



Decision and Reasons for Decision

Citation:	<i>Mineralogy Pty Ltd and Department of the Environment, Tourism, Science and Innovation</i> [2025] QICmr 61 (16 September 2025)
Application Number:	318392
Applicant:	Mineralogy Pty Ltd
Respondent:	Department of the Environment, Tourism, Science and Innovation
Decision Date:	16 September 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits information should exist - whether agency has conducted reasonable searches - whether access to documents may be refused on the basis they are nonexistent - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of the Environment, Tourism, Science and Innovation (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)¹ for access to various documents² concerning submissions made by another company about a proposed biodiversity offset strategy in relation to a particular coal mine project (**Biodiversity Offset Strategy**).³
2. After conducting searches, the Department decided⁴ to refuse access to the documents sought on the basis they were nonexistent.⁵
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.⁶ During the review, the applicant provided further information in support of their contention that the Department had not conducted all reasonable searches for the documents sought⁷ and the Department undertook further searches and enquiries, but did not locate any responsive documents.⁸ I have therefore examined the reasonableness of the Department's searches and made a finding on

¹ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. In accordance with the transitional provisions in chapter 7, part 9 of the RTI Act, particularly section 206K of the RTI Act, references in this decision are to the RTI Act as in force prior to 1 July 2025.

² Including correspondence, diary entries, file notes, minutes of meeting and internal departmental correspondence.

³ Access application dated 15 November 2024 and made compliant on 20 November 2024.

⁴ Decision dated 19 December 2024. This is the *reviewable decision* for the purpose of this external review.

⁵ Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

⁶ External review application dated 23 December 2024.

⁷ Submissions dated 14 February 2025 following OIC's preliminary view dated 5 February 2025.

⁸ Submissions to OIC dated 8 August 2025 in response to OIC's request dated 27 June 2025.

whether access to responsive documents may be refused on the basis they are nonexistent.⁹

4. For the reasons set out below, I affirm the Department's decision and find that access to responsive documents may be refused on the basis they do not exist. In making this decision, I have taken into account evidence, submissions, legislation and other material set out in these reasons (including footnotes).

Relevant law

5. Access to a document may be refused under the RTI Act if it is nonexistent or unlocatable.¹⁰ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹¹ 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.¹²
6. To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures, and the nature and age of requested documents.¹³ 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.
7. 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.¹⁴
8. 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.¹⁵ 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.¹⁶ Suspicion and mere assertion will not satisfy this onus.¹⁷

⁹ Under sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁰ Sections 47(3)(e) and 52 of the RTI Act.

¹¹ Section 52(1)(a) of the RTI Act.

¹² Section 52(1)(b) of the RTI Act.

¹³ 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] and *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12].

¹⁴ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

¹⁵ Section 87(1) of the RTI Act.

¹⁶ *Mewburn and Department Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

¹⁷ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23] and *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

Searches, evidence and submissions

9. The scope of the access application is set out below:¹⁸

For the period 1 March 2013 to 22 May 2019, (inclusive):

- (a) *correspondence (including electronic communications) and all attachments to any such correspondence, and*
- (b) *all diary entries (including any electronic calendar entries and meeting makers), file notes, and minutes of meetings,*
between (i) the Department ..., or the then Team Leader (Assessment) of the Department, or any personnel of the Department, and any of (ii) [the other company], [the coal mine company], or [two other named companies]; and
- (c) *any correspondence (including electronic communications) and all attachments to any such correspondence between any personnel of the Department,*
concerning the submissions made by [the other company] to the proposed Environmental Offset Strategy ... in relation to the ... Coal Mine ...

10. The Department's decision revealed that searches were conducted within the Environmental Services and Regulation division on two separate occasions and that the name of the other company (which made submissions) was used as the search term.

11. In seeking an external review, the applicant submitted they have '*significant difficulty accepting*' the Department's contention that it has no responsive documents as the Department '*based its search for documents on a single keyword which ... is patently inadequate and inconsistent with the Department's duty*' under the RTI Act.¹⁹

12. The Department provided OIC with a search certification and record of searches form completed by a departmental officer who stated they '*completed the searches – given that during the period between March 2013 and May 2019, [they were] the assessment officer responsible for the assessment of the ... coal project.*'²⁰ The following table sets out the locations searched by the departmental officer and the departmental officer's reasons for why no documents were located:

Locations searched	Comments/reasons why not located
'Search of emails/folders containing ... offset material'	'Firstly the ... Biodiversity Offset Strategy was not assessed by this department. Secondly was not prepared by Biodiversity and Carbon. Therefore no documents were submitted by [the other company] to this department. Recommend seeking information from the Office of the Coordinator-General, which was the assessment office for the ... Biodiversity Offset Strategy.' ²¹
'Re-searched of all digital folders and EDocs records that contain ... offset material.'	'As above – Please note attached copy of the Supplementary Environmental Impact Statement for [relevant coal] mine in which it is mentioned that a submission was received from [the other company] re offset strategy section 9.3.3 on page 65 – recommend requesting document from the Office of the Coordinator-General'

¹⁸ As clarified in the applicant's letter to the Department dated 25 November 2024.

