Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***G52 and Department of the Premier and Cabinet* [2025] QICmr 24 (7 May 2025)**
Application Number:	**318121**
Applicant:	**G52**
Respondent:	**Department of the Premier and Cabinet**
Decision Date:	**7 May 2025**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches - whether access to documents may be refused on the basis they are nonexistent - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied to Department of the Premier and Cabinet (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to (in summary):

> *All documents and correspondence concerning* [the applicant]:
>
> *1. in the electronic data management record system* (**eDRMS**)
> *2. associated with interactions between Governance and Engagement (Communications) and named entities (excluding eDRMS content)*
> *3. associated with interactions between Governance and Engagement (Legal) and named entities (excluding eDRMS content).*
>
> *Date range: 14 February 2015 to 28 February 2024.*[1]

2. Searches conducted by the Department failed to locate any documents responding to the terms of the access application. The Department therefore decided[2] to refuse access to the requested documents under section 67(1) of the IP Act and sections 47(3)(e) and

[1] The access application was first made on 28 February 2024. The applicant's evidence of identity was not provided until 7 March 2024. The Department advised the applicant on 20 March 2024 that it considered the application to be noncompliant because it failed to sufficiently identify the requested documents. The applicant then revised the scope of his application to make it in a compliant form on 7 May 2024. A summary only of the compliant scope is as set out in paragraph 1 above. The full scope of the application is attached to the Department's letter to the applicant dated 10 June 2024 and is discussed in paragraph 21 below. It extends to five pages and consists of three separate parts.
[2] Decision dated 10 June 2024.

52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the ground that the documents were nonexistent.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.[3]

4. For the reasons explained below, I decide, under section 123(1)(a) of the IP Act, to affirm the Department's decision.

Background

5. This is another in a series of access applications that the applicant has made to numerous government departments and agencies seeking access to any information held about him.

Reviewable decision

6. The decision under review is the Department's decision dated 10 June 2024.

Evidence considered

7. Significant procedural steps relating to the external review are set out in the Appendix.

8. 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 account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.[4]

9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.[5] 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 the RTI Act.[6] 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 made by Bell J on the interaction between equivalent pieces of Victorian legislation:[7] '*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*.*'[8]

Issue for determination

10. The issue for determination is whether the Department is entitled to refuse access to the requested documents under the IP Act on the ground that they are nonexistent.

Relevant law

11. Access to a document may be refused if the document is nonexistent or unlocatable.[9]

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[3] Application received by email on 8 July 2025.
[4] Contained in the applicant's external review application and in an email on 10 February 2025.
[5] Section 21 of the HR Act.
[6] *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].
[7] *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[8] *XYZ* at [573].
[9] Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist - section 52(1)(a) of the RTI Act. 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 the document but it cannot be found - section 52(1)(b) of the RTI Act.

12. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:[10]

    - the administrative arrangements of government
    - the agency's structure
    - the agency's functions and responsibilities
    - 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 to which the request relates.

13. If 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, as the search and inquiry process an agency will be required to undertake will depend on the particular circumstances.

14. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the key factors listed in paragraph 12 above.[11]

15. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all possible steps)[12] to identify and locate documents applied for by applicants.[13] Generally, the agency that 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.[14] However, if the applicant maintains further documents exist, the applicant bears a practical onus of establishing reasonable grounds to be satisfied that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.

Submissions

16. Upon commencement of the external review, the Department was asked to provide information regarding the searches and inquiries it had conducted in an effort to locate any responsive documents.

17. After considering the information provided by the Department,[15] OIC addressed the applicant's concerns (as raised in his external review application) and summarised a preliminary view about those concerns as follows:[16]

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[10] *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 the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009).
[11] *Pryor* at [21].
[12] *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].
[13] Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 to require additional searches to be conducted during an external review.
[14] Section 100(1) of the IP Act.
[15] On 16 August 2024 and 9 January 2025.
[16] Letter to the applicant dated 24 January 2025.

Concern	***Preliminary View Response***
Level of detail and explanation regarding eDRMS search	*DPC has confirmed searches were conducted of eDRMS using all search terms provided in Part 1 of the access application.*
Search terms provided in Part 1 should have been used for Part 2 and Part 3	*Due to the specific presentation of the terms of the application, DPC was not required to include the provided search terms from Part 1 for other parts of the application.*
Email search not sufficiently described	*DPC IT Services conducted global searches against **all** '@premiers.qld.gov.au' email accounts and search terms have been provided.*
Email search limited to two accounts	*Searches conducted by the Director of Strategic Communication were in addition to (not instead of) the global IT Services email searches.*
Hardcopy documents	*Given no documents were located from the extensive searches it is not reasonable or necessary for DPC to conduct further searches for hardcopy documents.*

18. In an attachment to its letter, OIC explained in further detail the searches and inquiries conducted by the Department and the reasons for OIC's preliminary view that the Department had conducted all reasonable searches in an effort to locate any responsive documents.

