



Decision and Reasons for Decision

Citation:	<i>K77 and Department of State Development and Infrastructure (Office of Industrial Relations) [2024] QICmr 24 (5 June 2024)</i>
Application Number:	317357
Applicant:	K77
Respondent:	Department of State Development and Infrastructure (Office of Industrial Relations)
Decision Date:	5 June 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - application for information concerning a particular complaint made to the Electrical Safety Office - whether access to further 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 Office of Industrial Relations (**OIR**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) seeking access to three categories of information, which generally relate to complaints made to the Electrical Safety Office (**ESO**).²
2. OIR located 13 pages and one video file as relevant to item 2 of the application, released 12 pages and one video file and decided³ to refuse access to one mobile telephone number on the remaining located page. In respect of the other application items, OIR decided to:
 - refuse to deal with item 1,⁴ on the ground that the applicant had previously applied to access these documents and had not provided a reasonable basis for again seeking to access to them; and
 - refuse access to information responsive to item 3, on the ground that it does not exist.⁵

¹ Access application dated 17 April 2023. OIR is currently part of the Department of State Development and Infrastructure.

² The timeframe specified in the access application is 1 January 2019 to 26 April 2023.

³ Decision dated 5 June 2023.

⁴ Pursuant to section 43 of the RTI Act.

⁵ Pursuant to sections 47(3)(e) and 52(1)(a) of the RTI Act.

3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for review of OIR's decision.⁶
4. During the review, the applicant accepted that documents responsive to item 3 of the application did not exist and he did not seek to contest OIC's view that access to the mobile telephone number could be refused. OIR also provided the applicant with further copies of documents that had previously been disclosed to him. However, the applicant maintains that the final assessment, report, findings or outcome requested in item 1 of the application exists and has not been located by OIR.
5. For the reasons set out below, I set aside OIR's decision to refuse to deal with item 1 of the access application⁷ and find that access may be refused to any further information on the grounds that it is nonexistent.

Background

6. In August 2021, the applicant forwarded complaint information to the ESO, including about an incident that he states occurred in 2020 (**Incident**). The complaint about the Incident was allocated event number 305529 and assessment number 490531, as referenced in item 1 of the access application.
7. On 15 October 2021, the applicant applied to OIR (OIR reference 220159) (**First Application**) requesting a wide range of documents generally relating to the complaints he had made to the ESO. OIR located over 1600 documents relevant to the First Application and released the majority of those to the applicant.⁸
8. As the applicant considered certain information was missing from those disclosed documents, he lodged a fresh access application with OIR on 4 February 2022 seeking the following documents (OIR reference 220288) (**Second Application**):
 1. [An individual's] *emails with EQL and procedures/ WMS/SWMS concerning the LV Crossarm replacement. The Risk Assessment and Traffic Control Documents from EQL.*
 2. [Officer C] and [Officer A] *factual confirmation from [entity X] of Phone conversations and messages and allegations concerning statements made by [entity X].*
 3. *Confirmation of a Signature from the Complainant on a [entity X] Toolbox document.*
 4. *OIR/ESO procedural documents and notes concerning all the complaints*
 5. [Officer A's] *final report on findings of allegations from the complainant and verification of Documents with correct dating.*
 6. [entity X] *Injury Management Procedures.*
9. OIR did not make a decision in respect of the Second Application within the required statutory timeframe and was therefore taken to have made a deemed decision refusing access to the requested documents.⁹ The applicant sought external review of that deemed decision (external review 316630)¹⁰ and, in that external review process, OIR disclosed documents to the applicant.¹¹ In accordance with OIC's resolution

⁶ External review application dated 5 June 2023.

⁷ Pursuant to section 43 of the RTI Act.

⁸ OIR released 1491 pages and 3 video files and decided on 18 January 2022 to refuse access to 20 pages and parts of 146 pages. OIR's decision in respect of the First Application was the subject of completed external review 316572, which was finalised on 29 September 2022. During that external review, the applicant narrowed his request to a particular investigation report and further information was disclosed to the applicant.

⁹ Under section 46(1) of the RTI Act. OIR confirmed this to the applicant by letter dated 27 April 2022.

¹⁰ On 23 March 2022.

