



Decision and Reasons for Decision

Citation:	<i>Y20 and Department of Education [2021] QICmr 20 (11 May 2021)</i>
Application Number:	315462
Applicant:	Y20
Respondent:	Department of Education
Decision Date:	11 May 2021
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF ACCESS APPLICATION - IRRELEVANT INFORMATION - whether information may be deleted on the basis it is irrelevant to the terms of the application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - personal information of other individuals - safeguarding personal information and the right to privacy of other individuals - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - where applicant contends further documents ought to exist - whether agency has taken all reasonable steps to locate responsive documents - whether access may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents relating to various aspects of her employment by the Department.

¹ Access application dated 19 December 2019; received by the Department on 2 January 2020; and made compliant on 23 January 2020.

2. The Department located 294 responsive pages, and decided to release 254 pages in full and 40 pages in part.² It deleted information on the basis that it was irrelevant information, and refused access to other information because its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied for internal review of the decision.³ The Department did not issue an internal review decision within the requisite timeframe and was therefore deemed to have affirmed its initial decision.⁴
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.⁵ She sought review of the Department's decision to refuse her access to information, as well as raising 'sufficiency of search' issues.
5. For the reasons set out below, I affirm the Department's decision. I also find that there are no reasonable grounds for believing that the Department holds additional responsive documents.

Background

6. The applicant is a teacher who is aggrieved about aspects of her employment by the Department. She has advised that she has brought proceedings against the Department in the Queensland Industrial Relations Commission (**QIRC**). She has made several applications to the Department under the IP Act seeking access to, or amendment of, documents relating to her employment. She has made three applications to OIC for review of the Department's decisions.

Reviewable decision

7. The decision under review is the Department's deemed affirmation of its original decision dated 30 April 2020.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (particularly footnotes and Appendix).
9. The applicant has sent a large volume of email correspondence to OIC during the course of the review. To the extent that that material contains information that is relevant to the issues remaining for determination in this review, I have taken account of it. I note that some issues raised by the applicant during the review are not issues that I have jurisdiction to consider or determine under the IP Act, or they have been resolved during the course of the review.

Application of the Human Rights Act

10. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁶ 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 IP Act and RTI Act.⁷ I have acted in this way in making this decision,

² Decision dated 30 April 2020.

³ In an undated 6 page letter attached to an email sent to the Department on 12 May 2020.

⁴ See section 97 of the IP Act. Notice of deemed refusal on internal review sent to the applicant on 18 June 2020.

⁵ Email dated 18 June 2020.

⁶ Section 21 of the HR Act.

⁷ *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 [11].

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:⁸ *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*.⁹

Information in issue

11. The information in issue comprises segments of information contained on various pages in Files A and B.¹⁰ The Department decided to delete some information on the grounds that it is irrelevant to the terms of the access application, and refused access to the remainder because it comprises the personal information of individuals other than the applicant and its disclosure would, on balance, be contrary to the public interest.
12. While it appears, in some correspondence received from the applicant,¹¹ that the applicant may only be wishing to pursue access to the information in issue on pages 8 and 20 of File A, this remains unclear despite requesting clarification from the applicant. Accordingly, I have proceeded on the basis that all information in Files A and B to which the Department refused access is in issue.
13. In addition, during the review, and as a result of additional searches conducted by the Department at the request of OIC, the Department located further bundles of responsive documents as follows:
 - (a) a bundle of 167 pages¹² in respect of which the Department advised that it objected to disclosure of segments of information contained on several pages,¹³ again on the basis that the information is either irrelevant to the terms of the access application, or it comprises the personal information of other individuals and its disclosure would, on balance, be contrary to the public interest.
 - (b) a bundle of 421 pages (titled '*Attachment A - Candidate List emails*')¹⁴ comprising job candidate lists and supporting job applications that were emailed to various schools that were seeking staff. The Department gave the applicant access to all information that concerned the submission of her job application material to the schools, but refused access to information that concerned other candidates.
 - (c) a bundle of 348 miscellaneous pages (titled '*Attachment B*')¹⁵ located by the Department late in the review, again mostly concerning the submission of job application material. The Department gave the applicant access to all information that concerned her, but refused access to information that comprised the personal information of others.
14. Again, because it is not clear to me whether or not the applicant continues to seek access to all information to which the Department refused access in the bundles referred to in paragraphs 13(a), (b) and (c) above, I have proceeded on the basis that all of that information is in issue.