19. The applicant did not accept OIC's preliminary view and provided a submission in response.[17] The applicant contended that the Department had not discharged the onus upon it to take all reasonable steps to locate responsive documents. He sought the following further steps to be taken:

> *1. Further eDRMS searches:*
>
> *The department needs to conduct further content-based searches within TRIM without specifying the author and addressee; this search should also include any containers or partitions created for documents transferred as a result of the change in government. In addition, it needs to be clarified whether the TRIM dataset is the appropriate dataset to be conducting searches on.*
>
> *2. Further email searches:*
>
> *The department needs to undertake further searches within its email systems using the relevant identifiers identified in part 1 of the application.*
>
> *3. Queensland State Archives and backup documents:*
>
> *The department needs to undertake further searches within its backup systems as well as for any documents that have been transferred to Queensland State Archives (QSA). While I have been told on various occasions that I would need to make an application to QSA for QSA held documents, section 191 of the* Information Privacy Act 2009 *(IP Act) states that such documents are taken to be in possession of the agency who placed them there if there are not reasonably available for inspection under the Public Records Act 2023 (**please see**: attachment 2).*

20. The applicant also requested that the Information Commissioner exercise the power contained in section 116 of the IP Act to direct the Department to provide *'its record management policies and procedures and any other documents which might explain its*

[17] On 10 February 2025.

eDRMS datasets. This information is needed to assess whether the department conducted searches within the correct locations using the correct methodologies'.

Findings

21. As I have noted, the terms of the access application set out in paragraph 1 are a summary only. The complete access application extends to five pages and contains three separate parts, with the relevant date range being 14 February 2015 to 28 February 2024:

    - Part 1 seeks access to all documents and correspondence held in eDRMS using a two page list of search identifiers supplied by the applicant and that includes eight variations of the applicant's name; eight variations of his date of birth; eight different email addresses; six mobile phone numbers; two drivers licence numbers; two car registrations; two Medicare numbers; six Health Care card numbers; a Jobseeker ID; and a university student number. It then requires searches to be undertaken using those identifiers and a list of 68 combinations of search terms including, for example, *'Department of Transport and Main Roads AND* [applicant's surname]*'*; *'Smart Start Australia AND* [applicant's surname]*'*; *'Queensland Police Service AND* [applicant's surname]*'*; *Department of Justice & Attorney General AND* [applicant's surname]*'*; '*Queensland Health AND* [applicant's surname]*'*; *Department of Education AND* [applicant's surname]*'*; *'Department of Employment, Small Business and Training AND* [applicant's surname]*'*; *Department of Children, Youth Justice and Multicultural Affairs AND* [applicant's surname]*'*; *'Office of Industrial Relations AND* [applicant's surname]*'*; *Brisbane City Council AND* [applicant's surname]*'*; *Logan City Council AND* [applicant's surname]*'*; *Gold Coast City Council AND* [applicant's surname]*'*, etc.

    - Part 2 seeks access to all documents and correspondence, including emails but excluding eDRMS content, concerning a stated version of the applicant's name associated with any engagements, interactions, exchanges, or transactions occurring between Governance & Engagement (Communications) and a list of 22 agencies/entities, including those listed in part 1 but also including private entities such as *'Goodlife Health Clubs'*.

    - Part 3 seeks access to all documents and correspondence, including emails but excluding eDRMS content, concerning a stated version of the applicant's name associated with any engagements, interactions, exchanges, or transactions occurring between Governance & Engagement (Legal) and the same list of 22 agencies/entities as for part 2.

22. Under section 137(2) of the IP Act, the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate requested documents. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner*[18] that this '*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.

23. As I have noted at paragraph 13 above, when an agency determines, based on the searches and inquiries that it has conducted, that requested documents are nonexistent, the only issue for OIC to determine is whether the agency has taken all reasonable steps

[18] [2021] QCATA 116 at [6].

to locate the documents. What constitutes reasonable steps will vary from case to case, depending on the particular circumstances.

24. In respect of part 1 of the access application, the Department used the list of identifiers provided by the applicant, and the 68 combinations of search terms, to search for responsive documents located within the Department's eDRMS (known as TRIM). No responsive documents were located. However, the applicant has submitted that these searches were not adequate, and that the Department should be required to conduct further content-based searches within TRIM *'without specifying the author and addressee'*, and that this search should also include any *'containers or partitions'* created for documents transferred as a result of the change in government. In addition, the applicant contends that the Department should be required to clarify whether the TRIM dataset is the appropriate dataset to be searching.