¹¹ The applicant has variously submitted in this external review that:

- OIR had '*failed to deliver the documents in the date advised to the OIC (External review 316630) and failed to deliver the documents in the request by the OIC in that review*' (External review application)
- the documents were not received '*on the allocated time*' (letter attached to applicant's email dated 5 January 2024)

processes, external review 316630 was closed after this document disclosure.¹² Following that review closure, the applicant submitted that '[t]he information given by OIR was incorrect, and not as per the request'¹³—more specifically, the applicant stated '*Information not included (as per 316630) [Officer A's] final report on findings of allegations from the complainant and verification of Documents with correct dating. (Investigation 305529)*'.¹⁴

10. On 17 April 2023, the applicant lodged the access application referenced in paragraph 1 above (OIR reference 230424) (**Third Application**) seeking:

1. *Electrical Safety Office final assessment, report, finding, outcome concerning event number 305529, assessment number 490531 concerning [entity X] complaint made by applicant*
2. *Information or assessment concerning complaint made on crane incident by applicant to the ESO in addition to complaint concerning Moola (Queensland 4406)*
3. *Emails concerning crane incident (as above) from the ESO to [entity X] and [entity X] to the ESO.*

11. In respect of item 1 of the Third Application (**Item 1**):

- OIR decided that the application did not disclose a reasonable basis for again seeking access to the requested documents; and
- in this review, the applicant submitted that '*This document was originally requested in October 2021 under the application OIR 220159. The document was not delivered under the application, and I applied for it again*'.¹⁵

12. The significant procedural steps taken during the external review are set out in the Appendix to this decision.

Reviewable decision

13. The decision under review is OIR's decision dated 5 June 2023.

Issue for determination

14. As noted in paragraph 4, some issues were resolved during the review.¹⁶

15. In respect of Item 1, the applicant submitted that he did not receive these documents or '*any documents concerning the assessment or findings*' of a particular officer about the Incident.¹⁷ Notwithstanding the submission referred to in paragraph 11 above, the applicant also contested that the documents requested in Item 1 had been requested in

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- he has never received documents under the last request 316630 (letter attached to applicant's email dated 14 November 2023); and
 - OIR had delivered the wrong documents (letter attached to applicant's email dated 1 April 2024).

¹² This was confirmed in an email sent to the applicant on 8 December 2022 at 11.09am.

¹³ Applicant email received 8 December 2022 at 12.10pm.

¹⁴ Applicant email received 8 December 2022 at 1.53pm. As a result of this post closure submission, I notified (i) the applicant (by email dated 13 December 2022) that it was open to him to lodge a fresh application with OIR for the particular document he considered to be missing; and (ii) OIR (by email dated 13 December 2022) of the received post closure submission; that we had explained to the applicant that he was entitled to make a fresh application to access application to access documents he considered to be missing; and while such a new application may trigger the refusal to deal ground in section 43 of the RTI Act we would appreciate OIR processing any such new application if it was made by the applicant.

¹⁵ External review application.

¹⁶ That is, the applicant accepted (in the letter attached to his email dated 14 November 2023) that documents responsive to item 3 of the Third Application did not exist and he did not seek to contest OIC's view that access may be refused to a mobile telephone number within the documents which OIR located and disclosed in respect of item 2 of the application.

¹⁷ Letter attached to the applicant's email dated 8 September 2023. I have referred to the officer named in the applicant's submissions as 'Officer A' in this decision.

the First Application.¹⁸

16. When notifying OIR that the external review application had been accepted, OIC asked OIR to confirm whether the documents requested in Item 1 had been located or considered in respect of the Second Application.
17. In response, OIR submitted¹⁹ that, in processing the First Application, the applicant was granted access to the whole ESO file in relation to the Incident²⁰ and there was no other information available to release to the applicant in relation to the Incident. OIR also provided²¹ the following explanation to OIC about the final assessment report sought by the applicant:

Given the applicant's concerns regarding this report, I discussed the existence of the report with [Officer A] from ESO ... when I processed the original request. [Officer A] explained that not every event requires a formal investigation report. This event did not require one and therefore a formal investigation report into the incident does not exist.

