned about the actions taken by Council to contain the offending animal and reprimand its owners in response to the attacks.
4. By letter dated 3 August 2009 (**Access Application**), the Applicant applied to Council for access to all information relating to his complaints about the First and Second Attacks.
5. By letter dated 4 September 2009, Council² notified the applicant of its decision (**Council Decision**) to:
 - grant full access to six documents and partial access to four documents (**Released Documents**)
 - refuse access to parts of four documents on the basis that information in those documents was exempt information, or contrary to public interest information, under the IP Act and RTI Act.
6. On 17 September 2009, Mr Lawson of Council provided the Applicant with responses to questions raised by the Applicant in his Access Application (**Response to Questions**). To prepare the Response to Questions, Mr Lawson consulted the Coordinator of Council's Animal and Pest Services Branch (**APS Branch**).
7. On 23 September 2009, the Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Council Decision on the basis that the information was '*not fully provided*' or was '*very inaccurate*' (**External Review Application**).

¹ The applicant states that he also suffered another attack prior to these attacks but did not report the earlier attack to Council.

² Mr C Lawson, Program Leader, Administrative Review and Ethics.

Reviewable decision

8. The decision which is subject to external review is the Council Decision referred to in paragraph 5 above.³

Steps taken in the external review process

9. The steps taken in the external review process are set out in the Appendix on pages 11 to 14.⁴

Relevant evidence

10. In making this decision, I have considered the following:
- Access Application and External Review Application
 - Council Decision and Response to Questions
 - relevant Released Documents, Additional Documents, Audio Recording and Further Additional Documents
 - Council's Search Submission, Search Schedule and Search Certifications
 - Applicant's First, Second, Third, Fourth and Fifth Submission
 - file notes of telephone conversations held between OIC staff members and various Council officers on 20 April 2010, 6 May 2010, 8 June 2010, 29 June 2010, 30 June 2010 and 6 July 2010
 - relevant provisions of the IP Act and RTI Act as referred to in this decision
 - previous decisions of the Information Commissioner as referred to in this decision
 - relevant case law and decisions of other jurisdictions as referred to in this decision.

Issue in this review

11. As set out in paragraph 7 above, the Applicant applied to OIC for external review on the basis that he was concerned that Council had not provided him with all the documents in its possession relevant to his Access Application.
12. During the review, a number of additional documents were located by Council and released to the Applicant, some in their entirety and others subject to the deletion of personal information of other people.⁵ Access to that information is not in issue in this review.
13. The remaining issue relates to the existence of and location of photographs relating to the First Attack (**Photographs**). As Council has been unable to find the Photographs, the issue which must be determined is whether access to the Photographs can be refused under section 52(1)(b) of the RTI Act⁶ on the basis that Council has taken all reasonable steps to find the Photographs.

³ This is a reviewable decision under the IP Act because it is a decision refusing access to a document under section 67 of the IP Act – see item (f) of the definition of 'reviewable decision' in schedule 5 of the IP Act.

⁴ The Appendix sets out a number of defined terms that are used throughout the reasons for this decision.

⁵ See paragraphs 6 - 7 and 13 - 14 in the Appendix. As the Access Application was processed by Council under the IP Act, access can only be granted to those parts of the documents located by Council to the extent they contain the Applicant's personal information (see section 40 of the IP Act).

⁶ In conjunction with section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

Applicable law

14. Under section 40 of the IP Act, a person has a right to be given access to documents of an agency, to the extent they contain the individual's personal information. However, access can be refused to information under section 67(1) of the IP Act. That section provides:

67 Grounds on which access may be refused

- (1) *An agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister in the same way and to the same extent the agency or Minister could refuse access to the document under the Right to Information Act, section 47 were the document to be the subject of an access application under that Act.*

15. Section 67(1) of the IP Act operates in conjunction with section 47 of the RTI Act which sets out grounds on which access to information may be refused. For the purpose of this review, the ground in section 47(3)(e) of the RTI Act is relevant as it concerns unlocatable documents:

47 Grounds on which access may be refused

- ...
 (3) *On an application, an agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister—*
 ...
 (e) *because the document is nonexistent or unlocatable as mentioned in section 52; or*
 ...

