



Decision and Reasons for Decision

Citation:	<i>D81 and Queensland Police Service [2025] QICmr 19 (8 April 2025)</i>
Application Number:	317746
Applicant:	D81
Respondent:	Queensland Police Service
Decision Date:	8 April 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - request for documents about applicant - documents about prosecution of applicant for drink driving offence - documents about applicant's participation in program requiring use of alcohol interlock ignition device - where agency has conducted searches - whether agency has taken all reasonable steps - where agency has described its processes to explain why documents do not exist - whether explanation is reasonable - whether access to documents may be refused on ground they are nonexistent or unlocatable - 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)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to certain categories of documents in relation to his prosecution for a drink driving offence and his participation in an alcohol ignition interlock program.²
2. Following consultation with the applicant, QPS issued a decision³ to refuse to deal with the application on the basis it did not comply with all relevant application requirements,⁴ specifically the requirement to give sufficient information concerning the requested documents to enable QPS to identify them.⁵
3. The applicant applied to the Office of the Information Commissioner (**OIC**)⁶ for external review of QPS's decision.

¹ Application received on 14 November 2023.

² The date range of the application was 13 May 2022 to 14 November 2023.

³ On 7 December 2023.

⁴ Under section 53(6) of the IP Act.

⁵ Section 43(2)(b) of the IP Act.

⁶ On 22 December 2023.

4. For the reasons set out below, I vary QPS's decision and find that access to the remaining requested documents may be refused on the ground that they are nonexistent or unlocatable.

Background

5. The applicant's application requested '[t]he police prosecution file associated with the mid-range drink-driving offence I attended [at a particular] Courthouse ... on [date]' (**Prosecution File**).
6. It also requested a further 28 categories of documents related to the applicant's participation in an alcohol ignition interlock program: three categories of documents created or communicated within QPS; five categories of documents related to interactions with the Department of Transport and Main Roads (**TMR**); five categories of documents requested three times, in relation to three different commercial entities (each being a provider of alcohol ignition interlock devices); and finally five categories regarding other 'non-specific' external entities.
7. In response to QPS's consultation regarding compliance issues,⁷ including the requirement to give sufficient information to enable QPS to identify the requested documents, the applicant stated:⁸

Although it is a bit lengthy and perhaps a little difficult to digest, it is important to note that all I am really asking for is:

- *Any correspondence associated with my participation in the program.*
 - *Any applications or requests for access to the systems, data or accounts associated with my participation in the program.*
 - *Any actual documents, data or materials collected, used, disclosed, or created as result of my offence, and subsequently, my participation in the program.*
8. For the purpose of this decision, I will refer to the 28 categories of documents, which the applicant has summarised into three main types, as the **Other Information**.
 9. In terms of the Other Information, as a result of searches conducted at OIC's request, QPS identified and released certain information. This information was on the applicant's profile in QPRIME⁹ and indicated that an interlock device was required to be installed in his vehicle for a specific, now expired, period.¹⁰
 10. In terms of the Prosecution file, as a result of further searches conducted at OIC's request, QPS located and released 10 pages and two body worn camera (**BWC**) recordings in full.
 11. The applicant maintains that further documents, both in his Prosecution File and comprising Other Information, exist and should be located by QPS.

⁷ Letter from QPS to applicant dated 21 November 2023.

⁸ Letter from applicant to QPS also dated 21 November 2023. He reiterated this summary in two subsequent emails to QPS – an letter dated 28 November 2023 (which he subsequently asked QPS to disregard) and a further email dated 29 November 2023.

⁹ The Queensland Police Records and Information Management Exchange, which is a database used by QPS to capture and maintain records for all police incidents in Queensland.

¹⁰ While QPS maintained that this particular information could be refused on the ground it was exempt information under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**), given the circumstances of the review, it agreed to release this information an effort to advance informal resolution.

