



Decision and Reasons for Decision

Citation: *P21 and Energex Limited [2024] QICmr 68 (28 November 2024)*

Application Number: 317897

Applicant: P21

Respondent: Energex Limited (ACN: 078 849 055)

Decision Date: 28 November 2024

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - whether information would be privileged from production in a legal proceeding - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether access to documents may be refused on the basis they are nonexistent - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to both Energex Limited (**Energex**) and Energy Queensland Limited (**EQL**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information in the following terms:

Supply Documents, Evidence, actions, Messaging tools and communication that identified the Person in the Cease and desist letter dated 13 March 2023 from [EQL]. ([Applicant] recipient of the Cease and Desist Letter from [EQL] dated 13 March 2023) Evidence given to the details of the complainant as identified in the document containing [sic] information is [sic] the personal information of the applicant or direction to identify the person in this Document.¹

2. Energex forms part of EQL.² However, because each is a separate entity for the purposes of the IP Act, access applications may be made to each. While Energex and

¹ The applications were received by Energex and EQL on 3 February 2024.

EQL each gave a decision in response to the relevant access application, I note that the decisions are identical in their terms, and both were made on the same day by the same decision-maker (as authorised by each entity).

3. By way of clarification of the terms of the application, the applicant stated³ that he was seeking access to information that was used to identify him in connection with a 'Cease and Desist' letter that he received from EQL dated 13 March 2023.
4. Energex located 94 pages that responded to the terms of the access application. In its decision dated 13 March 2024, Energex decided to give full access to one page, partial access to two pages, and to refuse access in full to 91 pages on the ground that they contained exempt information. Energex also decided to refuse access to some information requested by the applicant on the basis that it was nonexistent.
5. The applicant applied to the Office of the Information Commissioner (**OIC**) for review of Energex's decision.⁴ He also applied to OIC for external review of the identical decision given to him by EQL. While both reviews have been dealt with together by OIC, and are decided on the same terms, the fact that the respondent entities are separate entities under the IP Act necessitates the giving of separate decisions by OIC.
6. A number of issues were resolved during the course of the review. For the reasons explained below, I decide to affirm Energex's decision to the extent that it:
 - refused access in full to 91 pages as exempt information under the IP Act; and
 - refused access to certain information as nonexistent under the IP Act.

Background

7. By letter dated 13 March 2023, EQL directed the applicant to cease and desist from interacting with its employees while they were working in the field for Energex (**Cease and Desist letter**). EQL stated that the applicant's behaviour was causing its workers to feel '*harassed, intimidated, and unsafe*'. EQL contended that the applicant's behaviour, '*including entering our field based workplaces in non-compliance with our safe systems of work*', posed a safety risk to both the applicant and the workers. The letter listed four occasions on which EQL contended that the applicant had entered Energex's field-based work areas without consent – on 16 February 2022, 24 February 2022, 22 December 2022 and February 2023 – and described the alleged interactions between the applicant and Energex workers.
8. The applicant seeks information that was relied upon by EQL/Energex to identify him in connection with the information contained in the Cease and Desist letter. In an email that he sent to EQL/Energex on 13 March 2024, following receipt of their decisions on access and the release of certain documents, the applicant stated:

None of the documents have myself identified at these locations. Please supply documents and evidence as per the request application. What you have provided is incorrect and contains no evidence of being at any worksite noted in the Cease and Desist letter.

Please supply correct documents.

² EQL is a wholly government-owned electricity company. Energex is one of EQL's distribution businesses: <https://www.energyq.com.au> (accessed 12.11.24).

³ Email dated 8 February 2024.

⁴ Application dated 20 March 2024.

9. In his application for external review,⁵ the applicant stated:

In actions to refuse 91 documents in reasons of Public interest in concerns to my IP application, due to relevant false and inaccurate information applied to the cease and desist letter and the performance of Energy Queensland to accurately identify me ... in the locations identified in the letter provided by [EQL] (attached).

The refusal discounted the consideration of good order and function of the Government entity of well being of the citizen ... by making false statements as I was not identified in review of the evidence (as released) at the locations in the letter.

...

IMPORTANT NOTE: Energy Queensland noted of locations in Indooroopilly Road. No information identifies the applicant at this location. Obtained information of these locations are regarded as false or hearsay due to no factual evidence of the applicant. It would be reasonable to ascertain that Energy Queensland received unauthorized [sic] access to information against the applicant [sic] wishes and acted against the applicants [sic] liberty and security (and public safety).

...

