

Decision and Reasons for Decision

Citation:	R15 and Department of Transport and Main Roads [2026] QICmr 6 (21 January 2026)
Application Number:	318813
Applicant:	R15
Respondent:	Department of Transport and Main Roads
Decision Date:	21 January 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - complaint documents - whether disclosure would on balance be contrary to the public interest - prejudice flow of information - third party personal information and privacy - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - where applicant contends missing information - whether agency has taken all reasonable steps to locate relevant documents - whether access to documents may be refused on the basis they are nonexistent or unlocatable - 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 Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for complaint documents and an audio recording of a phone call between the applicant and a Department officer (**Audio Recording**).²
2. The Department granted access to six pages and refused access to parts of 10 pages (**Complaint Information**) on the basis the information is either exempt from disclosure, or would, on balance, be contrary to the public interest.³ The Department also refused access to the Audio Recording on the basis it does not exist or is unlocatable.

¹ On 18 June 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts **as in force prior to 1 July 2025**. These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> respectively.

³ Sections 47(3)(a) and (b), section 48, section 49 and schedule 3, section 10(1)(b) of the RTI Act.

3. The applicant applied⁴ to the Office of the Information Commissioner (OIC) for external review of the Department's decision. The applicant also raised concerns about the sufficiency of the Department's searches in relation to the Audio Recording and an email sent to the applicant by the Department, which he had a copy of.
4. For the reasons set out below, I vary the Department's decision and find that:
 - access may be refused to the Complaint Information as disclosure would, on balance, be contrary to the public interest⁵
 - access may be refused to the Audio Recording as it does not exist; and
 - the Department has taken all reasonable steps to locate the requested documents, and access to any further documents may be refused on the basis they are nonexistent or unlocatable.

Background

5. Some concerns raised by the applicant are not matters which the Information Commissioner has jurisdiction to consider when conducting an external review under the RTI Act. Accordingly, in making this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination.
6. I have had regard to the *Human Rights Act 2019 (Qld)* (**HR Act**), particularly the right to seek and receive information.⁶ 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 RTI Act.⁷ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Complaint Information

7. The Complaint Information can broadly be described as the personal information of other individuals, such as their name, contact details, images, and other information which may enable a person's identity to be ascertained.⁸ This information appears in the context of a complaint made by another individual, against the applicant. However, the remaining information relates entirely to other individuals and their interactions with the Department.⁹

Relevant law

8. Under the RTI Act, a person has a right to be given access to documents of an agency or Minister.¹⁰ This right is subject to certain limitations, including grounds on which

⁴ On 30 July 2025.

⁵ The Department confirmed it did not wish to make a submission in response to the varied ground of refusal (telephone call on 3 November 2025).

⁶ Section 21(2) of the HR Act.

⁷ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573], wherein Bell J observed '*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*' on the interaction between equivalent pieces of Victorian legislation; *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 in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Justice Member McGill saw 'no reason to differ' from OIC's position).

⁸ Section 12 of the IP Act defines personal information as '*information or an opinion, including whether 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*'.

⁹ I am limited in the amount of detail I can provide about the specifics of the Complaint Information (section 108 of the RTI Act).

¹⁰ Section 23 of the RTI Act.

access to a document may be refused. Relevantly, access to a document may be refused where its disclosure would, on balance, be contrary to the public interest.¹¹

9. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹² and explains the steps that a decision maker must take¹³ in deciding the public interest as follows:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosing the information would, on balance, be contrary to the public interest.

Discussion

10. No irrelevant factors arise in the circumstances of this case, and I have taken none into account.

Factors Favouring Disclosure

11. I recognise that the release of government held documents would enhance the transparency and accountability of the Department.¹⁴ Additionally, disclosure would give the applicant a more fulsome understanding of the information provided to the Department when assessing and dealing with the complaint against him. The release of this information may, albeit to a limited degree, advance the applicant's fair treatment in his dealings with the Department.¹⁵

12. However, the Department has released the majority of information relating to the complaint – including detailed information about the substance of the complaint, steps taken by the Department to assess the complaint and why the Department determined no further action was necessary. This disclosure of information has significantly discharged the public interest factors which seek to promote government accountability and transparency in decision making processes. As such, I afford these factors favouring disclosure low weight.