Reviewable decision

12. The decision under review is QPS's decision dated 7 December 2023.

Evidence considered

13. Significant procedural steps relating to the external review are set out in the Appendix.
14. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken into account the applicant's submissions to the extent they are relevant to the issue for determination in this review.
15. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹¹ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.¹² I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent pieces of Victorian legislation:¹³ '*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*'.¹⁴

Issue for determination

16. As noted at paragraph 2 above, QPS's decision considered that the applicant's access application did not provide QPS with sufficient information concerning the requested documents to enable QPS to locate them. On carefully considering the terms of the application, I was satisfied that the application provided sufficient detail regarding the requested documents to enable them to be identified. Accordingly, I considered that the issue for determination was not whether the application complied with the requirement to give sufficient information concerning the requested documents. Given the possible volume of the request (29 categories of documents in total, including Prosecution File documents), it appeared possible that the substantial and unreasonable diversion of resources ground for refusing to deal with an application¹⁵ may be relevant. However, as QPS searches progressed, few Prosecution File documents and one Other Information document were located.
17. Accordingly, the issue for determination is whether access to the remaining requested documents may be refused on the ground they are nonexistent or unlocatable.¹⁶ It is within this context that any lack of detail or specificity in the terms of the application may be considered, as part of assessing QPS's searches and enquiries.

¹¹ Section 21(2) of the HR Act.

¹² *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal (**QCAT**) in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Justice Member McGill saw '*no reason to differ*' from OIC's position).

¹³ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁴ *XYZ* at [573].

¹⁵ Section 60 of the IP Act.

¹⁶ The Information Commissioner (or their delegate) can decide any matter in relation to the access application that could, under the IP Act have been decided by the agency dealing with the application – see section 118(1)(b) of the IP Act.

Relevant law

18. Under section 40 of the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁷ This right is subject to limitations, including grounds for refusal of access.¹⁸
19. The Information Commissioner's external review functions include investigating whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.¹⁹ However, access may be refused in circumstances where a document is nonexistent.²⁰
20. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.²¹ To be satisfied that a document does not exist, the Information Commissioner has previously had regard to various key factors, including an agency's record keeping practices and procedures (including, but not limited to, its information management approaches).²² By considering relevant factors, the decision maker may conclude that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
21. The Information Commissioner may also take into account the searches and inquiries conducted by an agency in determining whether a document is nonexistent. The key question then is whether those searches and inquiries amount to '*all reasonable steps*'.²³ What constitutes reasonable steps will vary from case to case, as the search and inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.²⁴
22. A document is *unlocatable* if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found. In determining whether a document is unlocatable, it is necessary to consider the specific circumstances of each case,²⁵ and in particular, whether:²⁶

¹⁷ *Personal information* is defined in section 12 of the IP Act as '*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*'.

¹⁸ Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

¹⁹ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. QCAT 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.

²⁰ Sections 47(3)(e) and 52(1) of the RTI Act.

²¹ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

²² *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* addresses the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant.

²³ As set out in *PDE* at [49].

²⁴ As set out in *PDE* at [38].

²⁵ *Pryor* at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

²⁶ Section 52(1)(b) of the RTI Act.

- there are reasonable grounds to be satisfied that the requested documents have been or should be in the agency's possession; and
 - the agency has taken all reasonable steps to find the document.
23. The agency that made the decision under review has the onus of establishing that the decision was justified, or the Information Commissioner should give a decision adverse to the applicant.²⁷ However, where an external review involves the issue of missing documents, the applicant bears a practical onus to establish reasonable grounds which demonstrate that the agency has not discharged its obligation to take all reasonable steps to locate the requested documents. Suspicion and mere assertion will not satisfy this onus.²⁸
24. In assessing an agency's searches, the Information Commissioner has confirmed the relevant question is whether the agency has taken *all reasonable steps* to identify and locate documents, as opposed to *all possible steps*.²⁹