16. Section 52 of the RTI Act provides:

52 Document nonexistent or unlocatable

- (1) *For section 47(3)(e), a document is nonexistent or unlocatable if—*
- (a) *the agency or Minister dealing with the application for access is satisfied the document does not exist; or*
- Example—
a document that has not been created
- (b) *the agency or Minister dealing with the application for access is satisfied—*
- (i) *the document has been or should be in the agency's or Minister's possession; and*
- (ii) *all reasonable steps have been taken to find the document but the document can not be found.*

17. Under the repealed⁷ *Freedom of Information Act 1992 (Qld) (FOI Act)*, the equivalent of section 52(1) of the RTI Act was section 28A of the FOI Act.⁸ In applying section 52(1) of the RTI Act, the principles relevant to the application of section 28A of the FOI Act are relevant.

18. In *PDE and the University of Queensland*⁹ (*PDE*) the Information Commissioner considered the application of section 28A of the FOI Act and stated that:

⁷ As of 1 July 2009.

⁸ Section 52(1)(a) of the RTI Act is equivalent to section 28A(1) of the FOI Act and section 52(1)(b) of the RTI Act is equivalent to section 28A(2) of the FOI Act.

⁹ Unreported, Queensland Information Commissioner, 9 February 2009.

*Sections 28A(1) and (2) of the FOI Act address two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.¹⁰*

19. In *PDE* the Information Commissioner also considered how an agency was to satisfy itself as to the non-existence of documents sought by an applicant and indicated that to be satisfied that a document does not exist, it is necessary for the agency to rely upon its particular knowledge and experience with respect to various key factors including:
- the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
 - the agency's practices and procedures (including but not exclusive to its information management approach)
 - other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s
 - the nature of the government activity the request relates to.

Section 52(1)(b) of the RTI Act

20. For an agency to be entitled to refuse access to a document on the basis of section 52(1)(b) of the RTI Act, the questions to be answered are:
- (i) are there reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession?
 - (ii) has the agency taken all reasonable steps to find the document?¹¹
21. In answering these questions, regard should be had to the circumstances of the case and the factors set out in paragraph 19.

Submissions

Applicant's submissions

22. The Applicant submits that when Council officers attended his residence following the First Attack, an officer took photographs of his injuries, ripped jeans and his dog. In his Fourth Submission, the Applicant states:

...yes a council officer took pictures of my right knee, toes on right foot, and I even got the pair of jeans (brand new heavy denim work jeans} which had the knee torn out...¹²

¹⁰ At paragraph 34.

¹¹ See *PDE* at paragraph 44.

¹² This submission was made in response to a request from OIC on 3 June 2010 which asked the Applicant the following questions: (1) *Did you observe a Council officer take photographs on 26 March 2009?* and (2) *Can you identify what the subject matter of the photographs was?*

23. The Applicant also believes that Council should hold photographs of the offending dog and of the property at which it is kept, particularly of the fence and the gate. The Applicant submits that it is Council's policy to photograph all aspects of a dog attack, including the dog, its enclosure and any injuries suffered.
24. The Applicant submits that the content of the Photographs will show that the Council's actions in relation to the First Attack were inadequate and that as a result of the deficiencies in Council's response, the Second Attack was allowed to occur. The Applicant is particularly concerned that the wording in the investigation report does not adequately represent the nature and severity of the injuries he suffered and believes that the corresponding photographs of his injuries will demonstrate that Council should have taken further action in response to the First Attack.

Council's submissions

25. Council submits that it has conducted extensive searches of all relevant business areas but has not been able to locate the Photographs. In its Search Schedule, Council identified the particular locations searched, the names of Council officers involved in searching for documents and the time spent conducting these searches.
26. Council submits that it conducted electronic searches of its corporate property management system and official document management system.¹³ Council also submits that it made direct enquiries with staff members in the APS Branch, including those officers involved in investigating the Applicant's complaints. For example, the investigating officer involved in the Second Attack searched her filing cabinet and notebook for relevant documents.¹⁴
27. To support its searches and submissions, two officers of Council's APS Branch¹⁵ certified, in writing, that searches had been conducted for documents responding to the Access Application and that all relevant documents located within their area of responsibility had been located and provided to the Applicant. The Council officers also certified that an explanation as to why the documents did not exist or could not be located had been provided.
28. In relation to the Photographs, the First Attack Investigator submitted that Council does not hold any photographs of the injuries because the Applicant did not suffer any injuries in the First Attack.¹⁶
29. The Second Attack Investigator also made submissions on the Photographs. He explained that:
 - he attended the Applicant's property following the Second Attack to obtain a statement from the Applicant
 - on this visit, he did not take or receive any photographs from the Applicant
 - he usually encourages victims to provide any photographs they have taken themselves to Council
 - if an injury is visible, Council officers may take photos when they attend the victim's property to obtain a statement.

