



Decision and Reasons for Decision

Citation:	<i>C70 and Office of the Public Guardian [2025] QICmr 70 (13 October 2025)</i>
Application Number:	318352
Applicant:	C70
Respondent:	Office of the Public Guardian
Decision Date:	13 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant submits further documents should exist - whether agency has taken reasonable steps to locate relevant documents - whether agency can be satisfied further documents do not exist - section 52(1)(a) of the <i>Right to Information Act 2009 (Qld)</i> - whether access to further documents may be refused under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and section 47(3)(e) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Background

1. The applicant applied¹ to the Office of the Public Guardian (**OPG**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**)² for access to a range of information, including guardianship/administration applications and orders, correspondence, healthcare related documents and financial records, and metadata associated with all requested categories.
2. The OPG decided to refuse access to all requested documents under section 47(3)(e) and 52(1)(a) of the RTI Act on the basis they were nonexistent.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the OPG decision.⁴ In his application, the applicant submitted that *'it appears the documents I have requested have not been looked for properly or are being exempted'*. During the review, the applicant provided further submissions in support of

¹ Access application dated 11 October 2024.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting significant changes to the IP Act and *Right to Information Act 2009 (Qld)* (**RTI Act**). References in this decision to the IP and RTI Acts, however, are to those Acts as in force prior to 1 July 2025. This is in accordance with Chapter 8 Part 3 of the IP Act and Chapter 7 Part 9 of the RTI Act, comprising transitional provisions requiring that access applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted.

³ Decision dated 11 November 2024. This is the *'reviewable decision'* for the purpose of the external review. Section 67(1) of the IP Act provides that access to information may be refused on the same grounds as set out in section 47(3) of the RTI Act.

⁴ External review application dated 5 December 2024.

his contentions that documents should have been located, and pointed to additional searches which he considered would be reasonable for OPG to undertake.⁵

4. The issue for determination in this review is whether access may be refused to the requested documents on the basis they are nonexistent.⁶ In making my finding on this issue, I have examined whether the OPG has taken all reasonable steps to locate documents responsive to the terms of the application.
5. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as referred to in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information⁷ and in doing so, have acted in accordance with section 58(1) of the HR Act.⁸
6. For the reasons set out below, I affirm the OPG's decision to refuse access to the requested information on the basis it does not exist under sections 47(3)(e) and 52(1)(a) of the RTI Act.⁹

Relevant law

7. Under the IP Act, an individual has a right to be given access to documents in the possession or under the control of an agency to the extent they contain their personal information.¹⁰ The legislation is to be administered with a pro-disclosure bias,¹¹ however, the right of access is subject to certain limitations, including grounds for refusing access.¹²
8. Access to a document may be refused if it is nonexistent or unlocatable.¹³ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁴ 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.¹⁵
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 structure, its recordkeeping practices and procedures and the nature and age of requested documents.¹⁶ After considering relevant 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 by the agency. If searches are relied on to justify a decision that the documents do not exist, all

⁵ Submissions dated 14 July 2025 (**Applicant's Submissions**).

⁶ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

⁷ Section 21 of the HR Act.

⁸ OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

⁹ In conjunction with section 67(1) of the IP Act.

¹⁰ Section 40 of the IP Act.

¹¹ Section 64 of the IP Act.

¹² Section 67(1) of the IP Act and section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: section 67(2) of the IP Act.

¹³ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁴ Section 52(1)(a) of the RTI Act.

¹⁵ Section 52(1)(b) of the RTI Act.

¹⁶ These factors are identified in *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) at [37]-[38] (**PDE**). 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].

reasonable steps must be taken to locate the documents.¹⁷ What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.

10. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all possible steps)¹⁸ to identify and locate documents applied for by applicants.¹⁹ 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.²⁰ 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.²¹ Suspicion and mere assertion will not satisfy this onus.²²

Searches, evidence and submissions

11. The terms of the access application are set out below:

1. a. *Guardianship / administration applications (including reports and supporting materials).*
b. *Meta-data for documents returned from request item 1(a).*
2. a. *Guardianship / administration orders.*
b. *Meta-data for documents returned from request item 2(a).*
3. a. *Correspondence between the office, the appointees, and other relevant parties.*
b. *Meta-data for documents returned from request item 3(a).*
4. a. *Health and Healthcare related documents.*
b. *Meta-data for documents returned from request item 4(a).*
5. a. *Financial records.*
b. *Meta-data for documents returned from request item 5(a).*

12. After submitting the access application, the applicant provided the OPG with additional variations of his name, names of representatives/other customers involved, and known addresses.²³

13. In its decision, the OPG advised that *'the documents described in [the applicant's] application do not exist within our database system'*. The OPG's decision also outlined that:

The following searches were conducted in response to [the applicant's] application:

- *Search of the OPG database system which holds all OPG guardianship file records*
- *Search of the OPG database system which holds all community visiting and advocacy file records*
- *The above database systems are the appropriate locations to search for the documents as all OPG records are stored within the systems*

¹⁷ In *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6], McGill J observed that this does not extend to all 'possible' steps.