Findings

Further Prosecution File documents

25. As noted in the 'Background' to this decision, the applicant's application requested a Prosecution File – that is, '[t]he police prosecution file associated with the mid-range drink-driving offence I attended [at a particular] Courthouse ... on [date]'
26. During the review, OIC asked QPS to conduct searches for Prosecution File documents.³⁰ QPS located and released the following to the applicant in full:³¹
- QPRIME Report
 - QPS Court Brief
 - breath analysis certificate
 - notice of suspension or disqualification; and
 - two BWC recordings.
27. OIC also asked QPS³² to make further enquiries in relation to whether BWC footage was taken after the applicant arrived at the police station to provide a further breath sample.
28. QPS obtained and provided a response³³ from one of the 'involved officers' for this matter. This officer stated that he believed that the other involved officer took BWC footage; however, as that officer was no longer employed by QPS, he reviewed that officer's evidence.com account, but did not locate the BWC footage. QPS also explained that:

Evidence.com is the repository for [BWC] footage It is by default the only area that this footage is stored. When an officer docks their camera at the end of a shift, all footage captured that day is uploaded to evidence.com. There is the possibility that the camera did not record

²⁷ Section 100(1) of the IP Act.

²⁸ *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].

²⁹ *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

³⁰ Email to QPS dated 13 November 2024.

³¹ By email dated 3 February 2025, QPS confirmed that it had posted these to the applicant on 31 January 2025.

³² Email to QPS dated 23 December 2024.

³³ Email dated 14 January 2025.

the interaction or due to a technical issue the footage was not downloaded when placed in the dock.

Another explanation would be that the officer has not categorised the footage. The category is a broad descriptor and determines the data retention duration that will be applied to a file contained in evidence.com. If a file is categorised NON-EVIDENTIAL the file will be automatically deleted after 2 years. As the matter occurred 13 May 2022, if it was categorised as non-evidential, the footage would have been deleted 13 May 2024.

Unfortunately, [the relevant involved officer] is no longer with the QPS and therefore I am unable to make enquiries with him as to:

- a. Whether the camera was recording*
- b. If the recording was uploaded*
- c. How was the recording categorised to determine the retention period.*

29. I conveyed QPS's explanation at paragraph 28 to the applicant and explained that on the basis of this and the further documents located by QPS, I was satisfied that QPS had undertaken all reasonable steps to locate relevant documents in response to this component of his application and further documents are nonexistent or unlocatable.³⁴
30. In response, the applicant requested³⁵ that he be provided with copies of QPS's evidence.com policies and retention and disposal documentation '*so we are able to follow up on the QPS's statements*'.³⁶ I note that these documents do not fall within the applicant's access application, and that he seeks them in order to interrogate QPS's above explanation. However, as the decision-maker in this matter, having carefully considered QPS's above explanation, I consider it unnecessary to obtain copies of them for my consideration. There is nothing before me to suggest any further steps QPS could reasonably be expected to take, and I cannot see how obtaining the documents raised by the applicant would alter this. I am satisfied that QPS has undertaken all reasonable steps to locate the BWC footage and its explanation is sufficiently comprehensive for me to conclude that if the BWC footage existed, it no longer does. I therefore find that the further BWC footage may be refused on the ground it is nonexistent or unlocatable.
31. Also in his response to my preliminary view, the applicant raised³⁷ further CCTV-type footage for the first time in the external review.³⁸ The applicant had opportunities to raise this footage earlier in the review – most relevantly at the time he raised the further BWC footage – yet did not. I also note that, under a heading 'Photographs/Video', the QPS Court Brief released to the applicant mentions BWC – but no other types of footage. In the circumstances, I consider that there is insufficient material before me to suggest that any CCTV-type footage, if it existed, was part of the Prosecution File.
32. In terms of QPS's searches for Prosecution File documents more generally, the applicant submitted³⁹ that the documents released to him were '*original source documents*' obtained from QPRIME and evidence.com. He submitted that searches of QPS's Legal Services should also be conducted. He referred to chapter 3.8 of the QPS Operational Procedures Manual, and suggested that '*[h]ad they actually produced documents contained within the prosecution file they would also have given me the QP 0541 (index*

³⁴ Letter to the applicant dated 28 January 2025.