⁸ *Freedom of Information Act 1982 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

⁹ XYZ at [573].

¹⁰ File A - pages 2-6, 8, 20, 80, 82 and 84; and File B - pages 8, 9, 18, 20, 21, 23, 27, 30, 33 and 139-158.

¹¹ In the applicant's emails of 12 April 2021 and 28 April 2021.

¹² Released to the applicant on 9 December 2020.

¹³ Pages 1-3, 5-6, 132-144, 155 and 165-167. Pages 132-144 and 155 are internal departmental emails created on 31 January 2020 and in September and October 2020, regarding searches by the Department for responsive documents. OIC does not have jurisdiction to consider those pages in this review as they are outside the date range of the access application.

¹⁴ Released to the applicant on 15 April 2021.

¹⁵ Released to the applicant on 15 April 2021.

Issues for determination

15. The issues for determination are whether:
- the Department was entitled to delete certain information from the documents in issue on the basis that the information is irrelevant to the terms of the access application¹⁶
 - disclosure of the remaining information in issue would, on balance, be contrary to the public interest;¹⁷ and
 - access may be refused to additional information sought on the grounds that it is nonexistent or unlocatable.¹⁸

Applicant's submissions generally

16. The applicant has raised numerous complaints and issues throughout the course of the review, from the accuracy of the time of receipt of her emails by OIC, to issues concerning page numbering. Most of the issues have been resolved during the course of the review, or are irrelevant to the issues that I have jurisdiction to decide under the IP Act.
17. The basis for some of the applicant's submissions about the documents in issue is unclear. She has made numerous requests to be provided with *'true, correct and authentic'* copies of documents, including those to which she has been given full access by the Department. She appears to believe that documents that the Department has released to her may have been altered or amended. This belief may possibly be based on the fact that a handwritten note may appear on a released page.¹⁹ The applicant seems to regard this as an amendment to a document that she hasn't requested or authorised.²⁰ The applicant's submissions in this regard are misconceived. The Department is entitled to make notes on a document in its possession or under its control without seeking the applicant's permission. By doing so, the document is not rendered untrue, incorrect or inauthentic. It exists in that form in the Department's records and the applicant has been given access to it in that form. There is nothing before me to suggest that the documents that have been released to the applicant are not true copies of the documents as held by the Department.
18. In respect of page 20 on File A, which is in the nature of an unsigned and undated statement, the applicant contends that it is not a true, correct or authentic copy because she considers it is incomplete. She has raised questions about its origins, including seeking confirmation of why and when it was written, and to whom it was sent. However, she has been advised on several occasions throughout the review that the person who prepared the document is no longer employed by the Department and that the Department is unaware of why or precisely when it was prepared, or to whom it was sent. To the extent that the applicant seeks to raise a sufficiency of search issue regarding other documents that may be associated with this statement, I will deal with this below.

¹⁶ Under section 88 of the IP Act.

¹⁷ Under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**), in conjunction with section 67(1) of the IP Act. Section 67 of the IP Act provides that access to information may be refused on the same grounds as under section 47 of the RTI Act.

¹⁸ Under sections 47(3)(e) and 52(1) of the RTI Act.

¹⁹ See the applicant's email of 28 April 2021. However, that is not the case with the majority of pages identified by the applicant as apparently being of concern.

²⁰ See the applicant's email of 28 April 2021.