The degree of Energy Queensland to obtain information that was personal and unavailable is a deep concern to the public. Especially considering this information on two locations was held by another government department.

Reviewable decision

10. The decision under review is the decision of Energex dated 13 March 2024.

Evidence considered

11. Significant procedural steps relating to the external review are set out in the Appendix.
12. 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). I have taken account of the applicant's submissions to the extent that they contain information that is relevant to the issues for determination in this review.⁶
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'¹⁰

⁵ Application dated 20 March 2024.

⁶ Contained in the external review application dated 20 March 2024 and in emails on 27 August 2024, 28 August 2024, 10 October 2024 and 11 October 2024.

⁷ Section 21 of the HR Act.

⁸ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

Information in issue

14. The applicant received access to some additional information during the course of the review. He continues to pursue access to pages 4-91 to which Energex refused access in full on the basis that these pages attract legal professional privilege and are therefore exempt information under the IP Act.

Issues for determination

15. The issues for determination are as follows:
- a) whether access to pages 4-91 may be refused because they attract legal professional privilege (**LPP Information**) and are therefore exempt pursuant to section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act; and
 - b) whether access to certain information may be refused because it is nonexistent pursuant to section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act (**Sufficiency of Search**).

Issue a) – LPP Information

Relevant law

16. Schedule 3 of the RTI Act specifies the types of information Parliament has determined are exempt because release would be contrary to the public interest. Relevantly, information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (**LPP**).¹¹ This exemption reflects the requirements for establishing LPP at common law.¹²
17. Establishing whether LPP applies to information at common law requires that the information must comprise a communication:
- made in the course of a lawyer-client relationship
 - that was and remains confidential; and
 - that was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.¹³
18. When each of these requirements is met, LPP is established.¹⁴

Discussion

19. Having considered the information contained on the 91 pages in question, I am satisfied that the communications comprise confidential communications between staff

¹¹ Schedule 3, section 7 of the RTI Act.

¹² The doctrine of legal professional privilege is both a rule of evidence and a common law right. The High Court in *Daniels Corporation International Pty Ltd v Australian and Consumer Commissioner* (2002) 213 CLR 543 (**Daniels**) at [9] relevantly noted 'It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings' (footnotes omitted). See also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (**Esso**).

¹³ *Esso* and *Daniels*.

¹⁴ However, qualifications and exceptions to privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore is exempt under the RTI Act.

of Energex/EQL and EQL's internal lawyers, made for the dominant purpose of seeking or providing professional legal advice or assistance.

20. There is nothing in the material before me to suggest that the lawyers involved in the communications in question were not suitably qualified or of a sufficiently independent character.¹⁵ Similarly, there is nothing before me to suggest that the qualification or exceptions to LPP apply.
21. During the course of the review, in response to OIC expressing a preliminary view to the applicant that the pages in question satisfied the test for LPP, the applicant submitted variously as follows:

We do not believe that all of information, as stated is of LLP provisions and has been used to refuse information.

Not all of the 90+ pages are of the confidential (LLP) provisions, the statements from the EQL staff are not required, but the remaining information is.

Deliverance of this information would be required.¹⁶

...

What you are implying is that the 90+ pages would reveal communication between client and his or the entities lawyers. I do not request these, I do not request client Lawyer communication.¹⁷

...

The OIC opinion is that all relevant information (or any information) can be classified as LPP due to legal parameters, in the context of attracting legal communication. You stated that review of all these documents were, in your factual judgement, regarded as LPP (excepting released documents), not just the statements from the staff of EQL in this release. Could you please outline the test parameters or documentation that determines these test parameters in the case of LPP.¹⁸

...

Regardless of whether you are satisfied. The statements made by EQL was that information held was contents containing employee statements thus denying valid documents that identified myself in any of these worksites, that could be provided by redacting valid private information...¹⁹

22. I have set out the test for LPP in paragraph 17 above. As I have stated above, I consider that all of the communications contained in the 91 pages in issue satisfy this test, as confidential communications passing between lawyer and client and made for the dominant purpose of seeking or giving professional legal advice or assistance. The submissions made by the applicant are not relevant to the application of the test to the communications and do not alter the fundamental characterisation of the communications as ones that attract privilege: the applicant has simply submitted that he requires access to communications that are not between lawyer and client.

Finding

23. I find that the information contained on pages 4-91 attracts LPP and is therefore exempt information.²⁰ Access under the IP Act may be refused on that basis.

¹⁵ *Waterford v Commonwealth* (1987) 163 CLR 54.

¹⁶ Email of 27 August 2024.