As part of his investigation into the incident, [Officer A] created an RA summary sheet. [Officer A] has explained that this is his summary of the file so it is similar to a final investigation report. This summary sheet was released to the applicant under RTI application 220159 however, OIR is happy for this summary sheet to be provided to the applicant again.

18. During the review, OIR provided²² the applicant with a further copy of the RA summary sheet referenced above.²³ The applicant maintained that the documents requested in Item 1 had not been provided—he submitted that he had not requested the disclosed 'cover sheet' and suggested that an Employers log should contain the final assessment/findings.²⁴ The OIR subsequently provided²⁵ the applicant with a copy of the requested 'Employers log'.²⁶ Notwithstanding these disclosures, the applicant maintained that the disclosed documents are not responsive to Item 1 and a final assessment/finding in relation to the Incident (**Final Incident Report**) exists and has not been provided to him.
19. Therefore, the issue to be determined is whether access to any further documents relevant to Item 1 (including the Final Incident Report) may be refused on the ground they are nonexistent or unlocatable.²⁷

Evidence considered

¹⁸ In the letter attached to the applicant's email dated 8 September 2023, he stated: '*In this application that the RTI office refused, due to the same application material applied for. This is false I had not applied and the application relates to nothing to do with the documents of [Officer A] s [sic] Final Assessment in reference to 305529. The application had no correlation to previous application*'. In the letter attached to the applicant's email dated 17 October 2023, he further submitted '*In review of the application of October 2021 no correlation was sighted to the application 230424 made in comparison to October 2021*'.

¹⁹ OIR's letter to OIC dated 17 July 2023.

²⁰ This was also confirmed in OIR's decision under review.

²¹ OIR's letter to OIC dated 17 July 2023.

²² By email to the applicant dated 18 October 2023.

²³ On the basis that OIR had identified this document to be the closest document in existence to a 'final assessment/finding' in respect of the Incident. This document is titled *Electrical Safety Compliance OIR Event 305529 Response Assessment (RA) File Cover Sheet*. For ease of reference, I will refer to this document as being the 'Response Assessment summary sheet'.

²⁴ Letter attached to the applicant's email dated 14 November 2024.

²⁵ By email to the applicant dated 20 March 2024.

²⁶ Being a document titled Employer History Report CIRR00010 (which had initially been disclosed to the applicant in response to an earlier access application). OIR explained (on 9 February 2024) that the Employer History Report is from the database used by Workplace Health and Safety, Queensland to record its actions in relation to workplace incidents.

²⁷ Sections 47(3)(e) and 52(1) of the RTI Act.

20. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
21. The applicant provided OIC with a number of submissions during the external review.²⁸ To the extent the applicant's submissions are relevant to the issue for determination in this review, I have addressed them below.
22. OIC's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies. The applicant's submissions raise a number of concerns that OIC is unable to consider or address on external review and which are not relevant to the issue for determination in this review. Generally, these relate to the applicant's concerns about:
 - what he considers to be false statements the OIR investigator provided to him
 - how OIR dealt with various of his other access applications; and
 - what he considers to be criminal acts and failures by OIR staff.
23. I have also had regard to the *Human Rights Act 2019 (HR Act)*, particularly the right to seek and receive information.²⁹ I consider a decision-maker will be '*respecting and acting compatibly with*' this right and other rights in the HR Act when applying the law prescribed in the RTI Act.³⁰ I have acted in this way in making this decision in accordance with section 58(1) of the HR Act.

Preliminary issues

24. Before considering the issue for determination, it is necessary to deal with certain preliminary matters arising from concerns expressed in the applicant's submissions.
25. The applicant has made various bias allegations³¹—these are based on three main grounds, namely that OIC:
 - failed to act on his complaints about how OIR has processed certain of his access applications
 - failed to act on his concerns about how OIR disclosed documents to him in the previously completed external review 316630; and
 - has reached a different position to that of OIR in relation to Item 1 of the access application.
26. Having carefully considered all of the applicant's bias allegations, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter.³² I am also satisfied that the applicant's external review application has been properly considered on its merits. I have addressed each ground of the applicant's bias allegations in more detail below.

²⁸ As set out in the Appendix.

²⁹ Section 21 of the HR Act.