19. The applicant has made other general submissions in the following terms:²¹

I need to ask for legal remedies from DoE(Qld) and OIC(Qld) for all my loss(monetary compensation and non monetary compensation: loss of income/earnings(past, present and future loss), legal costs, medical expenses, counseling [sic] expenses, reputation, distress, hurt, humiliation, insult, etc), pain(severe physical head pain, emotional, mental and psychological), suffering(physical, emotional, psychological and mental), damages(pecuniary and non pecuniary compensation) which could have been avoided from 29/4/2019, 30/4/2019, 25/6/2019, 26/6/2019,15/7/2019, 22/7/2019, 27/7/2019, 5/8/2019, 6/8/2019, 7/8/2019, 9/8/2019,11/10/2019, 19/8/2019 and 24/10/2019 from DoE(Qld) if they had taken their responsible actions to investigate internally and treated me fairly and with natural justice for the Matter [reference deleted] at Queensland Industrial Relations Commission.

The OIC (Qld) could also deal with three OIC(Qld) External Review References 315462 [other references deleted] from 18/6/2020 with DoE(Qld) and [applicant] in a fair, impartial, timely and efficient way which could prevent me from suffering all pain, damages(pecuniary and non pecuniary), loss, humiliation, hurt, distress, insult and bad reputation.

20. I have no jurisdiction under the IP Act to respond to, or otherwise deal with, the applicant's submission regarding a claim for compensation. In respect of her request that OIC deal with her three applications for external review in a fair, impartial, timely and efficient way, I note that one of her reviews has already been finalised. I am satisfied that OIC has progressed this review as quickly and efficiently as possible, taking account of the volume of correspondence received from the applicant and the range of issues raised, the time taken for the Department to conduct additional searches for responsive documents, as well as the significant competing workload demands of OIC in the relevant period. I am also satisfied that the applicant has been afforded procedural fairness throughout the review process. She has been afforded several opportunities to provide submissions in response to preliminary views formed by OIC on the issues in the review.²² Where relevant to the issues to be determined, those submissions have been taken into account in deciding this matter.

Irrelevant information

Relevant law

21. The IP Act permits the deletion of information from released documents where it is irrelevant to the terms of an access application.²³ This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
22. In assessing whether documents fall within the scope of an application, it will generally be fairly apparent if a document is outside the relevant date range or relates to subject matter/individual(s) with no connection to the application. In practice, the term 'out of scope' is used to exclude *whole* documents. Where *parts* of a document do not relate to the terms of an application, section 88 of the IP Act operates to allow deletion of the information. In deciding whether information is irrelevant, a decision-maker should consider whether the information has any bearing upon, or is pertinent to, the terms of the application.²⁴

²¹ See the applicant's email of 28 April 2021.

²² In the 'preliminary view' letter of the Assistant Information Commissioner dated 22 December 2020; and in my letter to the applicant dated 8 April 2021.

²³ Section 88 of the IP Act.

²⁴ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

Finding

23. I am satisfied that the segments of information that the Department deleted on the grounds of irrelevance, namely, those contained on pages 1-3, 5 and 6 of the bundle of documents referred to in paragraph 13(a) above, are properly to be characterised as irrelevant to the terms of the access application. They concern meetings, discussions, etc with individuals about matters not concerning the applicant. They do not relate to the applicant or to the terms of her access application.

Contrary to the public interest

Relevant law

24. Under the IP Act, access to information may be refused to the extent that disclosure of the information would, on balance, be contrary to the public interest.²⁵ The term public interest 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, or a substantial segment, of the community, as distinct from matters that concern purely private or personal interests.²⁶
25. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁷
- identify factors irrelevant to the public interest and disregard them;
 - identify factors in favour of disclosure of information;
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Irrelevant factors

26. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

Factors favouring disclosure

27. The information in issue²⁸ comprises the personal information²⁹ of persons other than the applicant. It includes information such as the names and email addresses of other persons who applied for jobs with the Department; their job application material; mobile telephone numbers of Department officers; references to interactions between other Departmental employees; and aspects and details of other persons' employment with the Department, including leave details.
28. I do not consider that this information is in the nature of routine personal work information.³⁰ Routine personal work information is information that is solely and wholly

²⁵ Section 67(1) of the IP Act. See also section 47(3)(b) of the RTI Act.