25. I do not accept that the applicant's request constitutes a reasonable step that the Department should be required to take in an effort to locate any responsive documents. As I have noted, the issue for OIC to consider is whether the Department has taken all reasonable steps, not all possible steps. I am satisfied that the extensive list of identifiers and combinations of search terms used by the Department in respect of part 1 of the access application should reasonably have been expected to locate documents in TRIM that relate to the applicant, if any were to exist. I do not consider that any further searches of TRIM are reasonably required. Nor do I accept that it is necessary for the Department to specifically clarify that TRIM is the appropriate dataset upon which to conduct searches. As explained in paragraph 12, it is reasonable, in assessing whether searches have been reasonably targeted, for OIC to rely upon the Department's knowledge and experience of its own information management systems and procedures to identify the likely location/s of responsive documents within the Department's records.

26. Similarly, I do not accept the applicant's contention that it is reasonable to require the Department to undertake further searches of its email system using the identifiers that the applicant provided in part 1 of the access application. The terms in which an access application is framed set the parameters for an agency's response, and, in particular, set the direction of the agency's search efforts to locate responsive documents.[19] The Department attempted to clarify and simplify the scope of the access application with the applicant on numerous occasions. However, the applicant consistently maintained the specific scope of the application, as set out in three distinct parts, with the list of identifiers provided for part 1 only. Given that parts 2 and 3 of the access application sought access to emails (and other documents) based on a specific version of the applicant's name, I consider that the Department was reasonably required to conduct searches using only that version of the applicant's name as the identifier, and not those identifiers provided for part 1.

27. In response to the third issue raised by the applicant in his submission – that the Department is required to search its backup system for responsive documents, and also to search for any responsive documents that may have been transferred to Queensland State Archives (**QSA**) – I note that this issue has been addressed in numerous previous external reviews involving the applicant. There is nothing before OIC to indicate that the Department located anything in its records to suggest that any responsive documents ever existed in its possession or under its control. It follows that there is no obligation on the Department to conduct a search of its backup system under section 52(2) of the

[19] *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8], cited in *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33]; *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [15] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].

RTI Act.[20] It similarly follows that there is no reasonable basis for expecting that responsive documents have been transferred to QSA. In circumstances where no responsive documents have been found, the possibility of a transfer of documents to another agency is mere speculation by the applicant, unsupported by cogent evidence, and does not discharge the practical onus upon him. I note that the applicant has not suggested what additional searches, beyond the extensive searches already undertaken, the Department should reasonably be required to undertake to identify any documents transferred to QSA.

28. The applicant's final request in his submission was for OIC to issue a direction to the Department under section 116 of the IP Act to require it to provide OIC with its record management policies and procedures, and any other documents which might explain its eDRMS datasets. The applicant contended that this information was needed to assess *'whether the department conducted searches within the correct locations using the correct methodologies'*. Firstly, I note that section 116 of the IP Act relates to the provision of documents to OIC, not the applicant. It also requires OIC to have reason to believe that the agency has information or a document relevant to an external review. While the applicant may hold the view that this information is relevant and is needed to satisfy himself about the adequacy of the searches undertaken by the Department, the issue is whether the Information Commissioner (or delegate), as the independent decision-maker, considers that such information is relevant and required in order to determine whether the Department has taken all reasonable steps to identify and locate requested documents. I am not satisfied that it is required. For the reasons explained, I consider that the information provided by the Department concerning the searches it has conducted is sufficient to determine the issue under consideration.

29. In summary, having considered the extensive searches and inquiries that the Department conducted in an effort to locate responsive documents, I am satisfied that they were reasonable in all the circumstances. I consider that, if any responsive documents were to exist in the Department's possession or control, it is reasonable to expect that those searches and inquiries would have located such documents, or, at the very least, located information that may have identified other relevant avenues of search or inquiry. I am not satisfied that the applicant has discharged the practical onus upon him to demonstrate that the Department has not taken all such reasonable steps. He has provided no evidence to support a reasonable belief that there are missing documents, nor provided any indication as to why it is reasonable to believe that the Department would hold documents falling within the terms of the access application. As the applicant has been advised in previous of his external review applications, the search provisions in the IP Act are not to be used by an applicant to continue to pursue an unreasonable 'fishing exercise' in circumstances where reasonably targeted (and, in this case, extensive) searches by an agency have located no documents, and where the applicant has provided no cogent evidence to support a reasonable belief that responsive documents ought to exist.

DECISION

30. For the reasons set out above, I affirm the decision under review by finding that access to the requested documents may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the ground that they are nonexistent.

[20] Section 52(2) of the RTI Act requires an agency to conduct a search of its backup system only if the agency considers that a requested document has been kept in, and is retrievable from, the backup system.

31. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Rachel Moss
Principal Review Officer

Date: 7 May 2025

APPENDIX

Significant procedural steps

Date	Event
8 July 2024	OIC received the application for external review
12 July 2024	OIC received preliminary information from the Department
16 August 2024	OIC received search information from the Department
9 January 2025	OIC received additional search information from the Department
24 January 2025	OIC conveyed a preliminary view to the applicant
10 February 2025	OIC received a submission from the applicant