¹⁸ *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].

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. The Queensland Civil and Administrative Tribunal confirmed in *Webb* 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 Section 87(1) of the RTI Act.

²¹ See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

²² *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].

²³ Email to the OPG dated 8 November 2024.

- The search terms used for the community visiting and advocacy database were [applicant name] and [variation of applicant name] with the date of birth [applicant's date of birth]
- The search terms used for the OPG guardianship file records were:
 - the names [applicant name] and [variation of applicant name]
 - all records for individuals with the date of birth [applicant's date of birth]
 - the name [applicant's known surnames]
 - the names [applicant's representatives]
 - all records for [applicant name] and [variation of applicant name] at the following addresses:

[list of nominated addresses]

...

With respect to the documents described in paragraph 3 of [the applicant's] application, I am satisfied that the documents do not exist. I am so satisfied because OPG has no file record of being appointed as guardian for [the applicant] and therefore documents such as correspondence between OPG, the appointees and other relevant parties were never created.

With respect to the documents described paragraphs 1, 2, 4 and 5 of your application, I am satisfied that the documents are not in our possession. As indicated previously by email, the Queensland Civil and Administrative Tribunal will likely hold the documents that are sought if they exist.

14. Search records provided to OIC by the OPG reveal that searches were conducted of Resolve, Jigsaw and OPG email systems²⁴ using variations of the applicant's name and that of another individual, and various addresses nominated by the applicant.²⁵ Those searches were undertaken by staff in the following teams because the OPG identified that they would '*likely possess records of an individual within the scope particularised in the IPA access application*'.²⁶

- Corporate and Legal Practice Team (in consultation with a principal guardian within the Guardianship business unit)
- OPG Children and Young People Team
- Pre Advocacy Team; and
- Central Intake and Referral Team.

15. The OPG also provided the following information regarding its statutory functions and corresponding recordkeeping systems:²⁷

- All Guardianship files are stored on the Resolve database
- All Community Visting and Advocacy Team, and Child Advocate files are stored on the Jigsaw database; and
- All Investigations files are stored on the Resolve database.

16. The OPG also explained as follows:²⁸

The Resolve database contains search functions for names of interested persons (persons not party to QCAT proceedings) such as relatives, friends, or supporters to a party to the proceedings.

When this search function was used to search for the names: [provided by the applicant] no results were produced.

²⁴ Namely, the mailboxes OPG-QCAT@publicguardian.qld.gov.au and publicguardian@publicguardian.qld.gov.au.

²⁵ As set out in three completed record of searches forms and signed search certifications provided by the OPG to OIC as attachments to the OPG's submission dated 22 January 2025 (**OPG's Submissions**)

²⁶ Page 1 of the OPG's Submissions.

²⁷ Page 2 of OPG's Submissions.

²⁸ Page 4 of OPG's Submissions.

Searches were also conducted in relation to the addresses provided by [the applicant]. Those searches were not limited to client addresses but of all records where the addresses are entered into the database. No results were produced.

The databases used by OPG does not have capacity to run searches that would capture any documents referring to [the applicant].

...

In addition to searching the Resolve database which would hold documents if the Public Guardian were appointed for [the applicant] or if [the applicant] were listed as an interested party to a QCAT matter where the Public Guardian was appointed for an adult, we requested searches to be conducted within OPG teams that perform functions ancillary to the Public Guardian's statutory functions.

Those teams include:

- o The Central Intake and Referral Team - manages all incoming emails to the general email address listed on our website and community information material. This team stores records of emails that date back to 2022.
- o The Pre-advocacy Team – receives emails from QCAT about all applications to appoint a guardian. This team stores records of emails that date back 6 months.

We sought to understand why [the applicant] believes that OPG holds the documents that he seeks in his access application, and we invited him to have a discussion on the phone with us however, we received no contact from [the applicant].

