



Decision and Reasons for Decision

Citation:	<i>B51 and Queensland Police Service [2025] QICmr 75 (22 October 2025)</i>
Application Number:	318271
Applicant:	B51
Respondent:	Queensland Police Service
Decision Date:	22 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - request for video recordings - whether agency has conducted reasonable searches - whether access to recordings may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1)(a) and (b) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**)¹ for access to all closed-circuit television (**CCTV**) and body worn camera (**BWC**) recordings taken at a named police station (the **Station**) on a specified date, and related documents.²
2. QPS located 11 BWC recordings and 4 pages and decided to refuse access to:³
 - (A) CCTV recordings on the basis they were nonexistent
 - (B) parts of four BWC recordings, three pages and part of one page on the basis the information comprised exempt or contrary to public interest information; and
 - (C) seven BWC recordings on the basis that other access was available.

¹ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the RTI Act. As the applicant's application was made before this change, the RTI Act as in force prior to 1 July 2025 remains applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act. Accordingly, references to the RTI Act in this decision is to that Act as in force prior to 1 July 2025.

² Access application dated 25 July 2024. The various documents sought were described as 'All QPRIME records, documents, internal QPS systems and or things related, tangible or otherwise, written notes, statements etc. relating to a 'Notice to appear' document number...'. QPRIME is QPS's primary electronic database, the Queensland Police Records and Information Management Exchange.

³ Decision dated 16 September 2024. This is the 'reviewable decision' for the purpose of this review. QPS also deleted irrelevant information from the documents disclosed to the applicant under section 73 of the RTI Act.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision at (A), stating:⁴

Multiple formal requests were made to secure station CCTV footage, to various officers, ESC and even the RTI team itself. Despite these requests (well [within] the override period) the RTI team state the material doesn't [exist].

4. During the review, OIC requested further information from the applicant regarding his attempts to preserve the CCTV recordings⁵ and requested further information from QPS about the searches conducted for the CCTV recordings.⁶ OIC also conveyed a view to the applicant that access to the CCTV recordings may be refused on the basis they are unlocatable and, as *downloaded copies* of the CCTV recordings do not exist,⁷ access to such copies may be refused on that basis.⁸ However, the applicant maintained that QPS should have preserved the CCTV recordings following his requests to do so.⁹ As the applicant's concerns are limited to the issue of the missing CCTV recordings, I have examined the reasonableness of QPS's searches and made a finding on whether access to CCTV recordings may be refused on the basis they are nonexistent or unlocatable.¹⁰
5. In making this decision, I have taken into account evidence, submissions, legislation and other material set out in these reasons (including footnotes). 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.
6. For the reasons set out below, I vary QPS's decision and find that access may be refused to CCTV recordings on the basis they are unlocatable¹¹ and to downloaded copies of the CCTV recordings on the basis they do not exist.¹²

Relevant law

7. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.¹³ While the legislation is to be administered with a pro-disclosure bias,¹⁴ the right of access is subject to certain limitations, including grounds for refusing access.¹⁵
8. Relevantly, access to a document may be refused if it is nonexistent or unlocatable.¹⁶ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁷ 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.¹⁸
9. 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

⁴ External review application dated 15 October 2024. The applicant did not seek review of QPS's decision in relation to Part (B) or (C). OIC confirmed to the applicant that the external review was limited to QPS's decision at (A) by letter dated 28 November 2024. Accordingly, parts B and C of QPS's decision were not considered on review, and I have not dealt with them in this decision.

⁵ Letter to the applicant dated 28 November 2024.

⁶ Letter dated 28 November 2024 and email dated 24 April 2025.

⁷ As noted in submissions from QPS dated 24 and 27 June 2025.

⁸ Letter to the applicant dated 8 July 2025.

⁹ External review application and submissions to OIC dated 18 December 2024, 11 August 2025 and 14 September 2025.

¹⁰ Under sections 47(3)(e) and 52(1)(a) and (b) of the RTI Act.

¹¹ Sections 47(3)(e) and 52(1)(b) of the RTI Act.

¹² Sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹³ Section 23 of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.

¹⁶ Sections 47(3)(e) and 52 of the RTI Act.

