



Decision and Reasons for Decision

Citation:	<i>D27 and Brisbane City Council [2026] QICmr 22 (12 February 2026)</i>
Application Number:	318560
Applicant:	D27
Respondent:	Brisbane City Council
Decision Date:	12 February 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - request for building, development and certification information about residential properties across a thirty year timeframe - applicant submits further documents should exist - whether access to further documents may be refused on the basis they are nonexistent - whether agency has taken reasonable steps to locate relevant documents - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Brisbane City Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**)¹ for access to a broad range of documents pertaining to two residential properties, including building permits and certifications, over a time period of approximately 30 years.²
2. Following negotiations as to the scope of the application³, Council located 746 pages and five audio recordings and decided to grant access to 303 pages and one audio recording and refuse access to 443 part pages and four entire audio recordings.⁴
3. The applicant lodged an internal review application⁵ in relation to Council's decision and in response, Council affirmed its original decision.⁶

¹ 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 RTI Act. References in this decision are to the RTI Act as in force prior to 1 July 2025 in accordance with the transitional provisions in Chapter 7, Part 9 of the RTI Act.

² Application dated 12 November 2024, supplemented by a further application dated 14 November 2024.

³ Council issued a notice of intention to refuse to deal on 9 December 2024 and the applicant approved a revised scope on 17 January 2025.

⁴ Decision dated 27 February 2025.

⁵ Dated 12 March 2025.

⁶ Internal review decision dated 21 March 2025. This is the 'reviewable decision' for the purpose of this review.

4. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review⁷ of Council's decision raising concerns that Council should have located further documents.
5. On external review, Council provided OIC with records of the searches undertaken on the application, and a submission regarding its searches.⁸ The applicant maintained her position that Council has not located all relevant documents and provided submissions to support her case.⁹
6. The issue for determination in this review is whether access to the further documents sought by the applicant may be refused on the basis that they do not exist.¹⁰ In determining this issue, I have also considered whether Council has taken all reasonable steps to locate documents in its possession or under its control.
7. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as set out 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 information¹¹ and have acted in accordance with section 58(1) of the HR Act.¹²
8. For the reason set out below, I vary Council's decision and find that access to further documents may be refused under section 47(3)(e) of the RTI Act on the basis that they do not exist pursuant to section 52(1)(a) of the RTI Act.

Relevant law

9. Under the RTI Act, an individual has a right to be given access to documents in the possession or under the control of an agency.¹³ While the legislation is to be administered with a pro-disclosure bias,¹⁴ the right of access is subject to certain limitations, including grounds for refusing access.
10. Access to a document may be refused if there are reasonable grounds to be satisfied it is nonexistent.¹⁵ 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 the requested documents.¹⁶ 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.
11. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all *possible*

⁷ External review application dated 14 April 2025.

⁸ Council email to OIC dated 29 May 2025.

⁹ Emails to OIC dated 14 April 2025 and 22 October 2025.

¹⁰ The applicant did not raise concerns about the information to which Council refused access on the basis of contrary to public interest grounds and that information was therefore, not considered during the review process, and is not examined in these reasons. This approach was confirmed to the applicant in an email dated 9 October 2025.

¹¹ Section 21 of the HR Act.

¹² 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].

¹³ Section 23 of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁶ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July) 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]-[39].

steps)¹⁷ to identify and locate documents applied for by applicants.¹⁸ 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.¹⁹ 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.²⁰ Suspicion and mere assertion will not satisfy this onus.²¹

Submissions

12. The scope of the application that was processed by Council, following consultation with the applicant, is set out below:

Documents regarding Units 1 and 2 [subject address] as follows:

- *Entire file [number] Issue of Certificate for Building Unit Titles BUP [subject address]*
- *Documents re Building Certification [number] for a deck on Unit 2 (application number ...)*
- *Documents re Building Certification [number] to finalise existing rear deck on Unit 2*
- *Any documents relating to Body Corporate approval being sought/received in 2015 for deck on Unit 2*
- *Any documents relating to any property/conveyancing searches undertaken on Units 1 or 2 (1996 to Nov 2024)*
- *Any documents relating to fences constructed on common property at [subject address]*
- *Any aerial photographs of [subject address] (1996 to Nov 2024)*
- *Documents relating to any complaints received by Council or investigations undertaken by Council about Units 1 or 2 [subject address] [Note: this would include [eight complaint reference numbers]*
- *Documents relating to access restriction/limitation strip and impacts on access or parking for Unit 1*
- *Documents regarding refusal of residential driveway application [number] lodged by Unit 1*
- *Documents re “warning flag/s” placed on property records for [subject address] by [named person] in 2023 [reference number]*

Timeframe for documents: 1995 until Nov 2024 (except where otherwise cited above).

13. Council located over 700 pages in response to the access application with a significant proportion of the information being released to the applicant.²² The nature of the located documents included:

- records from Council’s Development and Regulatory Tracking (**DART**) database pertaining to the properties and concerning complaints, applications and permits
- emails, inquiries and communications generated through Council’s online customer service platform
- audio recordings between individuals and Council relating to issues arising at the properties; and

¹⁷ *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].

¹⁸ Section 130 of the RTI Act. 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.

¹⁹ Section 87(1) of the RTI Act.

²⁰ See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

²¹ *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].

²² Subject to the redaction of third party personal information.

- hard copy records including building certification and development application documentation and building plans and drawings.