²⁶ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²⁷ Section 49(3) of the RTI Act.

²⁸ The pages identified in footnote 10; pages 165-167 of the documents described in paragraph 13(a) above; and the pages or part pages to which the Department refused access as contained in the bundles referred to in paragraphs 13(b) and (c) above.

²⁹ Personal information comprises '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': section 12 of the IP Act.

³⁰ Generally, it is not considered to be contrary to the public interest to disclose routine personal work information.

related to the routine day-to-day work duties and responsibilities of a public sector employee, such as the fact of authorship of a work document or a work responsibility. I do not consider that the information in issue can be characterised as such.

29. The applicant was invited on several occasions³¹ to provide submissions in support of her case that the balance of the public interest weighed in favour of disclosure to her of the personal information of others.
30. The applicant responded³² by listing every public interest factor favouring disclosure contained in schedule 4, part 2 of the RTI Act. The applicant did not explain how she specifically contended that any of those factors applied to the information in issue, other than to submit:

According to the Information Privacy Act (QLD) in 2009, it also listed out all principles in the IP Act 2009 (QLD), please make your fair and right Decisions and decisions under the IP ACT 2009 (QLD) as well.

With the introduction of the Public Service and Other Legislation Amendment Act 2020 Queensland, please take your responsible actions for the [three] External Reviews ...from OIC (QLD) and DoE (QLD) Ref [deleted]. These three External Reviews from OIC (QLD) and DoE (QLD) Ref [deleted] are closely related. Please assess the three External Reviews [deleted] and DoE (QLD) Ref [deleted] collectively. OIC (QLD) needs to consider, evaluate, and make the fair, unbiased and rightful Decisions and decisions with natural justice for the External Reviews [deleted] and DoE (QLD) [deleted] under the Information Privacy Act 2009 (Queensland), Right to Information Act 2009 (Queensland), Crime and Corruption Act 2001, Queensland Human Right Act 2020, Public Records Act 2002 (QLD) and Public Interest Disclosure Act 2010 and 2013 (QLD).³³

...

Besides, according to the administration justice for a person/administration of justice generally including procedural fairness for any decision-making/the requirement to amend the information if it was incorrect, out of date, misleading, gratuitous, unfairly, subjective/the requirement in accordance with the law in dealing with agencies and government organisations/promotion of open discussions of public affairs and enhancement of Government's accountability/the need to inquire or investigate about the deficiencies in conduct/misconduct/negligence/unlawful conduct and administration of an agency or official under public interest test, the pursuit of legal remedy for [the applicant] for the Matter No. of [reference deleted] of Queensland Industrial Relations Commission (QIRC) and the procedures for legal court actions for the Office of Information Commissioner (OIC), Queensland (Qld) External Review Reference [reference deleted] (OIC, Qld's external review Reference/reference [reference deleted] for Department of Education (DoE), Queensland (QLD) [reference deleted], the other 2 OIC (Qld)'s External Review Reference [reference deleted] (DoE, Qld's reference/Reference [deleted]) and OIC, Qld's External Review Reference 315462 for DoE, Qld's Reference/reference 200008 on 30/4/2020 and the Matter No. of PSA [reference deleted], please disclose all the named documents in this email. The named documents are required in accordance with the law.

According to the Information Privacy Act 2009 (Qld), Right to Information Act 2009 (Qld), Public Records Act 2002 (Qld), Evidence Act 1977 (Qld), Recording of Evidence Act 1962 (Qld), Criminal Code Act 1899 (Qld), Crime and Corruption Act 2001 (Qld), Public Sector Ethics 1994 (Qld), Public Services and Other Legislation Amendment Act 2020 (Qld), Anti-Discrimination Act 1991 (Qld), Human Rights Act 2019 (Qld), Public Interest Disclosure Act 2010 (Qld) and Public Interest Disclosure Act 2013 (Qld), Code of Conduct- Ministerial Staff

³¹ In the 'preliminary view' letter of the Assistant Information Commissioner dated 22 December 2020, and in my letter to the applicant dated 8 April 2021.