³⁵ Letter dated 10 February 2025.

³⁶ Stating '*I am requesting information which is directly relevant to the QPS's claims about this missing information (i.e. request for evidence.com policies / QPS retention and disposal documentation (refer to proceeding section)) and I hope you will grant this request so we are able to follow up on the QPS's statements*'.

³⁷ Letter dated 10 February 2025.

³⁸ Stating '*I also thought there was footage taken within the room the breath sample was provided (i.e. not only via a body worn camera) and would appreciate if you could make enquiries with the QPS as to the whereabouts of such footage*'.

³⁹ Letter dated 10 February 2025.

to brief) and QP 0323 (list/non-availability of witnesses). The 'index to brief', will tell us exactly what they included in the brief of evidence'.

33. The substance of the applicant's submissions at paragraph 32 were put to QPS.⁴⁰ In response, QPS explained:⁴¹

- *When a person is charged, a QP9 Facts of the Charge is prepared for court. The defendant is given a copy of this.*
- *A QP9 is also known as a court brief.*
- *A court brief/QP9 and brief of evidence/full brief of evidence are two separate pieces of material. A court brief contains a summary of the charges. A full brief of evidence contains the evidence QPS has such as statements, statements [sic], photographs, physical evidence etc.*
- *If there is a plea of guilty, the matter is finalised, no full brief of evidence is prepared.*
- *In relation to the 'full brief of evidence', ... [a] full brief of evidence is only required when a person is pleading not guilty to a simple matter OR the offence is such that it must proceed by committal by virtue of the seriousness of the offence.*

34. In terms of the applicant, QPS explained:⁴²

- *... it was not necessary to make inquiries with Gold Coast Prosecutions as they would not have any additionally [sic] documents than what the Action officer had. It is the Action office that prepares the paperwork for prosecutions. Additionally, this material is available through QPRIME. There is no email or correspondence sent to Prosecutions with a copy of the QP9 and necessary supporting information.*
- *A QP9 was provided to the applicant, pages 5-8 refer.^[43]*
- *Depending on the offence the person has been charged with, some other documents may be submitted with the QP9, such as the breath analysis certificate (BAS) and notice of suspension or disqualification notice. I note, these documents were also provided to the applicant on 30 January 2025 by this office.^[44]*
- *... a full brief of evidence was not completed. This is because the defendant (applicant) pled guilty at the first appearance.*
- *... as the applicant plead guilty at his first court appearance, very little material is available as the applicant did not dispute/challenge the drink driving charge.*

35. Having carefully considered the material before me, I am satisfied that the applicant's submissions set out at paragraph 32 above do not satisfy the practical onus on him to show that QPS failed to conduct all reasonable searches for such documents. They do not provide any reasonable basis for concluding that further Prosecution File documents exist, and do not suggest any further locations that QPS could reasonably be required to search. I accept QPS's explanation that further documents forming part of the brief of evidence do not exist because, in circumstances such as the applicant's, QPS's processes do not involve creating any further Prosecution File documents. I find that further Prosecution File documents may be refused on this ground.

Other Information

36. As noted in the 'Background' to this decision, as well as requesting Prosecution File documents, the applicant's application also requested Other Information – that is, 28 categories of documents related to the applicant's participation in an alcohol ignition

⁴⁰ Email dated 18 February 2025.

⁴¹ Emails to OIC dated 19 February and 11 March 2025. Note – while these dot points comprise the exact text of QPS's submissions, I have placed them in this order for the purpose of this decision.

⁴² Ibid.

⁴³ The reference to pages 5-8 is a reference to the QPS Court Brief mentioned at paragraph 26 which has been released to the applicant in full.

⁴⁴ Here, QPS is again referring to documents noted in paragraph 26 which have been released to the applicant in full.

interlock program, involving both internal processes and communication, and interactions with external parties, namely TMR, three different providers of alcohol ignition interlock devices, and other 'non-specific' external entities.

