



## Decision and Reasons for Decision

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Citation:	<b><i>B39 and Scenic Rim Regional Council [2025] QICmr 52 (14 August 2025)</i></b>
Application Number:	<b>318333</b>
Applicant:	<b>B39</b>
Respondent:	<b>Scenic Rim Regional Council</b>
Decision Date:	<b>14 August 2025</b>
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - request for written records - agency submits communications occurred verbally - whether there are reasonable grounds to be satisfied documents do not exist - whether access to documents may be refused - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Background

1. The applicant applied<sup>1</sup> to Scenic Rim Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>2</sup> for access to various documents in connection with, what he referred to as, an ‘*excessive correspondence letter*’ (the **Letter**).
2. Council decided to refuse access to the requested documents on the basis they did not exist.<sup>3</sup>
3. The applicant applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for external review of Council’s decision.<sup>5</sup> The applicant’s concerns on external review focused on the issue of documents which he claims should exist to substantiate [Council’s] *claim of “excessive correspondence” from [the applicant] within the past 12 months*.<sup>6</sup>

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<sup>1</sup> Access application dated 30 October 2024. The scope of the access application comprised numbered items 1, 2 and 3. The item relevant for the purpose of this external review is item 1 only.

<sup>2</sup> 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. As the access application was made before those changes, the [RTI Act](#) as in force prior to 1 July 2025 remains applicable in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act. Accordingly, references in this decision are to the RTI Act as in force prior to 1 July 2025.

<sup>3</sup> Decision dated 18 November 2024 in relation to item 1 of the application.

<sup>4</sup> External review application dated 25 November 2024.

<sup>5</sup> In relation to item 1 of the access application

<sup>6</sup> External review application dated 25 November 2024.

4. Council provided OIC with a submission<sup>7</sup> to account for the nonexistence of the requested information which in summary, outlined that the relevant communications occurred verbally, and were not recorded in writing. In considering whether access to the requested documents may be refused, I have examined the information available to me, including Council's submissions, to determine whether there are reasonable grounds to be satisfied that the requested documents do not exist.<sup>8</sup>
5. In making this decision, I have taken into account evidence, submissions, legislation and other material set out in these reasons (including footnotes)<sup>9</sup>. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information and in doing so, have acted in accordance with section 58(1) of the HR Act.<sup>10</sup>
6. For the reasons set out below, I affirm Council's decision that access to documents sought by the applicant in connection with the Letter, may be refused on the basis they do not exist.<sup>11</sup>

### Relevant law

7. Access to a document may be refused under the RTI Act if it is nonexistent or unlocatable.<sup>12</sup> A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>13</sup> 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.<sup>14</sup>
8. 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.<sup>15</sup> By considering relevant key 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.
9. Where searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances. The Information Commissioner's external review functions include

<sup>7</sup> Submission dated 10 June 2025.

<sup>8</sup> Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>9</sup> During the review the applicant provided OIC with extensive submissions, some of which raised issues beyond the jurisdiction of the Information Commissioner under the RTI Act. To the extent the submissions are relevant to the issue for determination in this review I have referred to them in these reasons.

<sup>10</sup> OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

<sup>11</sup> Under sections 47(3)(e) and 52(1)(a) of the RTI Act

<sup>12</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>13</sup> Section 52(1)(a) of the RTI Act.

<sup>14</sup> Section 52(1)(b) of the RTI Act.

<sup>15</sup> 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 and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) 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].

investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.<sup>16</sup>

10. 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.<sup>17</sup> 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.<sup>18</sup> Suspicion and mere assertion will not satisfy this onus.<sup>19</sup>

## Searches, evidence and submissions

11. On external review, the applicant submitted:<sup>20</sup>

*SRRC made an official claim of 'excessive correspondence' allegedly based on email volume sent by me. Such claims inherently rely on quantitative data that must originate from emails or system logs, not unverifiable verbal statements. The burden of proof lies with SRRC to support its assertions with accessible and verifiable records. If no such records exist, the claim lacks an evidentiary foundation and must be retracted with a formal apology.*

12. In its decision<sup>21</sup>, Council included the following explanation for nonexistence of the requested documents:

*The Principal Specialist Governance and Assurance provided a verbal instruction to the Governance and Risk Officer to draft the "excessive correspondence" letter. A verbal instruction was also given to the Business Support Officer, Governance and Assurance to search Councils records and provide the number of documents as stated in the "Excessive Correspondence" letter to the Governance and Risk Officer. This information was provided verbally. Therefore, there are no documents to provide as you have already been provided with the "Excessive Correspondence" letter.*