17. The applicant submitted to OIC that he held outstanding concerns about the OPG's searches and in summary, raised the following points:²⁹

- a) Issues with the search queries said to have been used by the OPG in conducting searches across its IT systems.
- b) The lack of information provided by the OPG regarding the types of records held within Jigsaw and Resolve.
- c) The status of the OPG's IT consolidation project.
- d) The scope of the OPG's search efforts.
- e) The exclusion of the Legal Advocacy and Investigations business unit from searches.
- f) The OPG's failure to adequately explain its searches.
- g) The OPG's supply of contradictory or incomplete information.
- h) The applicant's supply of additional interested / concerned person identifiers.
- i) The identification of a pseudonym, alias or UID register, and the conducting of further searches based upon information obtained from that register.
- j) The OPG's failure to conduct searches within its backup systems, and for any records transferred to QSA.
- k) The purported use of DJAG's IT systems by the OPG.
- l) The limited number of OPG email addresses considered as being relevant to the OPG's search efforts.

18. The applicant further submitted³⁰ that the 'OPG must undertake the following searches to cure the defects identified in their responses':

UID / Alias / Pseudonym Registers

- a) The OPG must conduct searches within its pseudonym register (or similar) for the purpose of locating any alternative OPG identifiers the applicant may have.

²⁹ Page 14 of Applicant's Submissions.

³⁰ Page 16-18 of Applicant's Submissions. The quoted component below contains internal cross references to paragraphs within the Applicant's Submissions. I have considered the entirety of the Applicant's Submissions (18 pages and additional attachments) but have not reproduced all paragraphs in these reasons.

Resolve Database

- b) *The OPG must conduct further searches within Resolve using relevant OPG pseudonyms, UIDs or aliases and details of persons listed at paragraph 34 of this submission.*
- c) *The OPG must expand the radius of the searches undertaken within resolve, making sure to include Legal Advocacy and Investigations, archives, and back-up repositories within the scope of further searches.*
- d) *The OPG must be sure to relay details of further searches consistent with the formatting at paragraph 14.*

Jigsaw Database

- e) *The OPG must conduct further searches for records stored within Jigsaw should further enquiries reveal that the OPG was storing adult records within the Jigsaw database throughout the course of the IT consolidation project.*

Email accounts / Inboxes

- f) *The OPG must identify the email accounts listed at p 36 (b) and p 36 (c), and conduct further searches using relevant identifiers (i.e. the applicant's name, alias, UID, or pseudonym and the details of the persons listed at p 34).*

Backup systems / archived repositories

- g) *The OPG must identify its backup systems and repositories and conduct searches in those locations should it be considered that the types of files requested by the applicant would be held in such locations.*

QSA:

- h) *The OPG must consider and relay its retention and disposal requirements, in particular noting any records that may have been designated for permanent retention with QSA. Regardless of an agreement with the state archivist, several categories of relevant documents have permanent retention statuses, and it is therefore expected to QSA [footnote omitted]*

DJAG:

- i) *The OPG must consider its use of DJAG's eDRMS as a records management solution and conduct further searches within the DJAG system if necessary.*

Search certificates.

- j) *The applicant requests that the OIC direct the OPG to provide signed search certificates for the searches undertaken and any future searches it will undertake. These will be necessary for the purpose of determining whether the OPG is able to refuse access on the basis all reasonable steps have been taken.*

Further searches

- k) *It is expected that further searches will need to be undertaken when the OPG provides further information about its searches. The information listed above is not intended to be determinative and it expected that further arguments will be advanced as the review proceeds.*

19. The applicant also contended that the below further documents *'will greatly assist in determining certain outstanding matters and that OPG should be required to produce them'* including:³¹
- a. *Records management policies for:*
 - i. *Guardianship files.*
 - ii. *Legal Advocacy and investigation files.*
 - iii. *Resolve.*
 - iv. *Jigsaw.*
 - v. *Storage of documents within:*
 - 1. *DJAG's eDRMS.*
 - 2. *Backup systems or archival locations.*
 - 3. *Transfer of documents to QSA.*
 - b. *Internal policies or business processes relating to:*
 - i. *Communications within interested parties and representatives.*
 - ii. *De-identification, anonymisation confidentiality practices and the protection of records.*
 - iii. *Recordkeeping.*
 - iv. *Backup and archiving practices.*
 - c. *The OPG's business classification scheme and naming conventions.*
 - d. *The OPG's schedule / register of OPG contacts.*
 - e. *The OPG's delegations register.*
 - f. *The OPG's policy registers.*