¹⁷ Second email of 28 August 2024.

¹⁸ First email of 28 August 2024.

¹⁹ Email of 11 October 2024.

²⁰ Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

Issue b) – Sufficiency of Search

Relevant law

24. Access to a document may be refused²¹ if the document is nonexistent or unlocatable.²²
25. A document will be *nonexistent* if there are reasonable grounds to be satisfied it does not exist.²³ To be satisfied that a document does not exist, the Information Commissioner has previously had regard to various key factors, including the agency's record-keeping practices and procedures (including, but not limited to, its information management approaches).²⁴ By considering the relevant factors, the decision maker may conclude that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
26. The Information Commissioner may also take into account the searches and inquiries conducted by an agency in determining whether a document is nonexistent. The key question then is whether those searches and inquiries amount to '*all reasonable steps*'.²⁵ What constitutes reasonable steps will vary from case to case, as the search and inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances. Such steps may include inquiries and searches of all relevant locations identified after consideration of relevant key factors.²⁶
27. 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 it, but it cannot be found. In determining whether a document is unlocatable, it is necessary to consider the specific circumstances of each case,²⁷ and in particular whether:
- there are reasonable grounds for the agency to be satisfied that the requested documents have been or should be in the agency's possession; and
 - the agency has taken all reasonable steps to find the document.²⁸
28. 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

²¹ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

²² Section 67(1) of the IP Act and sections 47(3)(e) and 52 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.

²³ Section 52(1)(a) of the RTI Act. For example, a document has never been created.

²⁴ *Isles and Queensland Police Service* [2018] QICmr 27 (7 June 2018) at [15] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. *PDE* addresses the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant.

²⁵ As set out in *PDE* at [49].

²⁶ As set out in *PDE* at [38].

²⁷ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

²⁸ Section 52(1)(b) of the RTI Act.

adverse to the applicant.²⁹ Where the issue of missing documents is raised on external review, the agency must demonstrate that reasonable steps have been taken to identify and locate relevant documents.³⁰ However, if the applicant maintains further documents exist, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation. Suspicion and mere assertion will not satisfy this onus.³¹

Discussion

29. As noted in his external review application (see paragraph 9 above), the applicant contends there are reasonable grounds for believing that additional documents ought to exist that were relied upon by EQL/Energex to identify him in connection with the dates and incidents described in the Cease and Desist letter.
30. I would note firstly that, to the extent that information of this nature is contained in the communications on pages 4-91, I have decided above that such communications satisfy the test for LPP and access to them may be refused on that basis. Section 121(3) of the IP Act prohibits the Information Commissioner from including in a decision, information that is claimed to be exempt information or contrary to the public interest information. I am therefore unable to discuss the nature or contents of the information that I have decided is exempt.
31. But in any event, in respect of the dates of 16 February 2022 and 22 December 2022, I am satisfied that the applicant has been provided with the source information held by EQL/Energex that identifies him in connection with these – as contained on pages 1-3 of the documents in issue – as well as in the incident report for 16 February 2022 that was located and released to him during the course of the review,³² and in the additional information provided by EQL/Energex during the course of the review (concerning the incident on 22 December 2022) and communicated to the applicant in OIC's letter dated 20 August 2024.
32. As to information relating to the date of February 2023, Energex refused access to such information in its decision on the grounds that it was nonexistent. Energex stated that its searches had not located any record of an incident involving the applicant occurring on or about February 2023. It advised the applicant that this date had been included in the Cease and Desist letter in error. This was confirmed to OIC during the course of the review wherein EQL/Energex stated that the date of February 2023 had become confused with February 2022 when preparing the Cease and Desist letter.³³
33. In respect of the existence of source information relating to the identification of the applicant in connection with the date of 24 February 2022, EQL/Energex provided OIC with the following information:

I am advised by the Brisbane Central Area Manager that this incident has been mistakenly dated in the letter to the applicant. Accordingly, the documents do not exist because there was no interaction by the applicant on 24 February 2022 that caused Energy Queensland employees to feel harassed, intimidated, and unsafe.³⁴

²⁹ Section 100 of the IP Act.

³⁰ Section 137(2) of the IP Act.

³¹ *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36].

³² Energex also agreed to give the applicant access to some information concerning the date of 16 February 2022 which it had initially decided was irrelevant to the terms of the access application.

³³ On 15 April 2024 and in an email on 9 August 2024 that was provided in response to OIC's letter dated 10 July 2024.

³⁴ Email of 9 August 2024.