³⁰ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

³¹ In communications received on 8 September 2023, 17 October 2023, 14 November 2023, 5 January 2024, 15 January 2024, 1 April 2024, 3 May 2024, 10 May 2024 and 13 May 2024.

³² Paraphrasing the principles applying to the determination of apprehended bias (refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

27. During this review, the applicant provided³³ OIC with copies of six complaints (which I understand he had previously submitted to OIR) about how OIR had handled various of his access applications (**Complaint Documents**)³⁴—none of the Complaint Documents relate to OIR’s processing of the First, Second or Third Applications.³⁵ In respect of the Complaint Documents, the applicant contended that that OIC had failed to act on these as he considered OIC was required to do pursuant to OIC’s Complaint Management Procedure, and that this failure evidenced bias.³⁶ More specifically, the applicant submitted:³⁷

The OIC has before acted in bias towards failing of the OIR RTI in action s [sic] to deliver documents and failure to act on complaints of breaches of the RTI Act Section 33 (attached). These complaints were never actioned, in this action the OIC failed to follow their own CMS Policy. The actions of bias were compounded when (OIC) then, instead of actioning these complaints they then proceeded to change the understanding of the Section 33 to assist actions of the RTI Office (email stating the change by the RTI Office).

28. The Complaints Documents are not relevant to the issue for determination in this matter. I also note that OIC’s Complaint Management Procedure is about OIC’s services and conduct, not those of an agency, and OIC’s external review jurisdiction does not extend to investigating complaints about the way in which an agency has handled particular access applications.³⁸ For these reasons, I am unable to consider or address the Complaint Documents in this external review and I consider there is no basis to the applicant’s assertions that ‘failing to act’ on the submitted Complaint Documents constitutes, or is evidence of, actual or apprehended bias.
29. The applicant also raised concerns that, in completed external review 316630, ‘OIR failed to deliver in the date advised to the OIC (External Review 316630) and failed to deliver documents in the request by the OIC in that review’.³⁹ The applicant further contends that OIC ‘failed to gain any proof of delivery as per directive and falsely followed this narrative of the correct delivery... Once again the OIC have acted in bias toward the RTI Office by acted [sic] on statements without proof’.⁴⁰
30. Unlike the Complaint Documents, this bias allegation relates to OIR’s actions during an external review. Under the RTI Act,⁴¹ certain notification requirements arise if the Information Commissioner is of the opinion, at the conclusion of an external review, that there is evidence an agency’s officer has committed a breach of duty or misconduct in the administration of the RTI Act. However, the Information Commissioner is not required to account to an applicant for any action taken, or not taken, under the RTI Act in this regard. Given this, I am unable in this external review to specifically respond to, or take any action in respect of, the applicant’s concerns

³³ By email dated 13 June 2023.

³⁴ Each of these complaint documents alleges failures ‘under the OIC Guidelines’. When sending these documents on 13 June 2023, the applicant indicated he had previously sent copies of them to OIC in December 2022 and January 2023. The applicant also sent further copies of the Complaint Documents to OIC on 4 July 2023 and 17 October 2023.

³⁵ Although three of the Complaint Documents have different titles, they all appear to relate an access application dated 17 March 2022 (OIR reference 220465). The remaining three Complaint Documents relate to (i) an access application dated 31 March 2022 (OIR reference 220380E); (ii) an access application dated 15 April 2022 (OIR reference 220380I); and an access application dated 15 March 2022 (OIR reference 220380A).

³⁶ In his email to OIC on 4 July 2023, the applicant submitted that OIC had failed to act on these complaint ‘as per the CMS’.

³⁷ Letter attached to the applicant’s email dated 17 October 2023.

³⁸ This was confirmed to the applicant on 15 December 2023 and 18 March 2024.

³⁹ External review application. In the applicant’s email dated 4 July 2023, he stated: ‘The OIR RTI failed to deliver the documents as per date, the RTI had sent a link with that was password protected. This was the first time this has happened and they had failed to instruct me on this. The OIC stated that they had made an administrative error in the delivery date. With proof provided, this was false. The OIR RTI had created the documents 3 days after the failed delivery date, so they were aware of this as the document had been produced the following week. Apart from this the OIR RTI failed to deliver the documents requested by the OIC in the external review’. The letter attached to the applicant’s email dated 1 April 2024 reiterated his concerns about the short delay in OIR’s delivery of documents in completed external review 316630.

