



Decision and Reasons for Decision

Citation: Q90 and Department of Families, Seniors, Disability Services and Child Safety [2026] QICmr 99 (12 June 2026)

Application Number: 319050

Applicant: Q90

Respondent: Department of Families, Seniors, Disability Services and Child Safety

Decision Date: 12 June 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for electronic child safety documents of the applicant's late child - whether the existence of responsive information can be neither confirmed nor denied - section 55 of the *Right to Information Act 2009* (Qld) (RTI Act)

DECISION

I affirm¹ the decision of the Department of Families, Seniors, Disability Services and Child Safety (**Department**) to neither confirm nor deny the existence of the documents to which access is sought, on the basis that those documents would, if they existed, contain prescribed information.

This means that no further information is to be released to the applicant.

My reasons for the decision follow.



K Zaidiza
Manager, Right to Information

Date: 12 June 2026

¹ Under section 110(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

REASONS FOR DECISION

Background

1. The applicant applied² to the Department under the RTI Act for access to electronic child safety documents about their deceased child.
2. The Department decided,³ under section 55 of the RTI Act, to neither confirm nor deny the existence of the documents sought by the applicant.
3. The applicant lodged⁴ an internal review of the Department's decision. The internal review decision upheld the original decision to neither confirm nor deny the existence of the documents sought.⁵ The applicant then applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of that decision.
4. As part of the external review, OIC conveyed a preliminary view⁷ to the applicant that the Department was entitled to neither confirm nor deny the existence of documents they sought. The applicant disagreed with the preliminary view and provided submissions in support of their position.⁸
5. Therefore, the issue for determination in this review is whether the Department was entitled, under section 55 of the RTI Act, to neither confirm nor deny the existence of the documents sought by the applicant.

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).
7. I have also had regard to the Human Rights Act 2019 (Qld) (**HR Act**), particularly the rights to seek and receive information and privacy and reputation.⁹ I consider a decision-maker will be '*respecting, and acting compatibly with*' those rights, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹⁰ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

² On 26 August 2025.

³ Decision dated 29 August 2025.

⁴ On 19 September 2025.

⁵ Decision dated 15 October 2025. This is the *reviewable decision* in this matter.

⁶ On 4 November 2025.

⁷ On 18 March 2026.

⁸ Submissions dated 7 April 2026 and 4 June 2026.

⁹ Sections 21(2) and 25 of the HR Act.

¹⁰ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*... 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 FOI Act.*' I further note that OIC's approach to the HR Act (as 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 Judicial Member DJ McGill SC saw '*no reason to differ*' from OIC's position).

Relevant law

8. Under the RTI Act, an individual has a right to be given access to documents of an agency.¹¹ However, this right is subject to certain limitations, including grounds for refusal of access.¹²
9. One such limitation is comprised in section 55 of the RTI Act. Section 55 allows a decision maker to neither confirm nor deny the existence of a document which, if it existed, would contain prescribed information.
10. ‘Prescribed information’ is defined¹³ as:
 - (a) exempt information mentioned in schedule 3, section 1, 2, 3, 4, 5, 9 or 10; or
 - (b) personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b).
11. This provision is intended to apply in situations where, due to the specific wording of the request, revealing that the agency does, or does not, have documents in response to an application, would reveal information to which an agency would normally be entitled to refuse access.
12. Determining this issue essentially requires a decision maker to conduct a hypothetical public interest¹⁴ balancing exercise, making a judgement as to where the balance of the public interest would lie, were requested documents to exist. This involves a notional application of the public interest balancing test prescribed in section 49 of the RTI Act, including identifying public interest factors that would favour disclosure and nondisclosure, assuming the existence of requested documents.¹⁵
13. The Department has the onus in this review of establishing that the decision under review was justified or that the Information Commissioner should give a decision adverse to the applicant.¹⁶

Applicant submissions

14. During external review, the applicant has provided submissions¹⁷ which I have summarised as follows:

¹¹ Section 23 of the RTI Act.

¹² Section 47 of the RTI Act.

¹³ In schedule 5 of the RTI Act.

¹⁴ The term ‘public interest’ refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, ‘The Public Interest: We Know It’s Important, But Do We Know What It Means’ (2006) 48 AIAL Forum 12, 14.

¹⁵ *Nadel and Queensland Police Service* [2020] QICmr 19 (6 April 2020) at [15].

¹⁶ Section 87(1) of the RTI Act.

¹⁷ With external review application dated 4 November 2025, submissions dated 7 April 2026 and 4 June 2026.

