



Decision and Reasons for Decision

Citation:	<i>Mineralogy Pty Ltd and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development [2026] QICmr 52 (30 March 2026)</i>
Application Number:	318417
Applicant:	Mineralogy Pty Ltd ACN 010 582 680
Respondent:	Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development
Decision Date:	30 March 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - scope of application - reasonableness of searches - nonexistent or unlocatable documents - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development (**Department**)¹ under the *Right to Information Act 2009 (Qld)* (**RTI Act**)² for access to various documents related to declarations made under the *Vegetation Management Act 1999 (Qld)* in 2020 and 2022.³
2. The Department initially identified over 12,000 documents responsive to the application and obtained the applicant's agreement to narrow the scope.⁴ Despite multiple agreed extensions of time to the processing period, the Department did not make a decision on the application within the prescribed RTI Act timeframe⁵ and was therefore taken to have made a 'deemed decision' refusing access to all requested documents.⁶
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of the deemed decision.⁷ During the course of the review, 185 pages in total were released to the applicant by the Department. Initially, the Department released 46 pages, and later in the review, after negotiations with OIC around interpretation of scope of the application, a further 139 pages were released.

¹ At the time of the access application, the agency was known as the Department of Resources, however, following machinery of government changes, the name of the agency changed. For the purpose of this decision, the respondent agency is the Department named in these reasons.

² 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. As the access application was made prior to 1 July 2025, 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.

³ Access application dated 26 February 2024.

⁴ The Department issued a notice of intention to refuse to deal under section 42 of the RTI Act on 9 May 2024 and the applicant confirmed an agreed narrowed scope to the Department on 24 May 2025.

⁵ A decision was due to be made on 15 January 2025.

⁶ Section 46 of the RTI Act.

⁷ External review application dated 16 January 2025.

4. OIC undertook third party consultation in relation to some of the information located by the Department, and reached the view that access to third-party information in the documents could be refused. The applicant did not raise concerns in relation to the refusal of access to the third-party information. Rather, the applicant's concerns centered around whether the Department had located all relevant documents falling within the agreed narrowed scope of the application. Accordingly, the issue for determination in this review is whether access to further documents falling within the narrowed scope of the application may be refused on the basis they are nonexistent.
5. For the reasons set out below, I vary the Department's deemed decision and find that access to further documents may be refused under section 47(3)(e) of the RTI Act on the basis they are nonexistent under section 52(1)(a) of the RTI Act.

Relevant law

6. The right of access to documents of an agency provided for by the RTI Act⁸ is subject to certain limitations including grounds for refusing access. Relevantly, access to a document may be refused if it is nonexistent or unlocatable.⁹ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁰ 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.¹¹
7. 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.¹² 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 a case, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are explained. 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.
8. 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.¹³ The Information Commissioner also has the power to require additional searches be conducted on an external review.¹⁴ However, the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*', rather, the Information Commissioner relies on the agency's officers to search for relevant documents.¹⁵
9. 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.¹⁶ However, where the issue of missing documents is raised, the applicant bears a practical onus of

⁸ Section 23 of the RTI Act.

⁹ Sections 47(3)(e) and 52 of the RTI Act.

¹⁰ Section 52(1)(a) of the RTI Act.

¹¹ Section 52(1)(b) of the RTI Act.

¹² 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].

¹³ Section 130(2) of the RTI Act.

¹⁴ Under section 102 of the RTI Act

¹⁵ *Webb v Information Commissioner* [2021] QCATA 116 at [6].

¹⁶ Section 87(1) of the RTI Act.

demonstrating that the agency has not discharged its obligation to locate all relevant documents.¹⁷ Suspicion and mere assertion will not satisfy this onus.¹⁸

Searches, evidence and submissions

10. The agreed narrowed scope of the access application is set out below, excluding ‘*all the responsive documents held by Legal Services*’:¹⁹

For the period 1 April 2020 to 31 December 2020 (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 of Resources (formerly the Department of Natural Resources, Mines and Energy) (hereinafter “the Department”), or the then chief executive of the Department, or the Director-General of the Department, or any personnel of the Department, and any of (ii) [named mining companies]; and*
- (c) any correspondence (including electronic communications) and all attachments to any such correspondence between any personnel of the Department,*

concerning any of the following:

- (A) the declaration of the ... as a Voluntary Declaration Area made under ... the Vegetation Management Act 1999 on or about ... 2020 and/or*
- (B) the declaration of Declared Area ... made under the Vegetation Management Act in or about ... 2022.*

11. Initial searches conducted by the Department identified 12,985 documents responsive to the original scope of the application.²⁰ Search records provided by the Department reveal that:²¹

- the documents were located as a result of searches within the Natural Resource Assessment and In-House Legal business units and the Office of the Director-General
- locations searched include Network drives, eLVAS cases and interactions, CIRaM, emails, MS Teams, calendars, diaries, IT accounts of ex-employees and eDOCS; and
- search terms used include relevant terms and reference numbers relating to the declared areas and the named mining companies.