¹⁷ Section 52(1)(a) of the RTI Act.

¹⁸ Section 52(1)(b) of the RTI Act.

structure, its recordkeeping practices and procedures and the nature and age of requested documents.¹⁹ 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.

10. 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 investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.²⁰
11. On an external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.²¹ However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.²² Suspicion and mere assertion will not satisfy this onus.²³

Evidence, searches and submissions

12. QPS's decision explained:²⁴

- CCTV recordings are generally *'retained for 28 days, after which time the footage is recorded over by new footage'* unless it *'is required for use in court proceedings which have been commenced but not yet finalised'*
- while there was a matter before the court, *'the CCTV [recordings were] not noted on the Brief of Evidence'*
- QPS should be in possession of the CCTV recordings
- QPS's Right to Information and Privacy Unit (RTIPU) had received confirmation from the Station that the CCTV recordings were available on 27 August 2024
- the documents provided to the RTIPU on 30 August 2024 comprised four BWC recordings showing a playback of the CCTV recordings on a monitor²⁵ and the CCTV recordings were noted as missing
- RTIPU immediately sent a request to the Station for the CCTV recordings; and
- during a follow-up call to the Station on 3 September 2024, it was confirmed that the CCTV recordings were no longer available.

¹⁹ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19], which adopted the Information Commissioner's comments in *PDE 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].

²⁰ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 125 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act *'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents'* and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

²¹ Section 87(1) of the RTI Act.

²² See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

²³ 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].

²⁴ At pages 3-4.

²⁵ These recordings were provided to OIC and show the CCTV footage being viewed on a computer screen. These BWC recordings were released in part to the applicant by QPS pursuant to QPS's decision.

13. In seeking external review, the applicant submitted that he made a number of requests to QPS to secure the CCTV footage as follows:²⁶
- spoke to various named QPS officers at the Station
 - spoke to the Ethical Standards Command
 - calls to Policelink on 24 July 2024 at 2:22pm and 2:30pm
 - by email to Brisbane Prosecutions on 25 July 2024, which was initially sent to QPS Legal and forwarded to Brisbane Prosecutions; and
 - attendance at Brisbane Prosecutions on 12 August 2024 where the applicant spoke to a QPS officer who confirmed receipt of the applicant's resending of the 25 July 2024 email and advised that the email had been uploaded to the case file and the arresting officer had been tasked to compile the Station CCTV recordings for disclosure to the applicant.²⁷
14. During the review, QPS provided OIC with submissions and records of the searches conducted by, and enquiries made with, the Station regarding the CCTV footage, which are summarised below:²⁸
- at the time of the original request from the RTIPU, the Officer in Charge at the Station was able to view the CCTV recordings using the CCTV system software
 - the CCTV *'software overwrites the recorded station CCTV [recordings] every 30 days'*
 - the CCTV recordings were *'not downloaded in 2024 when it was requested, because nobody working [at the] Station at that time knew how to operate the system software to perform the download'*; and
 - the Station has confirmed that the CCTV recordings were *'never downloaded and now no longer exists in the system'* and that the *'only existing recording of the foyer CCTV is the [Qlite²⁹ device] recording of the CCTV playing on the monitor'*.
15. The applicant's submissions during the review can be summarised as follows:³⁰
- the steps he took to preserve the CCTV recordings *'shows that the material had to have been secured and provided'*; and
 - his matter was *'recently heard in the ... Magistrates Court, during which several concerning comments and revelations were made regarding the CCTV [recordings] in question'*.
16. The applicant sought two extensions of time to provide further submissions in response to OIC's preliminary view, stating *'I require additional time to obtain the official court transcripts and prepare relevant material for submission to the OIC'*, *'[p]roceeding without them may result in an error in the determination of this matter'* and he was awaiting a *'response [from QPS] to the material and issues I previously raised'* and without that response, he is *'unable to provide the OIC with a fair or accurate response'*.³¹ However, the applicant did not provide any further submissions, either by the extended due date or at time of issuing this decision, and he has not requested any further extension of time to do so.³² I have therefore proceeded to make the below findings, based on the information available to me at the date of issuing this decision.

²⁶ External review application and submission to OIC dated 18 December 2024.