- the applicant seeks information to understand whether the Department adequately responded to risks faced by their deceased child
 - the applicant is aware of the late child's contact with the Department and stated that *'[p]rior to...death, my [child] personally informed me that...had been in contact with Child Protection Services regarding concerns held about welfare and safety'*
 - there is a strong public interest in scrutiny of the Department's decisions where a child has died *'[t]his information is significant because it demonstrates that concerns regarding [child]'s safety were not limited to disclosures made by [individual]. Concerns were independently raised by another individual with direct knowledge'*
 - the refusal of this information significantly disadvantages the applicant in court proceedings
 - the availability of court processes to obtain this information via subpoena should not be used as a reason to deny the applicant rights under the RTI Act; and
 - section 55 of the RTI Act should not apply to prevent confirmation of the existence of the requested records.
15. To the extent these submissions relate to the Department's reliance on section 55 of the RTI Act and/or the hypothetical public interest balancing test, I have considered them in this decision.

Department's submissions

16. The Department's decision¹⁸ explained that *'if such documents did exist, they would contain the personal information of the specified person and other third parties'* and when considering the disclosure of these documents (if they existed) *'would, on balance, be contrary to public interest'*.
17. Additionally, the Department also provided that, given the role and function of the Department in administering the *Child Protection Act 1999* (Qld) (**CP Act**), if the Department were to hold any information responsive to the request, it is also reasonable to expect that this information would be refused as exempt information under schedule 3, section 12 of the RTI Act as its release is prohibited by the CP Act. Whilst this specific exemption is not listed as *'prescribed information'*,¹⁹ I have considered it in the assessment below given Parliament has already determined that disclosure of this type of information is contrary to the public interest.

Findings

18. Nothing in these Reasons for Decision should be taken to confirm nor deny that the documents sought in the access application exist.
19. For section 55 of the RTI Act to apply to the applicant's access application, I must be satisfied that, based on the terms of that access application, the requested

¹⁸ On the 15 October 2025.

¹⁹ As defined in paragraph 10.

documents would, if they existed, contain ‘prescribed information’.²⁰ As noted above, one type of prescribed information is personal information, the disclosure of which would, on balance, be contrary to the public interest.

Would the documents (if they exist) comprise or contain personal information?

20. In terms of the ‘personal information’ element of this type of prescribed information, as I am making findings in relation to a ‘neither confirm nor deny’ issue, I am limited in the level of detail I can provide, however, given the wording of the application, it is reasonable to expect that, if the requested documents exist, they would contain the personal information of the deceased child and other individuals. It is also reasonable to expect this would be in the context of the Department making decisions relating to the safety, wellbeing and best interests of a child, given the role and function of the Department in administering the CP Act.
21. Therefore, if the requested documents were to exist, it is likely that they would contain the deceased child's personal information, including detail of their communications with the Department, including matters reported, concerns raised, assessments undertaken, and information provided in confidence. Such records would also likely identify personal information about other individuals, including notifiers, family members, third parties and other persons involved in the matters.

Would disclosure of the documents (if they exist) be contrary to the public interest?

22. In terms of the ‘disclosure of which would, on balance, be contrary to the public interest’ element of this type of prescribed information, the RTI Act explains the steps that the decision-maker must take in deciding the public interest.²¹ It also identifies a non-exhaustive list of factors in Schedule 4 that may be relevant to deciding the balance of the public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.
23. I do not consider any irrelevant factors²² arise in this case and I have not taken any into account in making this decision.
24. I acknowledge that if the requested information exists, its disclosure could reasonably be expected to reveal actions taken by the Department, reveal reasons and background information for the Department’s decisions in relation to the applicant’s late child and enhance the government’s accountability to some extent.²³ However, Parliament has already determined that disclosure of information identifying person(s) who made notification(s) under the CP Act or information about individuals other than the applicant that has been given or received by a person performing functions under or relating to the administration of the CP Act

²⁰ As defined in paragraph 10.

²¹ Section 49(3) of the RTI Act.

²² Schedule 5, part 1, items 1–4 of the RTI Act

²³ Giving rise to the factors favouring disclosure at schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

would be contrary to the public interest and such its disclosure is prohibited.²⁴ I therefore afford these factors low weight.