¹³ These systems are respectively titled *Pathway* and *DM6*.

¹⁴ As a result of these searches the investigating officer located relevant documents which were released to the Applicant (subject to the deletion of the personal information of other people).

¹⁵ The Quality Assurance Officer and Coordinator of the APS Branch.

¹⁶ OIC was unable to obtain any further submissions from the First Attack Investigator as he is no longer employed by Council.

30. The Coordinator of the APS Branch submitted that at the time the First Attack occurred, Council did not have in place a written policy which set out the procedure to be followed by Council officers with respect to taking and storing photographic evidence relating to dog attacks. The APS Branch Coordinator explained that, at the time, Council officers would have generally followed these steps when investigating a dog attack:
- attend complainant's property and take photographs of the relevant subject matter, eg. injuries to people/other animals, damage to property
 - attend site of attack and take necessary photographs, eg. offending dog, fencing, point of escape
 - return to the office and upload the photographs from the camera onto the computer
 - prepare the investigation report and insert the photographs into the relevant sections of the report
 - save the report onto the document management system.
31. Council submitted that the absence of injury photographs from the investigation report would ordinarily indicate that the Photographs were not taken. However, Council also submitted that it is equally possible that the Photographs:
- were taken by the First Attack Investigator
 - were not stored in accordance with standard recordkeeping practice¹⁷
 - have since been lost.
32. Council explained that the First Attack Investigator's employment with Council had ended on the basis of poor work performance (including not keeping proper and detailed records). Having regard to that factor, Council submitted that it was unable to be satisfied on the issue of whether the Photographs were taken.
33. Council explained that when the First Attack Investigator left Council's employment, his equipment, including his camera, would have been allocated to another officer. Council conducted searches of its records which confirmed that the camera had, in fact, not been reallocated and remained in the Council storeroom. Council retrieved and examined the camera (including the memory card) to determine if the Photographs were still stored on the camera. However, these searches did not reveal the Photographs. Council also examined the notebook left with Council by the First Attack Investigator but did not locate any reference in the notebook to the First Attack or corresponding Photographs.

Findings and application of the law

Are there reasonable grounds for Council to be satisfied that the Photographs have been or should be in its possession?

34. The answer to this question is 'yes'. Reasons follow.
35. The applicant is insistent that photographs were taken by a council officer after the First Attack.
36. There are two documents that were released to the Applicant that contain a reference to the Applicant's injuries suffered in the First Attack. Firstly, the Customer Request

¹⁷ As set out in paragraph 30 above.

form, generated by Council when the Applicant reported the First Attack, sets out the Applicant's response to questions he was asked by the receiving officer. Question 9 in the form asks '*How was the person/animal injured?*' and the response reads '*my dog and me were both bitten, I have grazed knees as well*'. Secondly, the Dog Attack Investigation Report (**Investigation Report**), created by the First Attack Investigator following his interview with the Applicant, contains a section headed "Officer's comments" which reads '*...very small mark to the dog and [Applicant] graze knee*'.