²⁷ The applicant provided OIC with an audio recording of this interaction.

²⁸ A record of the searches (dated 27 August 2024) was provided to OIC on 13 January 2025 and submissions dated 24 and 27 June 2025.

²⁹ QPS Lite Information Technology Exchange.

³⁰ Submissions dated 18 December 2024 and 11 August 2025 and 14 September 2025.

³¹ Submissions dated 11 August 2025 and 14 September 2025.

³² The extended due date was 30 September 2025.

Findings

17. Having examined the information before me, including the located documents, the applicant's and QPS's submissions and the outcome of inquiries with the Station, I am satisfied that QPS has conducted targeted searches and inquiries to locate the CCTV recordings. I accept that:
 - the CCTV recordings existed at the time QPS's RTIPU made the request to the Station, following receipt of the access application
 - due to a lack of officer expertise in downloading from the CCTV recording system, recordings were made of the CCTV being played on a monitor using officers' BWC/Qlite devices, and this is what was provided to the RTIPU
 - due to constraints of the CCTV recording system, sometime between 27 August 2024 and 3 September 2024, the CCTV recordings became no longer accessible through the CCTV recording system because they were overwritten; and
 - searches and inquiries undertaken by QPS in response to the access application and during this review have established that copies of the CCTV recordings were not downloaded by any other officer with whom the applicant interacted.
18. I acknowledge that QPS's inability to preserve the CCTV recordings prior to them being overwritten has not met the applicant's expectations and that he generally has outstanding concerns about QPS's practices and procedures regarding requests for CCTV recordings. Regrettably, it does appear that lodgement of the access application should have triggered retention of the CCTV recordings beyond the usual retention period, yet this did not occur. However, QPS's level of compliance with relevant retention and disposal requirements is beyond OIC's external review jurisdiction, and not a matter upon which I am empowered to make any findings.
19. I also recognise that the applicant sought access to the recordings as created using the CCTV system and he did not receive access to footage in that format. He was however, provided with copies of the recordings created by QPS officers using their BWC/Qlite devices. Creation of those recordings in that way appears to have been done in an attempt to remedy the lack of expertise in downloading footage from the CCTV system, and provide the applicant with access to some relevant material, albeit in an unusual format. While it has not met the applicant's expectations, it has, practically speaking, provided him with access to the content of what would have appeared in the CCTV recordings, had they been retained.
20. Notwithstanding the applicant's broader concerns, the issue for determination in this external review is whether access to the CCTV recordings may be refused on the basis they are unlocatable, or to downloaded copies on the basis they do not exist. Based on the information before me, I am satisfied that the steps taken by QPS to search for a copy of the CCTV recordings, including contacting relevant officers with whom the applicant interacted, have been reasonable given the circumstances of this case. Based on the information set out in the preceding paragraphs, I am satisfied that QPS has conducted searches in locations where it would be reasonable to expect the CCTV recordings to be found.
21. Taking into account the circumstances of this case, I find that there are reasonable grounds to be satisfied that a copy of the CCTV recordings cannot be located because the CCTV system recording was overwritten/deleted. Accordingly, access to it may be refused on the basis it is unlocatable.³³ For completeness, I also find that downloaded copies of the CCTV recordings were never produced/made by QPS and therefore, do

³³ Under section 47(3)(e) and 52(1)(b) of the RTI Act.

not exist. Accordingly, access to downloaded copies of the CCTV recordings may be refused on the basis they are nonexistent.³⁴

DECISION

22. For the reasons set out above, I vary the reviewable decision³⁵ and find that access may be refused under section 47(3)(e) of the RTI Act to CCTV recordings on the basis they are unlocatable under section 52(1)(b) of the RTI Act, and to downloaded copies of the CCTV recordings on the basis they do not exist under section 52(1)(a) of the RTI Act.
23. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Katie Shepherd
Assistant Information Commissioner

Date: 22 October 2025

³⁴ Under section 47(3)(e) and 52(1)(a) of the RTI Act. I am also satisfied that it would not be reasonable for QPS to undertake searches of its backup system and, therefore, section 52(2) of the RTI Act is not enlivened.

³⁵ Under section 110(1)(b) of the RTI Act.