37. As mentioned at paragraph 9 above, during this review QPS identified and released certain information on the applicant's profile in QPRIME which indicated that an interlock device was required to be installed in his vehicle for a specific, now expired, period.⁴⁵ At this point, QPS advised that it was not involved in the alcohol ignition interlock program and that the released information was in QPRIME by virtue of certain aspects of QPS's and TMR's databases being linked to enable QPS to undertake certain activities such as licence checks.⁴⁶
38. Based on the information to hand, I conveyed a preliminary view⁴⁷ to the applicant that further documents comprising the Other Information were nonexistent or unlocatable. In response, the applicant provided⁴⁸ copies of three documents regarding three interlock ignition providers, each of which had fitted devices to his vehicle – namely:
- his client contract with one provider, which stated that QPS was an 'Administrator' and that downloaded data *will* be provided to Administrators or their authorised service centres to check compliance or non-compliance with the requirements of the alcohol ignition interlock program and administer or manage the alcohol ignition interlock program; and
 - a service agreement with another provider and the privacy policy of a third provider, which each stated that information may or can be shared with law enforcement agencies.
39. He also made submissions alleging 'privacy violations' by the providers and QPS:

... the privacy violations committed by the service providers and evidence of the QPS's administration of the program indicates that I have been of interest to the QPS and that they collected and used interlock program data for the purposes of some kind of covert activity they subjected / have been subjecting me to.

...

At this stage I am certain the QPS have collected and used information obtained in connection with the program for some kind of QPS function, activity or operation. What exactly it has been used for and whether its use is ongoing (i.e. because for some misguided reason I am being investigated) will dictate the outcome of this review.

...

40. I considered that the provider documents at paragraph 38 above were sufficient to give rise to a reasonable expectation of further documents in QPS's possession or control, and therefore requested that QPS make further enquiries.⁴⁹ In response, QPS submitted as follows:⁵⁰

- regarding the applicant's client contract with one provider which stated that QPS was an 'Administrator':

Whilst it is noted that the ... contract specifically references QPS as the administrator and that information will be shared to QPS, this is in direct contradiction with all other information

⁴⁵ While QPS maintained that this particular information could be refused on the ground it was exempt information under schedule 3, section 10(1)(f) of the RTI Act, given the circumstances of the review, it agreed to release this information an effort to advance informal resolution.

⁴⁶ Email from QPS dated 2 May 2024 which referred to a letter from OIC dated 23 April 2024.

⁴⁷ Dated 4 July 2024.

⁴⁸ On 17 July 2024.

⁴⁹ Email to QPS dated 19 September 2024.

⁵⁰ Submission dated 14 October 2024.

available in the public sphere and in QPS policy. It is unclear why the contract would mention this. However, as discussed below regarding my enquiries with [TMR], it simply does not align with the contracts that [TMR] has with the service providers.

- regarding the other providers' service agreement and privacy policy which stated that information may or can be shared with law enforcement agencies:

It is noted that the other contract and privacy collection statement indicates that information may be shared with law enforcement if required. It is QPS understanding that information is not routinely shared as in is not automatically shared unless explicitly requested by the law enforcement agency and in accordance with relevant law. There is no information available to this office which would indicate that the applicant was ever subject to further law enforcement action after his original drink driving offence which was the catalyst to him being subject to an interlock.

- regarding enquiries with its Legal Services:

Enquiries were made with QPS Legal Services to seek information regarding the contract negotiations and whether this will assist with identifying other areas of the QPS to make enquiries with.

Legal Services has advised:

To the knowledge of my office, we have not been involved in any contractual process with the forementioned service providers.

- regarding enquiries with its Road Policing Group:

QPS submits that if QPS was involved with the administration or coordination of the [alcohol ignition interlock program], Road Policing Group would be the relevant business area.

Specialist programs provides specialist state-wide support to several road policing programs. Specialist Programs is the conduit between the vendor or supplier of the instrument or device and the Queensland Police Service, ensuring integrity of these programs in addressing road related trauma.