⁴⁰ Applicant’s email dated 8 September 2023.

⁴¹ Section 113 of the RTI Act.

about the timeliness of OIR's delivery of documents in completed external review 316630. I do however note that the applicant's request for the Final Assessment Report is being addressed in this review and this is the document the applicant asserted, after closure of external review 316630, was missing from the documents that OIR had disclosed (ie in response to item 5 of the Second Application).

31. For these reasons, I am satisfied that the applicant's concerns about document delivery in a prior external review do not evidence actual or apprehended bias in this external review.
32. Finally, the applicant argued that:⁴²

In the OIC assessment 317357, the assessor instead of assessing the OIR RTI 230424 decision letter instead reviewed in total difference to the decision letter. The assessor then attempted to defer the contents of the decision letter in the contexts of the wording of the type of documents requested. Again none of the understanding of any type or correction of the documents when on the original application by the OIR RTI or with the OIC throughout any application. This assessor acted in bias towards the OIR RTI, instead of analyzing the decision letter, the assessor then tried to convey a different approach and attempted to change the narrative towards the OIR RTI.

...
Please note the OIR did not disclose any assessment or information in 220288 and that is why the external review 316630 was made. They had never stated that documents in all of these application [sic] did not exist. It is only now on your final attempts to quash the documents release that you are stating this. The OIR RTI have never stated these do not exist, only the OIC have, giving credence that the OIC have been acting suspiciously.

...
The OIC assessor under this review (317357) attempted to bypass the decision letter of the OIR RTI (230424) by changing the narrative of the decision, in my opinion acting in bias towards the OIR RTI.

33. As I understand it, the applicant has alleged bias because I have relied on a different provision of the RTI Act than OIR did in the decision under review. This bias allegation is without substance.
34. External review by the Information Commissioner is a merits review process of government decisions about access to, and amendment of, documents.⁴³ Under section 95(1) of the RTI Act, the procedure to be taken on external review is, subject to the Act, at the discretion of the Information Commissioner and the Information Commissioner is empowered to make any decision in respect of an access application that could have been made by the agency.⁴⁴ As such, in making a decision, the Information Commissioner⁴⁵ may rely on RTI Act provisions which are different to those relied upon by the agency in the decision under review.
35. Accordingly, in this external review, the applicant's entitlement under the RTI Act to access the information requested in Item 1 was considered afresh. In making this decision about the applicant's access entitlement,⁴⁶ I am not required to rely on the same ground that OIR relied upon in the decision under review. In addition, I consider that the applicant was provided with information, on a number of occasions, which sufficiently explained the Information Commissioner's role on external review and the

⁴² Letter attached to the applicant's email to OIC dated 17 October 2023. The applicant made similar submissions in a letter attached to his email dated 14 November 2023, including that I had made 'a statement untrue of fact and a leaning of bias ...'.

⁴³ This was confirmed to the applicant by letter dated 15 December 2023.

⁴⁴ Under section 105(1)(b) of the RTI Act. This was also explained to the applicant (for example, in a letter to the applicant dated 15 December 2024).

⁴⁵ Or her delegate.

⁴⁶ As a delegate of the Information Commissioner under section 145 of the RTI Act.

limits of the Information Commissioner's external review jurisdiction.⁴⁷ In particular, I explained to the applicant the basis of my preliminary view that access to further documents (including the Final Incident Report) could be refused and I invited the applicant to provide submissions if he did not accept my preliminary view.⁴⁸ In response, the applicant has provided a number of submissions contesting the refusal of access to the Final Incident Report. In these circumstances, I am satisfied that the applicant has been afforded due process in this review.