Findings

20. I have examined the terms of the access application, the OPG's decision, search records and submissions provided by the OPG, the external review application and the Applicant's Submissions.
21. As outlined above,³² where an agency has relied on searches to justify a decision to refuse access to documents on the basis that they do not exist, OIC is required to consider whether the agency has taken all reasonable steps to locate the documents. A finding that all reasonable steps have been taken by an agency is open to reach *'even if, at least in theory, further and better searches might possibly disclose additional documents'*.³³ Therefore, the issue upon which I must make a finding in this review is whether, based on the evidence available to me, the OPG has taken all *reasonable* steps to identify documents, as opposed to all *possible* steps.
22. Having reviewed the search records and submissions of the OPG, I am satisfied that undertaking searches of Resolve, Jigsaw and specific mailboxes were reasonable steps for OPG to take, considering the terms of the application, and the fact that the applicant was requesting documents containing his personal information, under the IP Act.³⁴ I have also taken into account OPG's submission that the reason the specific teams/business units listed at paragraph 14 above were contacted to undertake searches was because *'those teams would likely possess records of an individual within the scope particularised in the IPA access application'*.³⁵
23. The search records completed by OPG officers from the relevant teams demonstrate targeted searches were conducted of the relevant electronic recordkeeping systems and

³¹ Page 16 of the Applicant's Submissions.

³² At paragraphs 8 and 9.

³³ *Webb* at [6].

³⁴ Under section 40 of the IP Act, an applicant is entitled to be given access to documents of an agency *'to the extent they contain the individual's personal information'*.

³⁵ Submission to OIC dated 22 January 2025.

document repositories³⁶ using a variety of search terms, properly informed by the information provided by the applicant in support of his application. While I understand the applicant has concerns about the search ‘inputs’, I am not persuaded that his submissions establish reasonable grounds for electronic searches to be repeated using different search terms. Rather, I am satisfied that OPG officers working in those business units, had the requisite operational knowledge of the databases to undertake effective and targeted searches, using suitably formulated search terms.

24. I am satisfied that if records containing the applicant’s personal information were held by the OPG, it is reasonable to expect they would have been identified through the OPG’s searches. I consider that, if any responsive documents were to exist in the OPG’s possession or control,³⁷ 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 for the OPG to pursue.
25. In reaching my findings, I have closely considered the applicant’s comprehensive submissions he has made in support of his case. Those submissions demonstrate that the applicant firmly believes that far wider searches are necessary and that the recordkeeping practices and procedures of the OPG should be interrogated to a significant degree. It is clear that the applicant has undertaken extensive research into OPG’s governance and recordkeeping systems, information management and document retention requirements. However, based on the information available to me, I am not satisfied those submissions discharge the practical onus upon the applicant to demonstrate that OPG has not taken reasonable steps. While the submissions are comprehensive and well researched, the applicant has not produced any tangible evidence, nor provided any submissions about the nature of any interactions he has had with the OPG, which would justify requesting the OPG to undertake any further searches.
26. Where extensive electronic searches of an agency’s primary recordkeeping system/s reveal no information whatsoever in connection with an applicant (as is the case here) I consider that will generally be sufficient to establish reasonable grounds to be satisfied that information relating to that individual does not exist within the records of that agency. Further interrogation of an agency’s recordkeeping systems and practices, such as what the applicant is contending for in this case, should only be necessary where there is a reasonable basis to do so, i.e. beyond suspicion and mere assertion. For these reasons, and taking into account my findings in this and the preceding four paragraphs, I find that it would not be reasonable for OPG to make any further inquiries nor to direct any further searches as requested by the applicant in paragraph 18 above. Similarly, I find there is no reasonable basis for OPG to be required to produce the documents nominated by the applicant in paragraph 19, which I would also observe are outside the scope of an IP Act application. For completeness, based on the evidence available to me in this review, I am also satisfied that it would not be reasonable for the OPG to make inquiries with Queensland State Archives, nor would it be reasonable for the OPG to undertake searches of its backup system.³⁸
27. For the reasons set out above, I find that the OPG has taken all reasonable steps to locate documents relevant to the access application and access to responsive documents may be refused on the basis they do not exist.³⁹

³⁶ Resolve, Jigsaw and relevant mailboxes.

³⁷ Section 12 of the RTI Act.

³⁸ Therefore, the requirement under section 52(2) of the RTI Act is not enlivened.

³⁹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

DECISION

28. For the reasons set out above, I affirm the OPG's decision to refuse access to all documents responding to the terms of the application on the basis they do not exist.⁴⁰
29. I have made this decision under section 123(1)(a) of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.



Katie Shepherd
Assistant Information Commissioner

Date: 13 October 2025

⁴⁰ Under section 67(1) of the IP Act, section 47(3)(e) and 52(1)(a) of the RTI Act.