25. The applicant has raised their relationship with their deceased child as an eligible family member to be considered as a factor favouring disclosure.²⁵ The weight given to this factor will vary depending on circumstances such as the nature of the relationship, the sensitivity of the information and the extent to which the information is or may be known to the applicant. Equally, an additional factor favouring nondisclosure applies where the personal information is of a deceased individual, the applicant is an eligible family member of the deceased person, and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive.²⁶
26. In the circumstances of this case, the information sought concerns the applicant's late child, and if exists, it has not been disclosed and remains private. In such circumstances, the privacy interests of the late child remain high and may be adversely affected by disclosing this information. I therefore afford the eligible family member factor favouring disclosure low weight. The corresponding factor favouring nondisclosure is addressed further below.
27. The applicant also submits that they were aware of the involvement of the deceased child with the Department and the notifications made by other individuals. However, to acknowledge the existence of a file in the applicant's late child's name (should it exist) would be to disclose the very information that section 55 of the RTI Act is designed to protect. I have also considered that, even if documents of the kind described by the applicant existed, substantial portions of the information would likely be prohibited from disclosure under the CP Act²⁷ or disclosure would, on balance, be contrary to the public interest due to the highly sensitive nature of the information, the confidentiality on child safety reporting processes,²⁸ and the privacy rights of third parties.
28. In this regard, the information would be expected to contain the personal information of multiple individuals other than the applicant, and its disclosure could reasonably be expected to result in an unreasonable invasion of those individuals' privacy enlivening factors favouring nondisclosure of the information.²⁹
29. The applicant submits that low weight should be given to the protection of their late child's right to privacy. Whilst I accept that deceased people do not have privacy for the purpose of the IP and RTI Acts, the eligible family member factor favouring nondisclosure mentioned at paragraph [25] above is applicable. Further, the harm factor regarding personal information, as defined in the IP Act, applies to '*personal information of a person, whether living or dead*'³⁰ also applies.

²⁴ Schedule 3, section 12(1) of the RTI Act and section 186 to 188 of the CP Act. This gives rise to a factor favouring non-disclosure in schedule 4, part 3, item 22 of the RTI Act.

²⁵ Schedule 4, part 2, item 9 of the RTI Act

²⁶ Schedule 4, part 3, item 5 of the RTI Act.

²⁷ Giving rise to a factor favouring non-disclosure in schedule 4, part 3, item 22 of the RTI Act.

²⁸ Schedule 4, part 3, item 16 of the RTI Act.

²⁹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

³⁰ Schedule 3, part 4, section 6 of the RTI Act.

30. This means that when considering a deceased person's information, the protection of their personal information and privacy is to be assessed in the same way as it would apply to information of the living and does not diminish the importance of protecting the deceased child's personal information and privacy.³¹ As such, I afford these factors significant weight.
31. I have also considered that the CP Act has strict confidentiality provisions concerning the identity of notifiers and information about individuals other than the applicant that has been given or received by a person performing functions under or relating to the administration of the CP Act.³² Disclosure of the requested information, if it exists, would be prohibited by the CP Act and I afford this factor³³ significant weight.
32. In addition, the Department relies upon information provided by a range of sources to enable it to perform its functions. I am satisfied that disclosing notifying information, if it exists, would, discourage individuals from coming forward with information and cooperating with the Department, as they may consider that their identity and other personal information could be released to other individuals. This, in turn, could reasonably be expected to negatively impact the Department's ability to obtain this type of information in the future. As such, I afford this factor³⁴ substantial weight.
33. The applicant submitted³⁵ that access to the information would be expected to contribute to the administration of justice generally and for the applicant³⁶. Furthermore, it may assist them in legal proceedings, and its refusal significantly disadvantages the applicant in court proceedings. I however note that disclosure under the RTI Act process is not an adjunct to court processes – that is, an access application is not part of, linked to or required to assist in any court proceedings. Accordingly, information would not be released under an access application merely because it is relevant to court proceedings. I also note the applicant's ability to obtain, via court disclosure mechanisms, access to the documents sought (if those exist). As such, I afford the administration of justice factors, both generally and for the applicant, low to no weight.
34. The applicant submitted³⁷ that the availability of court processes to obtain this information via subpoena should not be used as a reason to deny the applicant rights under the RTI Act. Whilst I note the applicant's ability to seek or compel the provision of documents (if those exist) in the event that court proceedings are in place, the question for consideration in this review is whether confirming or denying the existence of the information would itself disclose information that is contrary to the public interest under the RTI Act. In that regard, on balance, I am satisfied that

³¹ And would still carry sufficient weight to overcome any applicable disclosure factors. No irrelevant factors arise for consideration in these circumstances.

³² Under sections 186–188 of the CP Act.

³³ Schedule 4, part 3, item 22 of the RTI Act.

³⁴ Schedule 4, part 3, item 16 of the RTI Act.

³⁵ External review application dated 4 November 2026, and submissions dated 7 April 2026.

³⁶ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³⁷ Submissions dated 7 April 2026 and 4 June 2026.

if the information sought exists, the public interest factors favouring its nondisclosure outweigh those favouring its disclosure.

35. Whilst the applicant submitted³⁸ that if the requested documents were to exist, the Department *'should be required to process the application in the ordinary way and provide edited copies with third-party information removed'*, for the reasons above, the factors favouring nondisclosure of the information (if exists) are determinative in the circumstances of this case. Therefore, the Department was entitled to neither confirm nor deny the existence of the documents to which access is sought, on the basis that those documents would, if they existed, contain prescribed information, namely, personal information, the disclosure of which would, on balance, be contrary to the public interest.

Conclusion

36. The above are the reasons for my decision set out at page 1.

³⁸ External review application dated 4 November 2026, and submissions dated 7 April 2026 and 4 June 2026.