³² See, for example, the applicant's emails of 30 January 2021, 12 April 2021 and 28 April 2021.

³³ Applicant's email of 30 January 2021.

*Members (18/2/2021), please review the OIC (Qld)'s External Review Reference 315462 for DoE (Qld) Reference/reference 200008 on its merits and with the requirements of all named legislations/Acts in this email (12/4/2021).*³⁴

31. OIC's preliminary view regarding the disclosure of the personal information of others that is in issue has been communicated to the applicant on several occasions during the review.³⁵ However, the applicant argues that its disclosure is in the public interest for the reasons set out in the extract from the applicant's submissions contained in the preceding paragraph. It appears she is particularly concerned about accessing the information for the purposes of the QIRC proceedings and in the administration of justice generally.
32. To the extent that the applicant seeks to focus her attention on the information in issue on pages 8 and 20 of File A, I dealt specifically with that information in my letter to the applicant dated 27 April 2021. I described the general nature of the information in issue on each page and explained why, given its nature, I considered that the public interest in protecting the personal information and right to privacy of the persons concerned outweighed the public interest in disclosure of the information, including the general accountability of the Department for its decision-making.
33. I afford only low weight to the public interest in enhancing the Department's accountability³⁶ regarding the information in issue on pages 8 and 20. The Department is accountable for fairly and carefully assessing officers' performance and suitability for positions. As a job applicant and employee, and through the information released by the Department, the applicant has an understanding of the process followed by the Department. Disclosing some of the information in issue would provide her with only a small amount of additional information about the Department's recruitment processes. I find that the pro-disclosure accountability factor is likely to be only marginally enhanced by disclosing the information in issue and I therefore afford it low weight.
34. I acknowledge that the applicant has advised that she is involved in QIRC proceedings with the Department. I am not aware of the precise nature of those proceedings. It appears that she is particularly concerned to access the information in issue on pages 8 and 20 of File A in the context of assisting her case in the QIRC proceedings. However, I am not satisfied that disclosure of the information in issue, given its nature, could reasonably be expected to contribute in any significant way to the administration of justice either generally, or specifically for the applicant,³⁷ in the context of those proceedings, or that it would significantly advance the applicant's fair treatment in accordance with the law in her dealings with the Department.³⁸ I afford these pro-disclosure factors low weight when applying them to pages 8 and 20.
35. I do not consider that any of the other pro-disclosure factors listed in schedule 4, part 2 of the RTI Act apply to pages 8 and 20 of File A.
36. As regards the remainder of the information in issue, I am not satisfied that any of the pro-disclosure factors contained in schedule 4, part 2 of the RTI Act apply to it given its content and also the lack of relevant supporting submissions from the applicant as to how she contends the factors apply to this information. In particular, I do not consider that disclosure of this remaining information could reasonably be expected to:

³⁴ Applicant's email of 12 April 2021 and repeated verbatim in her email of 28 April 2021.

³⁵ See OIC's letters to the applicant dated 22 December 2020, 8 April 2021, and 27 April 2021.

³⁶ Schedule 4, part 2, item 1 of the RTI Act.

³⁷ Schedule 4, part 2, items 16 and 17.

³⁸ Schedule 4, part 2, item 10.

- contribute to positive and informed debate on important issues or matters of serious interest;
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;
- reveal the reason for a government decision and any background or contextual information that informed the decision;
- reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective, or irrelevant; or
- contribute to the administration of justice either generally or for a person.

Factors favouring nondisclosure

37. Where disclosure of information would disclose the personal information of another person, a public interest harm automatically arises – schedule 4, part 4, section 6 of the RTI Act provides that disclosure of information could reasonably be expected to cause a public interest harm (**harm factor**) if disclosure would disclose personal information of a person, whether living or dead.
38. In addition, schedule 4, part 3, item 3 of the RTI Act recognises an associated factor that favours nondisclosure of personal information of others – where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy (**nondisclosure factor**).
39. Given the nature of the information in issue as described at paragraph 27 above, I would afford significant weight to both the harm factor and the nondisclosure factor in recognition of the strong public interest in protecting the personal information and right to privacy of others regarding their interactions with the Department.