Relevant law

36. Under the RTI Act, a person has a right to be given access to documents of an agency.⁴⁹ The RTI Act is administered with a pro-disclosure bias.⁵⁰ The RTI Act sets out certain grounds on which access to information may be refused⁵¹ and it is Parliament's intention that these grounds are to be interpreted narrowly.⁵²
37. 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.⁵³ However, access to a document may be refused if it is nonexistent or unlocatable.⁵⁴
38. To be satisfied that a document is nonexistent, an agency must rely on their particular knowledge and experience and have regard to a number of key factors which include:⁵⁵
 - the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities⁵⁶
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
39. By considering the above key factors, a decision maker may conclude that a particular document was not created because, for example, the agency's processes do not

⁴⁷ For example, in letters to the applicant dated 1 November 2023 and 15 December 2023 and an email to the applicant dated 15 January 2024.

⁴⁸ As set out in the Appendix. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

⁴⁹ Section 23 of the RTI Act.

⁵⁰ Section 44(1) of the RTI Act.

⁵¹ Section 47(3) of the RTI Act.

⁵² Section 47(2)(a) of the RTI Act.

⁵³ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102(1) 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 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.

⁵⁴ Sections 47(3)(e) and 52(1) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. A document is 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—section 52(1)(b) of the RTI Act.

⁵⁵ 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 *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

⁵⁶ Particularly with respect to the legislation for which the agency has administrative responsibility and the other legal obligations that fall to the agency.

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. However, if 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 as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

40. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors.⁵⁷
41. Generally, the agency that 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.⁵⁸ However, where an external review involves the issue of missing documents, as is the case here, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.⁵⁹

Analysis

42. OIR relies on the searches and enquiries conducted by its officers to justify its position that reasonable steps have been taken to locate documents responsive to Item 1 and has provided information about its searches and enquiries, as set out below.
43. As referenced in paragraph 17 above, OIR submitted⁶⁰ that, following the disclosure of the ESO file to the applicant in response to the First Application, OIR held no further information in relation to the Incident. OIR further submitted⁶¹ that, in processing the Third Application, searches were undertaken of its relevant electronic record keeping system⁶² and email records,⁶³ using the Event number 305529 and the Response Assessment number for the Incident as the search terms. OIR also confirmed to OIC that, during this external review, further enquiries made with Officer A about the applicant's submission that a Final Investigation Report existed⁶⁴ and Officer A confirmed that:
 - as the Incident did not require preparation of a formal investigation report, no such report was created; and
 - as part of the investigation, a Response Assessment summary sheet was created, being Officer A's file summary, which is similar to a final investigation report.

⁵⁷ Pryor at [21].

⁵⁸ Section 87(1) of the RTI Act.

⁵⁹ *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].

⁶⁰ Submission dated 17 July 2023.

⁶¹ Submission dated 17 July 2023, which attached a completed search record and certification.

⁶² Referred to as 'CISr' in the provided search record and certification.

⁶³ Being those of Officer A and 'ESOAAA'.

⁶⁴ OIR provided copies of its records about these enquiries to OIC.

44. This explanation was conveyed to the applicant,⁶⁵ however, the applicant did not accept the explanation.⁶⁶ Instead, the applicant submitted that he did not believe Officer A's explanation⁶⁷ and contended⁶⁸ that separate evidence confirmed additional documents relevant to Item 1 existed and had not been disclosed by OIR. More specifically, the applicant submitted:

Evidence of these findings (investigation findings) from statements made on March 2023 from the Electrical Safety Office email complaint review email noting a [sic] assessment file, not a cover sheet as you had sent. In this Employers log the assessment had a findings outcome and noted the investigators assessment outcome (findings re: employers log). Evidence in statements from emails from the investigator and the ESO had stated information had been finalised.⁶⁹

[Officer A] in a email to [the applicant] stated that the investigation had been completed. [Officer B] of the ESO, stated in a email in August 2022 that a assessment had been completed. In a original application to the incident, parts of the employers log noted a assessment. The summary sheets that is stated is the incident summary that was supplied, or initial summary.