...

Enquiries were made with the Strategy and Performance Office for Road Policing Group.

They have advised:

QPS has nothing to do with it outside of detecting people driving contrary to terms set out in the interlocker program.

I have been back through correspondence held by this command, and I believe that the wording is wrong, in that it lists QPS as the owner, however it is actually [TMR].

Specialist Programs has advised:

I have confirmed with [the relevant Chief Superintendent], QPS don't do any administration of this program ...

- regarding enquiries with TMR:

QPS made enquiries with [TMR] to speak to an officer from the Interlock Program to obtain further understanding of the program. ... [who] advised the following:

...

[TMR] went to great lengths to ensure the contracts with the three service (interlock device) providers explicitly stated that [TMR] is the owner of the data and that the necessary information is shared to [TMR].

...
 ... information would only be shared to QPS if QPS requested information from [TMR] for the purpose of investigating a criminal matter. The system does not automatically contact QPS, nor do [TMR] contact QPS if the person violates the term of the program. If information were to be shared, it would be based on QPS receiving information from another source (maybe an informant about a person not complying) and or the person being pulled over and found to be driving a vehicle without the device fitted or under the influence. QPS would then initiate proceedings/Traffic Infringement Notice.

41. More generally, QPS also provided the following submissions regarding its searches and enquiries:⁵¹

- searches of QPRIME:

The applicant has no history in QPRIME to suggest he received compliance checks or was spoken to by police in relation to his interlock.

I have undertaken a detailed search in QPRIME for interactions with police during the date period (13/5/2022 – 14/11/2023). The applicant has had 5 interactions with police. None of these matters are in relation to his participation in the program or even reference him having an interlock. It is reasonable to expect, if there was an interaction with him, it would be held in QPRIME as a street check.

...
 ... nothing else can be gleaned from this system to even identify anything to do with the scope of application other than the [information noted paragraph 9 above and the Prosecution File documents].

- enquiries with QPS's Drug and Alcohol Coordination Unit:

Due to the DACU's involvement with Drug and Alcohol programs, enquiries were made with their office to identify whether they had any involvement with the Interlock Program.

Advice received from the State Liquor Coordinator from DACU is that they are not involved with the program.

They suggested making enquiries with Road Policing Group (RPG).

- enquiries with QPS's Road Policing Group:

Specialist Programs has advised:

I have confirmed with [the relevant Chief Superintendent], QPS ... are not provided any data for compliance checks.

We were receiving funding for enforcement activities (ie overtime if an interlock device was identified during the course of normal patrols), however this was never used and we requested TMR no longer provided this funding as we were not doing active enforcement with regards to this program.

42. I confirmed to the applicant⁵² that, having requested and considered further information from QPS, it remained my preliminary view that further documents comprising the Other Information were nonexistent or unlocatable.
43. Although the provider documents (or at least one of them) may indicate otherwise, having considered QPS's enquiries and explanations, I am satisfied that the nature of QPS's role regarding the alcohol ignition interlock program is relatively limited, and more

⁵¹ Submissions dated 18 and 19 September 2024 and 14 October 2024.

⁵² Email dated 31 October 2024.

confined than the applicant envisages. I accept that, in practice, QPS performs relatively few processes related to the program, and these do not comprise ongoing oversight; rather they constitute specific processes resulting from interactions with participants where transgressions are identified. I further accept QPS's advice that such interactions have not occurred with respect to the applicant. I therefore accept QPS's explanation that, in circumstances such as the applicant's, its processes do not extend to creating the various categories of Other Information.