Balancing the public interest

40. In respect of pages 8 and 20 of File A, in terms of pro-disclosure factors, I would afford low weight to the public interest in the Department's accountability, and low weight to the public interest in the administration of justice and the fair treatment of individuals. In terms of nondisclosure factors, I afford significant weight to the public interest in protecting the personal information of others, as well as their right to privacy.
41. After balancing the public interest factors favouring disclosure and nondisclosure of the information in issue on pages 8 and 20 of File A, I am satisfied that the factors favouring nondisclosure outweigh those favouring disclosure.
42. In respect of the remainder of the information in issue, I would again afford significant weight to the public interest in protecting the personal information of others, as well as their right to privacy. I am not satisfied that any of the pro-disclosure factors contained in schedule 4, part 2 of the RTI Act apply to this information such as to outweigh the public interest in nondisclosure.

Finding

43. For the reasons explained, I find that the balance of the public interest weighs in favour of nondisclosure of the information in issue such that its disclosure would, on balance, be contrary to the public interest.

Sufficiency of search

Relevant law

44. Another ground for refusing access to information is if the document is nonexistent or unlocatable.³⁹
45. A document is *nonexistent* if reasonable grounds that the document does not exist are satisfied.⁴⁰ In making this determination, regard should be had to a number of key factors including:⁴¹
- 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); and
 - other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s; and
 - the nature of the government activity the request relates to.
46. When proper consideration is given to relevant factors, it may be unnecessary for searches to be conducted to establish that a document does not exist. However, if an agency or Minister relies on searches to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the requested documents.⁴²
47. A document is *unlocatable* if reasonable grounds are satisfied that the requested document has been or should be in the agency's possession, and the agency has taken all reasonable steps to find the document and it cannot be located.⁴³ In making this determination, regard should again be had to the circumstances of the case and the key factors.⁴⁴

Applicant's submissions

48. I acknowledge that the Department located a significant number of additional responsive documents during the course of the review.
49. In light of this and the release to the applicant of the bulk of these additional documents, together with the information the Department provided during the review in response to the sufficiency of search issues raised by the applicant, I wrote to the applicant on 8 April

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

⁴⁰ Section 52(1)(a) of the RTI Act.

⁴¹ *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of which are replicated in section 52 of the RTI Act; and *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19].

⁴² *PDE* at [38].

⁴³ Section 52(1)(b) of the RTI Act.

⁴⁴ *Pryor* at [20]-[21].

2021 to summarise the current status of the various sufficiency of search issues as I understood them, and, if she contended that further documents still ought to exist in the Department's possession or under its control, to invite her to provide a final written submission that:

- identified any other responsive documents, or categories of responsive documents, that she contended the Department had not yet located; and
- identified any other searches or inquiries that she contended the Department should reasonably be expected to undertake in order to locate any additional responsive documents.

50. In her email in response of 12 April 2021, the applicant referred to requiring access to documents⁴⁵ that the Department subsequently released to her on 15 April 2021. Since that release, the applicant has made no further submissions in support of an argument that there are reasonable grounds for expecting that the Department holds additional responsive documents.⁴⁶

51. As regards the statement contained at page 20 of File A, to the extent that the applicant contends that it is incomplete and that there ought to exist other documents that explain or confirm why and when it was prepared and to whom it was sent, this was raised with the Department. The Department advised of the circumstances surrounding the location of the statement and the time period during which it appeared to have been prepared. The Department also advised that no documents concerning the statement's circulation had been located through additional searches, and that, as the person who prepared the statement no longer worked for the Department, no further information was able to be provided.⁴⁷

Finding

52. Having reviewed:

- the additional documents released to the applicant by the Department during the course of the review
- the details of the searches conducted by the Department in an effort to locate any further documents
- the information provided by the Department in response to sufficiency of search questions; and
- the applicant's submissions,

I am satisfied that there are no reasonable grounds for believing that the Department holds any additional documents that respond to the terms of the access application. I am unable to identify any further searches or inquiries that I consider it would be reasonable to ask the Department to undertake.