13. Given the refused information is limited to the personal information of individuals other than the applicant, I do not consider that there is any public interest in enabling the applicant access to his own personal information. As such, this factor does not apply.¹⁶

14. The applicant submits¹⁷ that within the documents there are '*retrospective documentation or manipulation*' of internal system or date errors. The applicant contends these '*obscure the true timeline*' of the Department's activity.

¹¹ Sections 47(3)(b) and 49 of the RTI Act. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that, ordinarily, a public interest consideration is one which is common to all members of, or a substantial segment of, the community as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹² Schedule 4 of the RTI Act. This list is not exhaustive and therefore, other factors may also be relevant in a particular case. The public interest balancing test is to be applied with a pro-disclosure bias (section 44(4) of the RTI Act).

¹³ Section 49(3) of the RTI Act.

¹⁴ Schedule 4, part 2, items 1 and 3 of the RTI Act.

¹⁵ Schedule 4, part 2, items 10 and 11 of the RTI Act.

¹⁶ As such, I do not consider that the factor favouring disclosure under schedule 4, part 2, item 7 of the RTI Act is enlivened.

¹⁷ External review application dated 30 July 2025.

15. Accordingly, I have considered whether disclosure could reasonably be expected to reveal:
 - that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;¹⁸ or
 - misconduct, or negligent, improper or unlawful conduct of the Department.¹⁹
16. As explained above, the Complaint Information is limited to third party personal information, in the context of a complainant providing information to the Department, and does not relate to the applicant. As such, I do not consider that these public interest factors are enlivened, as disclosure of this information could not reveal what the applicant alleges. For completeness, the Complaint Information does not contain information which objectively indicates that the Department engaged in improper conduct, to enliven these public interest factors.
17. The applicant asserted²⁰ that a ‘defamatory claim’ was ‘accepted into official records without evidence or procedural fairness and may have influenced internal bias’. Given the applicant’s submissions, I have considered whether release of the Complaint Information would contribute to the administration of justice for a person, including procedural fairness.²¹
18. Procedural fairness requires a decision maker to act fairly when deciding a matter that will impact a person’s rights or interests.²² This means the person subject to a decision must be provided with adequate information to effectively respond to the case against them. As detailed above, the applicant has access to information concerning the substance of the complaint, the Department’s handling of the matter, and the reason that no further action would be taken. Accordingly, I am not satisfied that procedural fairness requires the applicant to receive the Complaint Information, and I do not consider that this factor applies to the extent it relates to procedural fairness.
19. When considering this factor in relation to the administration of justice, I must consider whether:
 - the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the requested information held by the Department would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.²³
20. Beyond a general assertion that the claim is defamatory, the applicant has not articulated the loss or damage he suffered which he is seeking to remedy. Noting that the Department decided to take no further action in relation to this complaint, the information before me does not indicate the applicant has a reasonable basis for seeking to pursue a remedy. In any event, I do not consider that disclosure of the Complaint Information is required to evaluate whether a remedy (legal or otherwise) is available or worth pursuing, due to the substance of the complaint being already made available to the applicant. To the extent this factor applies, I afford it minimal weight only.

¹⁸ Schedule 4, part 2, item 12 of the RTI Act.

¹⁹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

²⁰ External review application dated 30 July 2025.

²¹ Schedule 4, part 2, items 16 and 17 of the RTI Act

²² The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 582 per Mason J).

²³ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

Factors favouring nondisclosure

21. As detailed above, the Complaint Information is limited to the personal information of other individuals. Disclosure of third party personal information of private individuals gives rise to a public interest harm, and could also reasonably be expected to prejudice the protection of other individuals' right to privacy.²⁴ Given the nature of the information appearing in a complaint context, I consider that these public interest factors warrant significant weight.
22. Disclosing a complainant's personal information could also reasonably be expected to discourage people from reporting complaints in the future and prejudice the flow of this type of information to the Department, thus negatively impacting on the Department's law enforcement functions.²⁵ This factor has been found to apply even in circumstances where the veracity of a complaint is raised.²⁶ I consider these factors should be afforded significant weight.