44. Also, noting the locations searched by QPS officers and staff with requisite knowledge and experience of those areas, and the fact that these searches indicated no interactions between the applicant and QPS regarding his participation in the program, I am unable to identify any further avenues of inquiry which would be reasonable to require QPS to undertake. In reaching this conclusion, I have noted the particular wording of the 28 categories of information comprising the Other Information. Each category is relatively specific regarding an action or process (identifying, for example, the subject matter of a document, its author and who received it). However, none provide any information or evidence of any circumstances that actually occurred, or even possibly occurred, which could have prompted that action or process. For example, in the third category of the access application, the applicant requested the following:

Documents associated with requests and/or applications made by QPS personnel, divisions and/or units to access the data, systems and/or accounts associated with my participation in the AIIP. For example:

- *Requests or applications made by QPS personnel to the QPS Commissioner regarding access*
- *Requests or applications made by QPS personnel to QPS legal services regarding access*
- *Requests or applications made by QPS personnel to the Police Information Centre regarding access*
- *Requests or applications made by QPS personnel to some QPS authority or delegated decision maker regarding access.*

45. Generally, I recognise that applicants may be unaware of particular agency actions or processes, and have limited awareness of their involvement in those actions and processes. This will not necessarily inhibit the efficacy of their application. However, in terms of this particular application, the complete absence of any detail or specificity regarding circumstances which could assist with the direction of searches, combined with the relatively unfocussed and therefore broad scale of the steps the applicant appears to consider appropriate, are relevant to my considerations.
46. For example, with reference to the third category as set out in paragraph 44, in addition to the searches and enquiries noted at paragraphs 40 and 41 above, it would be *possible* to conduct further searches of documents held by the authors and recipients identified by the applicant – perhaps, for instance, searches of the emails of the Police Commissioner, Legal Services staff, the Police Information Centre staff, and QPS personnel (which would presumably cover all QPS officers and other staff, and therefore include any relevant '*QPS authority or delegated decision maker*' should any exist) covering the 18 month time period specified in the application. However, given the applicant has provided no detail about any circumstances which could have prompted the actions or processes envisaged by him in his application, and given QPS's searches and enquiries have yielded no suggestion of any such actions or processes, I do not consider that further searches across all or even some of the authors or recipients raised by the applicant for any part of the relatively lengthy period identified by him would be a

reasonable step.⁵³ This reasoning may be applied across all 28 categories relating to Other Information.

47. The applicant submitted⁵⁴ that QPS should be required to produce nine types of QPS policies, procedures, registers etc⁵⁵ under section 116 of the IP Act, and advised that '[i]t should be noted that once we have this information I plan to make further submissions regarding additional searches'. It appears that the applicant considers that his examination of these documents is required in order to identify further steps for QPS to take in its searches. However, section 116 of the IP Act relates to the provision of documents to the Information Commissioner (or delegate) – not the applicant. Again, while I acknowledge that that review of the nine types of documents is a *possible* step that could potentially identify further searches, I consider that this step goes beyond what is *reasonable*.
48. The applicant also submitted⁵⁶ that further searches should be conducted for documents that may have been transferred to Queensland State Archives (**QSA**). However, there is nothing before OIC to indicate that QPS located anything in its records to suggest that further documents comprising Other Information ever existed. It follows that there can be no reasonable basis for expecting that relevant records were transferred to QSA. This is mere speculation by the applicant and does not demonstrate any need for searches of QSA in order for QPS to have taken all reasonable steps.
49. The applicant also submitted⁵⁷ that searches of back up documents were required. In order to find a document is nonexistent,⁵⁸ section 52(2) of the RTI Act requires an agency to conduct a search of its backup system⁵⁹ *if* the agency considers the document has been kept in, and is retrievable from, the backup system.⁶⁰ However, I am satisfied that QPS's enquiries and searches demonstrate a sufficient basis to consider that the documents were not kept in, or retrievable from, the backup system, and therefore, searches of the backup system were not required.
50. Accordingly, I do not consider that the applicant's submissions satisfy the practical onus on him to show that QPS failed to conduct all reasonable searches for such documents.
51. Taking into account QPS's explanation about the alcohol ignition interlock program and its lack of interactions with the applicant regarding that program, and considering the extent of QPS's searches within the context of the specific wording of the applicant's application, there is nothing before me which suggests the existence of any documents comprising Other Information, or any further locations that QPS could reasonably be required to search. In the circumstances, I find that such documents may be refused on the ground they are nonexistent or unlocatable.