12. As set out above, 185 pages were disclosed to the applicant during the review process, following third party consultation and negotiations regarding interpretation of the narrowed scope. In summary, those documents included correspondence with named mining companies, or companies acting on their behalf, and internal departmental communications regarding the declared areas.

13. Despite the release of those documents, the applicant maintained their concerns about the adequacy of searches as follows:²²

¹⁷ *Mewburn and Department Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

¹⁸ *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].

¹⁹ As confirmed in the applicant’s letter to the Department dated 24 May 2024.

²⁰ As set out in the Department’s notice of intention to refuse to deal to the applicant dated 9 May 2024, which identified that 1,215 documents comprised general correspondence and 11,770 documents comprised legal documents.

²¹ Provided to OIC on 25 March 2026.

²² Submissions dated 10 March 2026.

- OIC's conclusion that all reasonable searches have been conducted *'is premature'*
- the location and disclosure of additional documents during the external review *'indicates that the Department's earlier assessment of the application was incomplete'*
- the location of responsive documents during the external review process *'raises a reasonable question as to whether further documents may exist that have not yet been identified'*; and
- OIC *'should not conclude that the Department has undertaken all reasonable searches until the Department has confirmed that its searches were conducted based on the correct interpretation of the scope.'*

Findings

14. I have examined the search records and submissions provided by the Department during this review. I am satisfied that in undertaking searches in response to the access application, the Department contacted officers with relevant knowledge and expertise and asked them to undertake searches in the key recordkeeping systems that the Department maintains in relation to declared areas. The Department's search records also confirm that search terms used in searching those systems included relevant terms and reference numbers related to the nominated declared areas.
15. I acknowledge that the Department originally took a different view to the applicant on interpretation of the narrowed scope of the application. However, this was resolved during the review process, and the 139 pages which had originally been excluded by the Department on the basis of scope, were released to the applicant.
16. I also recognise that, in view of the large number of documents that were originally located by the Department (over 12,000 pages), the applicant considers that more documents should have been identified as falling within the narrowed scope. The purpose of the consultation process in sections 41 and 42 of the RTI Act²³ is to achieve agreement between an agency and applicant on application terms that are manageable for an agency to process. As such, a narrowed scope will set parameters of the searches. While the searches in this case were conducted on the original scope, I am satisfied that the narrowed scope represents a subset of the original scope such that the broader searches that were performed by the Department effectively incorporated searches for documents falling within the narrowed scope. I am also satisfied that on external review, the Department subsequently exercised its expertise and knowledge to review the original set of documents to identify relevant documents falling with the narrowed scope. I also note that most of the original set of documents located prior to the scope narrowing were held by the legal unit and the applicant specifically excluded these from the narrowed scope.²⁴
17. Based on the terms of the narrowed scope and the nature of the released documents, I do not consider it would be reasonable for the Department to interrogate the original set of documents any further to search for documents that *may* fall within the narrowed scope. Further, I do not consider it would be reasonable for the Department to undertake any additional searches of its recordkeeping systems, given the searches already conducted as described in paragraph 11 above.
18. Taking into account the narrowed scope of the application, the documents located, and the Department's searches and recordkeeping practices, I am satisfied that the Department has undertaken reasonable searches in this case, and that access to further

²³ Which was undertaken by the Department during the processing period of the access application.

²⁴ See footnotes 19 and 20 above.

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

19. For the reasons set out above, I vary the reviewable decision²⁶ and find that access to any further documents relevant to the narrowed scope of the access application may be refused under section 47(3)(e) and 52(1)(a) of the RTI Act on the basis they are nonexistent.
20. 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.



Katie Shepherd
Assistant Information Commissioner

Date: 30 March 2026

²⁵ Based on the information available to me, I do not consider the requirement for the Department 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.