*I did not require a **formal investigation report**, I required a final assessment, findings, outcome and/or report of the investigation, of which was verified by [Officer B] of the ESO. This assessment/findings is usually in the Employers log as per previous investigations. Please supply the complete Employers log and the final outcome of this log.⁷⁰*

45. I asked the applicant to provide a copy of this referenced evidence.⁷¹ While the applicant provided some further details about the referenced evidence, he declined to provide copies of that referenced information.⁷²
46. As a result, I asked OIR to respond to the applicant's specific submissions that evidence supported his position that further relevant documents existed. In response, OIR provided me with copies of the referenced email evidence and submitted that:⁷³
- when a complaint is received by OIR, it is triaged by assessment services and, if the event is deemed significant, it is referred to OIR's Statewide Investigations for investigation. However, if an event does not meet the threshold for review by Statewide Investigations or its seriousness has not yet been established, it will be allocated to a region and an Inspector in the field will investigate the incident
 - accordingly, Officer A's role in respect of the applicant's complaint about the Incident was to investigate the applicant's complaint to determine what had occurred and whether any action was needed by OIR
 - page 1 of the disclosed Employer History Report recorded:
 - an entry by Officer A which summarises the actions taken by that officer in relation to the Incident and requests approval to close the matter;⁷⁴ and

⁶⁵ By letter dated 8 September 2023.

⁶⁶ Submissions received 8 September 2023.

⁶⁷ Letter attached to the applicant's email dated 8 September 2023.

⁶⁸ In letters attached to the applicant's emails dated 14 November 2023 and 5 January 2024.

⁶⁹ Letter attached to the applicant's email dated 14 November 2023.

⁷⁰ Letter attached to the applicant's email dated 5 January 2024.

⁷¹ By email to the applicant dated 15 January 2024.

⁷² Applicant's email to OIC dated 15 January 2024. The applicant identified the evidence as comprising emails he received from Officer A on 19 August 2021, 27 September 2021 and 6 October 2021; and a reply he received from Officer B dated 20 September 2022. I also note that, in this email, the applicant also referred to certain statements made in a decision responding to an access application made by another individual.

⁷³ Submissions dated 9 February 2024.

⁷⁴ OIR submitted this is Officer A's response assessment of the Incident. In this regard, I note that the Employer History Report records the following as an 'assessment activity' on 6 October 2021: 'An investigation was conducted to identify if a breach of the *Electrical Safety Act 2002* or *Electrical Safety Regulation 2013* had occurred.... The reported failure of application of working earths is not a Dangerous Electrical Event as defined by Section 12 of the *Electrical Safety Act 2002* and was not reportable to the Electrical Safety Office... No enforcement action taken or required as no breach of the ESA or ESR was

- the review of the actions by Officer A's supervisor and the agreement of that supervisor that no further action was necessary⁷⁵
 - the above entries, together with the disclosed Response Assessment summary sheet, comprise the final assessment into the Incident
 - the referenced emails which the applicant received from Officer A confirmed that Officer A was undertaking an investigation of the applicant's complaint; and
 - a reference to an 'internal assessment' in an email Officer B sent to the applicant⁷⁶ was to an internal assessment Officer B undertook into a separate customer complaint lodged by the applicant, rather than an internal assessment of the applicant's complaint about the Incident.
47. Having carefully considered the applicant's submissions, OIR's response and the provided copies of the referenced emails, I do not consider the evidence relied upon by the applicant gives rise to any reasonable expectation that further documents relevant to Item 1 exist and have not been located.⁷⁷ In reaching this conclusion, I have taken into account that:
- the disclosed Employer History Report confirms:
 - the steps taken by Officer A in respect of the applicant's complaint, including Officer A's contact with the applicant
 - that, on 6 October 2021, a decision was made that '*No enforcement action taken or required as no breach of the ESA or ESR was identified*' and no further action was required
 - the Employer History Report does not reference the creation of any further documents in respect of the applicant's complaint after 6 October 2021
 - the '*RA Action Taken Summary*' of the disclosed Response Assessment summary sheet, also records that no enforcement action was taken or required as '*no breach of the ESA or ESR was identified*' and that closure of the matter was requested on 6 October 2021
 - the content of referenced emails the applicant received from Officer A only confirmed that, as at the date of the emails, the investigation was ongoing; and
 - the email the applicant received from Officer B (including its attachments) does not relate to the applicant's complaint about the Incident, but instead relates to an internal assessment of separate complaints made by the applicant in 2022.