⁵³ I also note that, even if it were possible to view this step as reasonable, the substantial and unreasonable diversion of resources ground for refusing to deal with the application may well arise in any event.

⁵⁴ Letter dated 10 February 2025.

⁵⁵ '1. QPS policy register(s) / policy schedule(s) ... 2. QPS delegations schedule(s) / delegations register(s) ... 3. QPS Records Location, Storage and Disaster Management Handbook ... 4. Service corporate thesaurus + procedures ... 5. QPS records retention and disposal schedule + handbook ... 6. Evidence.com procedures ... 7. QPS – [TMR] Memorandums of Understanding ... 8. QPS policy and procedures related to information sharing / access agreements or arrangements ... 9. Any documents specifically concerning access to AIIP program documents or systems'

⁵⁶ Letter dated 10 February 2025.

⁵⁷ Letter dated 10 February 2025.

⁵⁸ A search of a backup system is not required where documents are unlocatable under section 52(1)(b) of the RTI Act.

⁵⁹ Schedule 5 of the IP Act defines 'backup system' to mean 'a system that has, for disaster recovery purposes, copied electronic data onto a separate data storage medium, for example, onto a backup tape'.

⁶⁰ Section 49 of the IP Act provides that whilst an access application cannot require an agency to search for a document from a backup system, the agency may conduct searches of its backup system if the agency considers this is appropriate.

DECISION

52. For the reasons set out above, I vary QPS's decision and find that access to any further Prosecution File documents and documents comprising Other Information may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act, on the ground that they are nonexistent or unlocatable.
53. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 8 April 2025

APPENDIX

Significant procedural steps

Date	Event
22 December 2023	OIC received the application for external review from the applicant. OIC requested preliminary documents from QPS.
12 January 2024	OIC received the preliminary documents from QPS.
17 January 2024	OIC advised the applicant and QPS that the application for external review had been accepted.
23 April 2024	OIC requested information from QPS.
2 May 2024	OIC received a response from QPS.
21 May 2024	OIC requested further information from QPS.
23 May 2024	OIC received a response from QPS.
18 June 2024	OIC asked QPS to consult with TMR regarding certain information.
24 June 2024	OIC received advice from QPS that TMR did not object disclosure of the information.
4 July 2024	OIC asked QPS to release information to the applicant. OIC conveyed a preliminary view to the applicant.
17 July 2024	OIC received a submission from the applicant.
18 September 2024	OIC requested information from QPS. OIC received a response from QPS.
19 September 2024	OIC requested information from QPS. OIC received a response from QPS.
23 September 2024	OIC requested information from QPS.
14 October 2024	OIC received a submission from QPS.
31 October 2024 11 November 2024	OIC requested information from the applicant regarding an informal resolution proposal. ⁶¹
12 November 2024	OIC clarified with the applicant that he did not agree to the informal resolution proposal.
13 November 2024	OIC requested that QPS conduct searches for certain documents and advise its position on disclosure of any located documents.
5 December 2024	OIC received a response from QPS.
23 December 2024	OIC confirmed QPS's position regarding the located documents and requested further information from QPS.
14 January 2025	OIC received a response from QPS.
28 January 2025	OIC asked QPS to release information to the applicant and requested further information from QPS. OIC conveyed a preliminary view to the applicant.

⁶¹ Made in accordance with section 103 of the IP Act.

Date	Event
3 February 2025	OIC received a response from QPS.
10 February 2025	OIC received a submission from the applicant.
18 February 2025	OIC requested further information from QPS.
19 February 2025	OIC received a response from QPS.
11 March 2025	OIC responded to QPS. OIC received a further response from QPS.
27 March 2025	OIC requested information from QPS.
27 March 2025 31 March 2025	OIC received a further response from QPS.