37. The above references to injuries in Council documents support a finding that in the First Attack, the Applicant and his dog suffered some level of injury.
38. The categorisation of the First Attack as "*Dogs – Attack with Bite*" in Council documents¹⁸ indicates that, at the time the documents were created, there was sufficient evidence before Council for it to describe the incident as one involving a dog bite. In my view, it is reasonable to expect that such an incident would have also involved some level of injury to an individual and/or another animal.
39. The Dog Attack Investigation Report contains a blank space titled "Photograph of Injury". This indicates, and affirms Council's evidence given in relation to its standard practice, that photographs of dog attack injuries are obtained by the investigating officer and uploaded into the relevant section of the investigation report. Council confirmed that this is where the Photographs should be located.
40. I have also examined a written summary of the Audio Recording prepared by OIC staff. In the recording, the Applicant refers numerous times to injuries to his knee and his ripped jeans that resulted from the First Attack. The Applicant repeated this submission in his Second, Third and Fourth Submission.
41. As the injuries appear to have been of a minor nature, it is possible that no photographs were taken. However, given the Applicant's evidence, the factors listed above and the poor record keeping practices of the individual council officer concerned, it is more likely than not that:
 - the Applicant suffered some level of injury in the First Attack
 - the First Attack Investigator attended the Applicant's residence on 26 March 2009 and took photographs of the Applicant's injuries
 - the First Attack Investigator did not upload the Photographs into the Investigation Report in accordance with Council's standard recordkeeping practice.
42. The evidence given by the First Attack Investigator¹⁹ does not support the above findings. However, in making those findings, the only available direct evidence from the First Attack Investigator was a brief telephone message he left with OIC as he ceased employment with Council during the external review process.²⁰ I am satisfied that the weight of the evidence supports the findings in paragraph 41.
43. Having reviewed the Applicant's and Council's submissions and evidence, I also make the following findings:
 - the camera (and associated memory card) that was used by First Attack Investigator does not contain the Photographs

¹⁸ This information appears in the Investigation Report and the Customer Request form.

¹⁹ In paragraph 28 above.

²⁰ OIC staff attempted to contact the First Attack Investigator a number of times without success.

- at the time that the First Attack was investigated, Council did not have formal procedures in place setting out mandatory steps to be followed or specific evidence to be obtained by its officers when investigating dog attacks
- Council has conducted searches of relevant hard copy files and electronic documents and has been unable to locate the Photographs.

Has Council taken all reasonable steps to find the Photographs?

44. The answer to this question is 'yes'. In determining this point, I have had regard to the following:
- Council's standard recordkeeping practices and customs that were in place at the relevant time in relation to obtaining and storing evidence relating to dog attack investigations²¹
 - locations in which any further documents would be stored, if they existed
 - searches conducted by Council in processing the Access Application and during the course of this review
 - organisational structure of Council.
45. I accept Council's evidence as to its search and enquiry process set out in paragraphs 25 to 27 and 33 above. Council used its knowledge of its organisational structure and appropriately identified the relevant area within the Council that would hold documents responding to the Applicant's request, ie. the APS Branch. Council subsequently identified and made enquiries with relevant officers who were expected to have knowledge of the particular documents sought by the Applicant, eg. officers involved in investigating the attacks and their supervisors/team leaders.
46. Council also provided signed Search Certifications that all documents relating to the Access Application in the possession of Council have been located. I accept this certification as further evidence that Council has taken all reasonable steps to find the Photographs.
47. The Applicant first raised specific concerns about the absence of the Photographs in his Second Submission.²² In response to a request from OIC staff, Council then took steps to search for the Photographs and repeated all searches conducted in response to the Access Application. Once Council had identified that the First Attack Investigator was the appropriate person to speak to in relation to this matter, OIC made a number of attempts to contact him. However, during this period, the officer ceased employment with Council and could not be contacted. Had the First Attack Investigator still been employed by Council, it would have been reasonable for Council to obtain a statement from him in relation to the Photographs. It is likely that OIC staff would have also vigorously questioned him on this issue. However, on the basis that the First Attack Investigator is no longer employed by Council and the circumstances surrounding his termination, I do not consider it reasonable for Council, or OIC, to make any further attempts to contact this officer.

²¹ Evidence of a general practice or custom in a business or government department can give rise to an inference that the usual system was followed in a particular case. See *Ugur and Human Rights and Equal Opportunity Commission* [2009] AATA 563 at paragraph 155 citing *Connor v Blacktown District Hospital* [1971] 1 NSWLR 713.

²² The Applicant raised general concerns about the absence of photographic evidence from documents released to him in his First Submission. However, it was not until the Second Submission that the particular subject matter of the missing photographs, ie. the First Attack injuries, was clarified.