Findings

23. For the reasons above, I consider the factors favouring disclosure should each be afforded low weight. I have determined the public interest factors in relation to protecting the personal information and right to privacy of other individuals and the Department's ability to obtain information for its regulatory function should be afforded significant weight and, on balance, outweigh the factors favouring disclosure. Accordingly, access may be refused to the Complaint Information as disclosure would, on balance, be contrary to the public interest.²⁷

Nonexistent or unlocatable documents

Relevant law

24. Under the RTI Act, access to documents may be refused if there are reasonable grounds to be satisfied that they are nonexistent²⁸ or are unlocatable.²⁹ OIC's functions on external review include investigating and reviewing whether an agency has taken all reasonable steps to locate documents applied for by applicants.³⁰
25. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience, having regard to various factors, including the agency's structure, practices and procedures (including information management approaches), and considerations reasonably inferable from information supplied by an applicant.³¹

²⁴ Schedule 4, part 4, section 6 and schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the IP Act or RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others – see the Australian Law Reform Commission's definition of the concept in *"For your information: Australian Privacy Law and Practice"* Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56. I find that the fact an individual has made a complaint to the Department, falls with the individual's personal sphere.

²⁵ Schedule 4, part 3, items 13 and 16 of the RTI Act.

²⁶ *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) from [35].

²⁷ Schedule 47(3)(b) of the RTI Act. I have applied the pro-disclosure bias when making this decision.

²⁸ Section 52(1)(a) of the RTI Act.

²⁹ Section 52(1)(b) of the RTI Act.

³⁰ 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 (*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.

³¹ See *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11]-[12] and *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016) (*Gapsa*) at [13]-[14], adopting the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (*PDE*) at [37].

26. To determine that a document is unlocatable, the legislation requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and, if so, whether the agency has taken all reasonable steps to find the document.³² What constitutes '*all reasonable steps*' will vary from case to case³³ and is a different test to all *possible* steps.³⁴
27. Where the issue of missing documents is raised on external review, the applicant bears a practical onus of demonstrating that the agency has not discharged the obligation to locate all relevant documents.³⁵ Suspicion and mere assertion will not satisfy this onus.³⁶

Audio Recording

28. The application sought the Audio Recording of a specific telephone call between the applicant and an identified Department employee. The Department located a screenshot of the employee's mobile telephone, reflecting the detail of the phone call (ie, phone number, date and duration). However, the Department refused access to the Audio Recording on the ground it is nonexistent.
29. On external review, the Department submitted³⁷ that searches were conducted on the Department's digital evidence management system for all documents stored under the relevant complaint/investigation number as '*any documents associated with an investigation are held within this system*'.³⁸ The Department also provided a signed certification from the relevant officer which stated "*there is no recording of the conversation between [the applicant and Department officer] which took place on [date and time]*."
30. Consistent with the requirements in paragraph 25 above, I consider the Department officer involved in the telephone call is best placed to know whether the telephone call was recorded and, if so, where it would be located in line with the Department's record keeping practices. In any event, due to the Department's recordkeeping practices, if the Audio Recording existed, it is reasonable to expect that it would have been located from the searches conducted by the Department of the complaint/investigation electronic file.
31. Under the RTI Act, before it can be established that a prescribed document does not exist, a search of a backup system is required. However, this is **only** required if it is considered that the document has been kept in, and is retrievable from, the backup system.³⁹ There is nothing before me to indicate that the Audio Recording exists and is stored within a backup system. Therefore, I determine that it is not necessary to require the Department to do searches of a backup system.
32. For the above reasons, I am satisfied the Audio Recording was never created and access can be refused on the basis that it is nonexistent.⁴⁰

³² *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [17]-[19] which adopted the Information Commissioner's findings in *PDE*.

³³ *Webb* at [5] per McGill J.

³⁴ *P52 and Fraser Coast Regional Council* [2024] QICmr 7 (19 February 2024) at [24]; *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) (**S55**) at [23].