DECISION

53. I affirm the Department's decision under review. I am satisfied that:

- the Department was entitled to delete information from responsive pages on the grounds that it is irrelevant to the access application; and

⁴⁵ See items 3 and 4 in the penultimate paragraph of the applicant's email.

⁴⁶ The applicant does not appear to raise any further sufficiency of search issues in her email of 28 April 2021.

⁴⁷ See OIC's letter to the applicant dated 22 December 2020.

- access to the remaining information in issue may be refused on the grounds that its disclosure would, on balance, be contrary to the public interest.
54. In addition, I find that there are no reasonable grounds for believing that the Department holds any additional documents that fall within the terms of the applicant's access application.
55. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner

Date: 11 May 2021

APPENDIX**Significant procedural steps**

Date	Event
18 June 2020	OIC received the external review application.
19 June 2020	OIC received correspondence from the applicant.
20 June 2020	OIC received correspondence from the applicant.
22 June 2020	OIC notified the applicant and the Department that the external review application had been received, and requested procedural information and documents from the Department.
1 July 2020	The Department provided the requested information to OIC.
8 July 2020	OIC notified the applicant and the Department that the external review had been accepted, and requested the information in issue from the Department.
21 July 2020	The Department provided the information in issue to OIC.
24 July 2020	OIC summarised the issues and requested a submission from the applicant. OIC held a telephone conversation with the applicant.
3 August 2020	OIC received correspondence from the applicant.
31 August 2020	OIC held a telephone conversation with the applicant.
14 September 2020	OIC wrote to the applicant regarding sufficiency of search issues. OIC wrote to the Department to request further searches be conducted.
15 September 2020	OIC received correspondence from the applicant.
16 September 2020	The Department requested an extension of time to conduct searches. OIC granted the extension of time. OIC wrote to the applicant addressing her concerns raised in the telephone conversation on 31 August 2020.
20 October 2020	The Department provided OIC with search records.
21 October 2020	The Department provided OIC with additional documents located following further searches.
27 October 2020	OIC received correspondence from the applicant.
4 November 2020	The Department provided OIC with marked up copies of the additional documents located.
8 December 2020	OIC wrote to the Department and the applicant regarding release of the additional documents located.
22 December 2020	OIC wrote to the applicant to express a preliminary view.
23 December 2020	OIC received correspondence from the applicant.
6 January 2021	OIC wrote to the applicant to clarify the nature of the documents provided to the applicant by the Department.

Date	Event
21 January 2021	The applicant wrote to OIC requesting a formal decision.
25 January 2021	OIC wrote to the applicant to clarify the external review process.
30 January 2021	OIC received correspondence from the applicant.
23 February 2021	OIC wrote to the Department regarding sufficiency of search and other issues. OIC wrote to the applicant to advise the Department had been asked to undertake further searches and to confirm outstanding issues.
9 March 2021	OIC received correspondence from the applicant.
12 March 2021	OIC wrote to the applicant and provided page numbered copies of the released documents.
14 and 15 March 2021	OIC received correspondence from the applicant.
22 March 2021	OIC received correspondence from the Department regarding sufficiency of search issues and additional documents located.
29 March 2021	OIC received correspondence from the Department.
6 April 2021	OIC received copies from the Department of additional documents located.
8 April 2021	OIC wrote to the applicant to summarise outstanding issues and to advise that the Department would be releasing additional responsive documents. OIC wrote to the Department to request that it release the additional documents to the applicant.
12 April 2021	OIC received correspondence from the applicant.
15 April 2021	OIC was advised by the Department that the additional documents had been released to the applicant.
27 April 2021	OIC wrote to the applicant in response to her email of 12 April 2021 and to summarise outstanding issues.
28 April 2021	OIC received correspondence from the applicant.