48. Council has indicated that since the Applicant's concerns were first raised about the First Attack, it has amended its policies and procedures and addressed associated staffing issues. While Council is unable to change what occurred in the First Attack investigation process, the steps it has since taken indicate responsiveness on Council's behalf to improve its policies and procedures where deficiencies are identified. Implementing more stringent procedures for investigations and recordkeeping should serve to avoid, or at least minimise, future instances of missing documentary evidence.
49. On the basis of Council's searches conducted when the Access Application was received and during this review, I am satisfied that Council has taken all reasonable steps to locate the Photographs and that these documents cannot be located. Therefore, I find that access can be refused to the Photographs under section 52(1)(b) of the RTI Act.²³

DECISION

50. I vary the decision under review and find that access can be refused to the Photographs under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(b) of the RTI Act on the basis that Council has taken all reasonable steps to find the Photographs and cannot locate them.

Julie Kinross
Information Commissioner

Date: 8 July 2010

²³ In conjunction with section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

APPENDIX

Steps taken in the external review process

1. Following receipt of the External Review Application, the OIC requested copies of documents relevant to the review from Council.²⁴ Council provided these documents to OIC on 23 October 2009.²⁵
2. By letter dated 14 October 2009, OIC informed the Applicant that his application had been accepted for external review.
3. On 5 November 2009, OIC asked Council to provide it with a submission on the searches it had conducted in relation to the Access Application. Council responded to this request on 20 November 2009 (**Council's Submission on Searches**).
4. By letter dated 26 November 2009, OIC invited the Applicant to provide submissions in response to Council's Submission on Searches.
5. On 9 December 2009, the Applicant informed OIC that he was not satisfied with Council's Submission on Searches and submitted that Council should hold further relevant documents (**Applicant's First Submission**).
6. On 14 January 2010, OIC requested Council to conduct further searches for the additional documents identified in the Applicant's First Submission. On 9 February 2010, Council provided OIC with additional documents located as a result of its further searches (**Additional Documents**).²⁶
7. On 17 February 2010, OIC asked Council to:
 - release the Additional Documents to the Applicant, with the *'personal information'*²⁷ of other people deleted
 - conduct further searches for an audio recording of a statement given by the Applicant following the Second Attack that was referred to in one of the Additional Documents (**Audio Recording**).
8. On 19 February 2010, Council informed OIC that it had located the Audio Recording and would send it, together with the Additional Documents, to the Applicant.
9. By letter dated 19 February 2010, OIC informed the Applicant that Council would send him copies of the Audio Recording and Additional Documents, subject to the deletion of other individuals' personal information appearing in the documents.
10. On 4 March 2010, the Applicant informed OIC he was still not satisfied with Council's searches and was particularly concerned about the lack of photographs located in relation to the First Attack (**Applicant's Second Submission**).

²⁴ This occurred through a series of telephone conversations, emails and written correspondence between OIC staff and Council officers.

²⁵ Including the Access Application, Council Decision, Released Documents, Response to Questions and relevant correspondence between Council's Animal and Pest Services Branch (**APS Branch**) and Council's Governance Branch.

²⁶ Five pages relating to the First Attack and 12 pages relating to the Second Attack.

²⁷ As that term is defined in section 12 of the IP Act.

11. Following receipt of the Applicant's Second Submission, OIC made enquiries with Council as to its searches and the existence of photographs from the First Attack. As a result of these enquiries, Council agreed to repeat all searches relevant to the Access Application.
12. By letter dated 15 March 2010, OIC asked Council to:
 - conduct searches of all relevant business areas for any documents responding to the Access Application, particularly photographs of injuries from the First Attack (**Photographs**)
 - provide certification to OIC that all necessary searches had been carried out and all relevant documents located and released to the Applicant
 - release any additional documents located to the Applicant
 - provide OIC with written submissions explaining its searches.
13. On 29 March 2010, Council provided OIC with a schedule outlining the searches it had conducted (**Search Schedule**) and several more documents (**Further Additional Documents**).
14. On 14 April 2010, OIC asked Council to:
 - release the Further Additional Documents to the Applicant, subject to the deletion of personal information of other people
 - arrange for an officer in Council's APS Branch to contact OIC regarding the issue of the Photographs.
15. On 15 April 2010, OIC provided the Applicant with an update as to the status of OIC enquiries with Council regarding its searches and the Photographs. The applicant replied to this correspondence with the name and contact telephone number of a Council officer whom he believed was involved in taking the Photographs (**Second Attack Investigator**).
16. On 20 April 2010, an officer from Council's APS Branch who investigated the First Attack (**First Attack Investigator**) left a telephone message with OIC registry staff stating that:
 - he had already provided all photographs relating to this matter
 - photographs of injuries did not exist.
17. On 20 April 2010, Council provided OIC with copies of the Further Additional Documents in the format for release to the Applicant.²⁸
18. On 23 April 2010, OIC asked Council to send the Further Additional Documents to the Applicant, subject to the deletion of personal information of other people. OIC also made further enquiries of Council in relation to the Photographs on this date.
19. On 29 April 2010, OIC asked Council to obtain written certification from relevant Council officers regarding the searches they had conducted for documents responding to the Access Application (**Search Certification**).
20. On 29 April 2010, the Second Attack Investigator contacted the OIC to provide information in relation to this review. On 6 May 2010, OIC contacted the Second