¹⁹ External review application dated 23 December 2024.

²⁰ Provided to OIC on 3 February 2025.

²¹ The Office of the Coordinator-General is part of the Department of State Development, Infrastructure and Planning.

13. The above was conveyed to the applicant along with OIC's preliminary view that the Department had provided a reasonable explanation for why no responsive documents were located, all reasonable steps had been taken to locate responsive documents, and access may therefore be refused on the basis they are nonexistent.²² The applicant's submissions in response can be summarised as follows:²³
- the access application was for '*copies of correspondence (including emails) concerning the submissions made by [the other company] and not just for a copy of the submissions made by [the other company] alone*'
 - the Department played a key role, and was extensively involved, in the assessment of the Biodiversity Offset Strategy, with extensive communications between the Department, the Commonwealth Department of Environment and the Office of the Coordinator-General
 - '*the Department's contention that it has no correspondence whatsoever concerning the submissions made by [the other company] simply strains credulity*'; and
 - '*the reason the Department failed to locate any responsive documents is because it has only based its search for documents on the single keyword ... which, with respect, is patently inadequate and inconsistent with the Department's duty under the [RTI Act] to proactively provide access to all responsive documents*'.
14. In response to a request to consider the issues raised by the applicant's submission,²⁴ the Department confirmed that searches for relevant emails had been conducted and further stated '*the Coordinator-General was responsible for the assessment of the ... Biodiversity Offset Strategy and therefore was the recipient of any submissions on this component of the EIS as a Coordinated Project*' and the other company would not have sent something directly to the departmental officer as they were '*merely providing advice through [the Department's] Impact Assessment team to the office of the Coordinator-General*'.²⁵

Findings

15. Having examined all the information available to me, including the outcome of the Department's searches and enquiries with the relevant departmental officer, I am satisfied that the Department has taken all reasonable steps to locate responsive documents, and that access may be refused on the basis that such documents are nonexistent. While I accept that the Department was involved in the assessment of the Biodiversity Offset Strategy, there is no evidence before me to suggest that there was direct contact between the Department and the other company, the mining company or other named companies regarding the submissions made by the other company. Rather, the information available to me supports the position that the Department was only involved to the extent that advice was provided to the Office of the Coordinator-General via the Impact Assessment Team.
16. The applicant has submitted that using only the name of the other company as the sole search term was inadequate. In my view, the name of the other company was central to the scope of the application and was an appropriate search term for the Department to use—had there been responsive documents, I am satisfied they would have included the name of the other company. I am further satisfied that searches conducted were of relevant electronic document recordkeeping systems and that they were undertaken by the departmental officer who had been directly involved in the assessment of the

²² Letter dated 5 February 2025.

²³ Submission dated 14 February 2025.

²⁴ Email dated 27 June 2025.

²⁵ Email dated 7 August 2025, provided as an attachment to an email to OIC dated 8 August 2025.

Biodiversity Offset Strategy, with requisite knowledge of where responsive documents would be located if they existed within the Department. Further, that officer's explanation regarding the role of the Office of the Coordinator-General also serves to address why responsive documents do not exist within the Department.

17. I acknowledge that the lack of responsive documents has not met the applicant's expectations of the Department's involvement in the assessment of the Biodiversity Offset Strategy. However, OIC does not have jurisdiction to interrogate the actions of the Department, nor make any determinations about the Department's involvement in the assessment of the Biodiversity Offset Strategy. The issue for determination in this review is whether access to documents may be refused on the basis they do not exist.
18. Based on the information before me, including the Department's search records and submissions received from the applicant and Department, I am satisfied that the Department has searched in locations where it would be reasonable to expect documents relevant to the application to be found. I also consider that enquiries with the departmental officer was an appropriate avenue to pursue, given their involvement regarding the relevant coal mine project. In the circumstances of this case, I find there are no further reasonable searches that the Department could undertake.
19. For the reasons set out above, I find that the Department has taken all reasonable steps to locate documents relevant to the scope of the access application, and access may be refused to responsive documents on the basis that they do not exist.²⁶

DECISION

20. For the reasons set out above, I affirm the reviewable decision²⁷ and find that access to responsive documents may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.
21. 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.



K Shepherd
Assistant Information Commissioner

Date: 16 September 2025

²⁶ Section 47(3)(e) and 52(1)(a) of the RTI Act.

²⁷ Under section 110(1)(a) of the RTI Act.