³⁵ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

³⁶ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23].

³⁷ Submission dated 28 August 2025.

³⁸ The database is called "evidence.com"

³⁹ Section 52(2) of the RTI Act.

⁴⁰ Section 47(3)(e) and section 52(1)(a) of the RTI Act.

Sufficiency of search

33. The applicant raised concerns about the sufficiency of the Department's searches, as he received an email from the Department (separate to his RTI access application) which was not located as part of this application.⁴¹ I am satisfied that the email is within the terms of the application, however, was not included in the documents considered by the Department in dealing with that application.
34. The Department submitted that, in addition to the searches detailed at paragraph 29, that the responsible officers 'searched through all email correspondence regarding [the applicant]' to locate responsive documents.
35. Given these searches did not locate the email referred to by the applicant, I requested further searches be conducted in the relevant email account, using the applicant's email address as the search term.⁴² The Department completed these searches and advised that no further email correspondence was located.⁴³
36. I am satisfied that the relevant email was created and sent to the applicant. However, the search information provided by the Department shows that relevant officers searched locations where email correspondence would be held, using the applicant's name and email address. I consider that the Department has completed reasonable and targeted searches. While the email did exist at one stage, it is now unlocatable.⁴⁴
37. In these circumstances, there falls to the applicant a practical onus of demonstrating that the Department has not discharged its obligation to locate all relevant documents.⁴⁵ While the applicant has raised concerns about the Department's conduct and the accuracy of the released information, the applicant has not explained how the Department's search steps are deficient or suggested other specific enquiries that the Department could make. While the applicant is concerned about the contents of the released material, I do not consider that this points to the existence of further relevant documents which have yet to be dealt with by the Department. Any inaccuracies or omissions within the released documents appear to be recordkeeping issues, outside of OIC's external review jurisdiction.
38. In assessing an agency's searches, the relevant question is whether the agency has taken all *reasonable* steps to identify and locate responsive documents, as opposed to all *possible* steps.⁴⁶ Having considered the searches conducted by the Department, including the further queries on external review, I cannot identify any other reasonable search steps the Department could take to locate documents responsive to the application, including the email provided by the applicant. The Department has explained the searches completed and completed certifications to reflect the steps taken. I have no reason to query that advice.

⁴¹ A screenshot of the email (dated 11 June 2025) was included as an attachment to the external review application.

⁴² The applicant is known by two different names and, as such, it was determined that it was reasonable that an additional search was conducted using the email address as the search term, to ensure that all emails were located regardless of which of the applicant's preferred names it may have been addressed to.

⁴³ Which were undertaken in the email account of the Department officer who had sent the email. The Department's submission received 23 September 2025.

⁴⁴ For completeness, I consider the searches were targeted and comprehensive to have located the email, had it still been held by the Department.

⁴⁵ Gapsa at [15]; A51 and Office of the Health Ombudsman [2020] QICmr 17 (24 March 2020) at [15].

⁴⁶ S55 at [23].

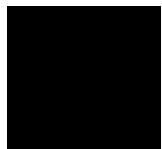
39. On this basis, I consider that the Department has taken all reasonable steps to locate documents and access to any further documents responsive to the application⁴⁷ may be refused on the basis that they are nonexistent or unlocatable.⁴⁸

DECISION

40. For the reasons set out above, I vary the reviewable decision⁴⁹ and find that:

- access may be refused to the Complaint Information on the ground that disclosure would, on balance, be contrary to the public interest
- access may be refused to the Audio Recording on the basis it is nonexistent; and
- all reasonable steps have been taken to locate documents and access may be refused to the missing email and any further documents on the basis they are nonexistent or unlocatable.

41. 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.



Brianna Luhrs
Manager, Right to Information

Date: 21 January 2026

⁴⁷ Including the email dated 11 June 2025.

⁴⁸ Section 47(3)(e) and section 52 of the RTI Act. There is no requirement for searches to be conducted on a backup system where it is determined that a document is unlocatable (section 52(3) of the RTI Act).

⁴⁹ Under section 110(1)(b) of the RTI Act.