13. On external review, OIC requested<sup>22</sup> that Council provide further information about any searches it had conducted and further reasons to explain why the requested information could not be located. Council's Governance and Risk Officer submitted as follows:<sup>23</sup>

2. *A search has been conducted, and I confirm that there are no documents or records held by Council that relate to Section 1 of [the applicant's] application.*
3. *I was the officer who drafted the excessive correspondence letter that was issued to [the applicant].*
4. *The drafting of this letter was discussed verbally in my office between myself (in my capacity as Acting Senior Governance and Risk Officer), the Principal Specialist Governance and Assurance, and the Business Support Officer.*

<sup>16</sup> 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.

<sup>17</sup> Section 87(1) of the RTI Act.

<sup>18</sup> See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

<sup>19</sup> See *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

<sup>20</sup> Submission dated 26 June 2025.

<sup>21</sup> Decision dated 18 November 2024.

<sup>22</sup> By way of telephone conversation with Council on 6 June 2025.

<sup>23</sup> Submission dated 10 June 2025, provided in the form of a sworn statement, signed by the Governance and Risk Officer of Council.

5. *During that discussion, I opened the template excessive correspondence letter on my Council-issued computer. My Principal Specialist verbally instructed the Business Support Officer to provide me with the number of items of correspondence received from [the applicant].*
6. *The Business Support Officer...verbally provided the numbers to me while I had the letter open on my screen. It is my understanding that the Business Support Officer had searched Council's electronic document and records management system (ECM) to obtain the numbers.*
7. *These numbers were not written down or sent via email to any party. The only written record of the numbers is contained within the letter that was subsequently sent to [the applicant].*
8. *I confirm that no documents exist in relation to Section 1 of [the applicant's] RTI application. The figures included in the letter were the result of a verbal discussion and verbal instruction, and no documentary record of that specific search was created or retained.*

## Findings

14. For the reasons set out below, having examined the information available to me, including the applicant's submissions and Council's explanation of the circumstances surrounding creation of the Letter, I am satisfied that there are reasonable grounds to be satisfied that documents in connection with the Letter, as sought by the applicant, do not exist.
15. I accept that the Letter contains references to the number of emails the applicant is alleged to have sent Council. Council submits that the references were communicated *verbally* to the author of the Letter by the Business Support Officer during the preparation of the Letter, through a concurrent review of the records management system.
16. Taking into account the information set out in paragraph 13 about the steps undertaken by Council officers to retrieve the information that was included in the Letter, and preparation of the Letter itself, I consider it is reasonable to conclude that those communications between Council officers occurred verbally, concurrent with the drafting of the Letter. While I acknowledge that the applicant considers that Council officers *should* have created additional written records in the course of preparing the Letter, there is no information available to me, other than the applicant's assertions, to support that belief. Rather, the evidence advanced by Council in its submissions is that the communications only occurred verbally. For these reasons, I find that there are reasonable grounds to be satisfied that Council did not create written records in connection with the Letter (other than the Letter itself).
17. I have had particular regard to the submissions directly provided by the author of the Letter as outlined in paragraph 13 above. I am satisfied that Council has provided a reasonable explanation to account for the nonexistence of documents and made appropriate enquiries with the officer who had direct involvement in drafting the Letter. Given the explanation provided by Council, I do not consider it is necessary for Council to also demonstrate reasonable searches to justify the nonexistence of documents, however, for completeness, I find there are no further searches or enquiries that Council could reasonably be expected to undertake in the circumstances of this case.
18. For the reasons set out above, I find that there are reasonable grounds to be satisfied that Council did not create written records in connection with the Letter (other than the

Letter itself), and therefore, access may be refused to the requested documents on the basis that they do not exist.<sup>24</sup>

## **DECISION**

19. I affirm<sup>25</sup> Council's decision that access to the requested documents may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.
20. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**Katie Shepherd**  
**Assistant Information Commissioner**

**Date: 14 August 2025**

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<sup>24</sup> Section 47(3)(e) and 52(1)(a) of the RTI Act. Based on the findings I have reached in this review, I determined that a backup system search under section 52(2) of the RTI Act was not required.

<sup>25</sup> Section 110(1)(a) of the RTI Act.