²⁸ With the personal information of other people blacked out.

Attack Investigator again to obtain further information in relation to his involvement in the Second Attack and to discuss the issue of the Photographs.

21. On 6 May 2010, OIC attempted to contact the First Attack Investigator. Council informed OIC that this officer was no longer employed by Council.
22. On 7 May 2010, Council provided OIC with Search Certifications from two Council officers.²⁹ On this date, OIC made further enquiries with Council about the issue of the Photographs.
23. On 10 May 2010, Council informed OIC that the Manager of the APS Branch wanted to meet with the Applicant to discuss his Access Application and concerns about Council's investigation process. On 12 May 2010, Council provided OIC with the contact details for the Manager of the APS Branch.
24. By letter dated 14 May 2010 to the Applicant, OIC:
 - confirmed the steps OIC had taken to address the Applicant's concerns as to the sufficiency of searches undertaken by Council
 - provided a copy of Council's Search Certifications and Search Schedule
 - conveyed a preliminary view on the application of section 52(1) of the RTI Act to the documents which could not be located (**Preliminary View**)³⁰
 - extended the invitation from Council's APS Branch Manager to meet the Applicant to discuss his concerns about Council's investigation of the dog attacks
 - sought the Applicant's response as to the next step in this review.³¹
25. On 26 May 2010, the Applicant responded to the Preliminary View, confirming his previous submission that Council took the Photographs and therefore, should be able to find them (**Applicant's Third Submission**).
26. On 3 June 2010, OIC asked the Applicant to:
 - provide further information in support of his submission as to the Photographs
 - confirm whether he wanted to take up the offer of meeting with Council's APS Branch Manager.
27. On 8 June 2010, OIC contacted the Coordinator of Council's APS Branch to:
 - investigate the issue of the Photographs
 - obtain further information on Council's search processes and recordkeeping procedures.
28. On 8 June 2010, the Applicant provided OIC with further submissions on the issue of the Photographs (**Applicant's Fourth Submission**). In this email, the Applicant indicated he was willing to attend a meeting with the Manager of Council's APS Branch to discuss his concerns about Council's investigation of the dog attacks.

²⁹ Certifications were signed by the Quality Assurance Officer and the Coordinator of the APS Branch.

³⁰ The Preliminary View was that Council was entitled to refuse access to further documents under section 67(1) of the IP Act because the document(s) are non-existent or unlocatable in accordance with section 52(1)(a) and (b) of the RTI Act.

³¹ That is, whether the Applicant was prepared to resolve the review on the basis of Council's searches or whether he sought a formal decision on the matter.

29. On 23 June 2010, OIC corresponded with Council and the Applicant to assist in coordinating a meeting between the Manager of Council's APS Branch and the Applicant.
 30. On 23 June 2010, OIC requested a copy of the Audio Recording from Council. Council provided the Audio Recording to OIC on 28 June 2010.
 31. On 24 June 2010, in an email to OIC, the Applicant indicated that he maintained his concern about the Photographs (**Applicant's Fifth Submission**).
 32. On 29 June 2010 and 30 June 2010 OIC contacted Council to obtain further submissions on the issue of Photographs. OIC asked the Coordinator of the APS Branch to make enquiries as to the whereabouts of the camera that would have been used by the First Attack Investigator when he was employed by Council.
 33. On 6 July 2010, OIC spoke to the Coordinator of the APS Branch to obtain further information regarding Council's recordkeeping practices and searches undertaken for the Photographs. The Coordinator informed OIC that the camera used by the First Attack Investigator had been located and that its memory card did not contain the Photographs.
-