14. In the external review application, the applicant specifically raised concerns that the following documents should have been located:

... documents concerning the so-called survey error-Access Limitation Allotment on ... Street frontage inadvertently omitted from the original survey of pre-BUP allotment and original parcel from which the pre BUP allotment was excised...

... documents showing whether and if the Southern District Surveyors letter of March 2016 advising of the survey error was ever sent to the Brisbane City Council and if so what did the Council do about it.

15. During the external review, Council provided OIC with a submission²³ explaining its search and recordkeeping process:

For this 2025 application, search requests were sent to the following work areas, who are all of the areas likely to have possession of, or have access to, documents relating to this RTI application:

- Compliance and Regulatory Services Branch
- Development Services Branch
- Customer Services Branch (Search & Certificates Unit)

It should be noted that the applicant lodged a previous access application in 2017 for documents relating to [nominated address], for the period 1997 to 1 June 2017. 489 pages were considered in this application...I have gone through the documents considered in this 2017 application to see if there were any documents relating to the two specific issues in your letter dated 15 May 2025 that were raised by the applicant in her external review submission. Given that the 2017 application was lodged within only a couple of years after the date period of circa 2016, then that application would have more likely uncovered the documents the applicant is referring to, as opposed to an applicant lodged 9 years afterwards.

I was unable to locate any documents relating to the two specific issues cited in your letter amongst the documents considered as part of the 2017 RTI application. Additionally, they were not located as part of the searches for the 2025 RTI application either.

If such documents did exist, then I believe that they would have been filed/stored in one of the following likely locations, all of which were extensively searched (by different officers) for the purposes of both the 2017 application and the 2025 application:

- DART (Development and Regulatory Tracking) system – searches (by officers in multiple areas) on address, complaint numbers, application numbers
- CMX (Correspondence Management Exchange) system – searches on address, DART complaint numbers, application numbers
- Properties on the Web system – searches (by officers in multiple areas) on address
- Content Manager (Council's electronic records management system) – searched and retrieved various history file documents

16. Council also provided OIC with copies of Search Action Forms completed by Council officers within the relevant business units that undertook searches, as outlined in the above submission.

²³ Dated 29 May 2025.

Findings

17. I have examined the search records and submissions provided by Council during this review. I am satisfied that in undertaking searches in response to this application, Council contacted officers with relevant knowledge and expertise and asked them to undertake searches in areas where it would be reasonable to expect documents responding to the terms of the application would be found.
18. As set out in paragraph 12 above, the access application was framed in wide terms, spanning a 30 year time period. Council has explained that it undertook searches of its recordkeeping systems with relevance to the terms of the application, including:
 - DART (Development and Regulatory Tracking) system
 - CMX (Correspondence Management Exchange)
 - Properties on the Web system
 - Content Manager (Council's electronic records management system)
19. Council's search records, and its submission set out above, also confirm that search terms used in searching those databases included the subject address and reference/complaint numbers provided in the application. Having examined the documents that were located by Council through those searches, I am satisfied that it was reasonable for Council to undertake searches in those locations as they represent the key recordkeeping systems that Council maintains in relation to properties, complaints, permit, development and related building matters. I am satisfied that the reasonableness of those searches is also demonstrated by the significant number of relevant documents that were located through searches of those locations.
20. In considering the applicant's specific concerns about missing documents set out at paragraph 14, I have taken into account Council's submission that the applicant made an earlier application in 2017, in respect of which over 480 documents were located, and that Council examined those documents for the purpose of this application to determine if any addressed the applicant's specific concerns. Given that the applicant's concerns are about issues that arose in 2016, I am inclined to agree with Council's view that if documents about those matters *were* held by Council, it is reasonable to expect they would have been identified through the application that was made closer to that point in time. As it stands, Council has not been able to locate documents about the 2016 matters and I am satisfied it has taken reasonable steps to establish that those documents cannot be located.
21. I acknowledge that the applicant has ongoing concerns about building and development matters pertaining to the property and that she is seeking to locate as much information as possible to interrogate those matters and pursue further lines of inquiry. However, the question for me to determine under the RTI Act is whether Council has taken all reasonable steps to locate relevant documents; the test is not whether Council has taken all *possible* steps. While I recognise that the located documents have not addressed the applicant's concerns about a '*survey error*' and that she has outstanding questions about Council's actions at the time, I am unable to identify any further steps that it would be reasonable for Council to take to locate further relevant documents.²⁴
22. As I have already noted, the application was framed in wide terms, seeking documents across a 30 year time period. Taking into account the scope of the application, the documents Council has located, the various locations searched, search terms used, and

²⁴ I am also satisfied that under the RTI Act, Council is not obliged to answer questions posed by an applicant, see *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at [30].

Council's recordkeeping practices, I am satisfied that Council has undertaken reasonable searches on the application, and that access to further documents may be refused on the basis they do not exist, in accordance with section 47(3)(e) and 52(1)(a) of the RTI Act.²⁵

DECISION

23. For the reasons set out above, I vary the reviewable decision²⁶ and find that Council has taken all reasonable steps to locate documents responding to the terms of the application and that access may be refused to further documents under section 47(3)(e) and 52(1)(a) on the basis they do not exist.
24. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Katie Shepherd
Assistant Information Commissioner

Date: 12 February 2026

²⁵ Based on the information available to me, I do not consider the requirement for Council to conduct back up searches under section 52(2) of the RTI Act is enlivened.

²⁶ Under section 110(1)(b) of the RTI Act.