Conclusion

48. Having carefully considered all the information before me (including the submissions received from the applicant and OIR), I consider that OIR has conducted appropriate searches of locations where it would be reasonable to expect the types of information requested in Item 1 would be stored. I am also satisfied that enquiries were undertaken with staff possessing relevant knowledge about the existence of the requested documents.⁷⁸

identified. In this regard, I understand that the 'ESA' references are to the *Electrical Safety Act 2002* and the 'ESR' references are to the *Electrical Safety Regulation 2013*.

⁷⁵ I note that the disclosed Employer History Report relevantly records the following 'assessment activity' on 6 October 2021: '*No enforcement action taken or required as no breach of the ESA or ESR was identified. No further action required*'.

⁷⁶ I note that the subject heading of this 20 September 2022 email is '*Customer Complaint Assessment – Electrical Safety Office*'.

⁷⁷ I notified the applicant on 18 March 2024 that the evidence he had referenced in his submissions did not give rise to any expectation that further documents relevant to Item 1 exist and have not been located.

⁷⁸ Including search records and certifications.

49. In view of the above, and taking into account the content of the disclosed documents,⁷⁹ there is nothing before me, other than the applicant's assertions, to support an expectation that further relevant documents exist. Accordingly, I am satisfied that:
- OIR has taken reasonable steps to locate documents relevant to Item 1; and
 - access to further documents (including the Final Incident Report) may be refused on the basis they do not exist.⁸⁰

DECISION

50. For the reasons set out above, I vary OIR's decision and find that access to any further documents responsive to Item 1 (including a Final Assessment Report) may be refused on the basis they are nonexistent.
51. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

T Lake
Principal Review Officer

Date: 5 June 2024

⁷⁹ Namely, the Response Assessment summary sheet and the Employer History Report.

⁸⁰ Under sections 47(3)(e) and 52(1) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
5 June 2023	OIC received the application for external review.
13 June 2023	OIC received the applicant's request for an update and copies of six complaints the applicant had lodged directly with OIR and previously forwarded to OIC concerning his dissatisfaction with how OIR had handled a number of his access applications.
3 July 2023	OIC notified the applicant and OIR that the application for external review had been accepted and requested information from OIR.
4 July 2023	OIC received a submission from the applicant, together with further copies of the six complaints the applicant had lodged directly with OIR and previously forwarded to OIC concerning his dissatisfaction with how OIR had handled a number of his access applications.
17 July 2023	OIC received the requested information from OIR.
10 August 2023	OIC provided an update to the applicant.
8 September 2023	OIC conveyed a preliminary view to the applicant and received the applicant's submissions contesting the preliminary view.
17 October 2023	OIC conveyed a further preliminary view to the applicant and requested that OIR provide the applicant with a further copy of the Response Assessment summary sheet. OIC received the applicant's further submissions.
18 and 27 October 2023	OIC received emails from the applicant.
1 November 2023	OIC wrote to the applicant to reiterate the preliminary view and explain OIC's external review functions and the limits to OIC's jurisdiction.
14 November 2023	OIC received the applicant's further submissions.
15 December 2023	OIC conveyed a further preliminary view to the applicant.
5 January 2024	OIC received the applicant's further submissions.
15 January 2024	OIC wrote to the applicant requesting that he provide copies of documents referenced in his submissions. OIC received the applicant's further submissions, which included further details about the supporting documents referenced in his previous submissions, however, the applicant requested that OIC obtain copies of those documents from OIR.
18 January 2024	OIC requested OIR provide a response to the matters raised in the applicant's 5 January 2024 and 15 January 2024 submissions and copies of the documents referenced by the applicant in those submissions.
9 February 2024	OIC received OIR's submissions and copies of some of the documents referenced by the applicant.

Date	Event
18 March 2024	OIC conveyed a further preliminary view to the applicant and asked OIR to send a copy of the Employer History Report to the applicant.
20 March 2024	OIR released a further copy of the previously disclosed Employer History Report to the applicant.
1 April 2024	OIC received the applicant's further submissions, maintaining his disagreement with the preliminary view.
3 May 2024	OIC notified the applicant that a formal decision would be issued to finalise the review. OIC received the applicant's further submissions.
10 May 2024	OIC received the applicant's further submissions, including a request for a response to his bias allegations.
13 May 2024	OIC responded to the applicant's bias allegations and received the applicant's further submissions.