34. This information was communicated to the applicant in OIC's letter dated 20 August 2024. However, the applicant did not accept this explanation and submitted (relevantly) as follows:

It is evident that the Area Manager falsified this and mislead [sic] the OIC, as these were correct dates, evidence as sent to Workplace Health and Safety Queensland (the only recipient of this information and any information concerning these [sic] sites) and not the stated incorrect dates as reasoned by this Manager.

The Area Manager statement is accurate for the date and the location, information not privy to him, EQL or anybody outside the OIR. The Area Manger [sic] retracted this due to a [sic] intimidating document and the action of obtaining private information without permission.

The RTI Application request was for the evidence in reference to the Cease and Desist letter on this location and date.

The Area Manager obtained this information of the date and location from a defined source and my application requested this.

...

Concerning these locations I had not given any details of my actions or presence at these sites to EQL or its contractors. Evidence of which I had requested from the OIR and Energex of the 24 February sites.³⁵

35. The applicant therefore contended that the date of 24 February 2022 was correct because he had, in fact, made a complaint to Workplace Health and Safety Queensland (**WHSQ**) in connection with what he had observed at Energex worksites on 24 February 2022. However, he alleged that only the Office of Industrial Relations (**OIR**) (on behalf of WHSQ) was aware of his complaint, and that he had not disclosed this information to EQL/Energex. He alleged that, in including this date in the Cease and Desist letter, EQL/Energex must have obtained his complaint information through unlawful means and without his permission. He sought access to documents that showed the source of this information.
36. The applicant also contended that the EQL Area Manager, in his statement extracted at paragraph 33 above, had misled OIC and provided a false statement. However, my interpretation of the Area Manager's statement is that the date of 24 February 2022 should not have been included in the Cease and Desist letter to the applicant in the context of describing an interaction with workers that caused them to feel harassed, intimidated, or unsafe, because no interaction of that type had occurred on that date.
37. After considering the applicant's submission, OIC requested that EQL/Energex conduct further searches for any source documents that referred to the applicant in connection with the date of 24 February 2022.
38. By email on 8 October 2024, EQL/Energex provided OIC with a copy of an email dated 25 March 2022 that the applicant had sent to both EQL and OIR, to which he had attached various Incident Notification Forms³⁶ that he had completed and signed. Two forms recorded incidents occurring on 24 February 2022 - at 79 and 94 Indooroopilly Road. Each form contained notifications by the applicant of alleged breaches of safety requirements by Energex workers when conducting tree trimming activities at or near these addresses. For example, the form relating to 79 Indooroopilly Road contained the following under the heading 'Description of the incident':

³⁵ Email of 27 August 2024.

³⁶ Form 3 pursuant to the *Work Health and Safety Act 2011* (Qld); *Safety in Recreational Water Activities Act 2011* (Qld); and *Electrical Safety Act 2002* (Qld).

No adequate traffic signs, no traffic control, no pedestrian signs, no worker signs. Breach of code of practise [sic]. Failure to ensure public safety.

A similar incident description was provided on the form relating to 94 Indooroopilly Road.

39. Accordingly, EQL/Energex submitted that it was the applicant's own Incident Notification Forms, which he had sent to EQL on 25 March 2022, that were the source for identifying him in connection with incidents occurring on 24 February 2022. However, as noted above, EQL/Energex conceded that it was a mistake to state in the Cease and Desist letter that the applicant had entered the worksites and interacted with Energex workers on this date, as there was no evidence to indicate that this had occurred.
40. In response, the applicant submitted:

Firstly, the email sent to [EQL and OIR] is the complaint notices of the incidents. This only states that I was the author of the complaints and infractions of EQL and their contractors, not of my onsite participation of the worksites, as noted in the Cease and Desist letter. These documents do not prove that I was at the site or involved as per the Cease and Desist letter. So your so-called determinations of the information required, are false and are detracting from the issue. No information is conclusive to me being onsite of the locations, again as per the CD Letter. This is the fundamental reason why we are requesting information determined as proof of refused evidence form [sic] the OIR and Energex, again what you have not provided. You have determined that I am the author and nothing else. Please provide proof through the release of the 90 + documents that are proof that I was at these worksites and participated in action highlighted in the CD letter. Especially in reference to all the sites at Indooroopilly Road.³⁷

...

I do seek access to proof of my presence in these worksites (please refer to the applications), and I disagree with you, and do not accept your poor assessment. They have not supplied valid evidence that I was at the worksites, including the noted incident at Indooroopilly dated 7/2/2022, or the letter in the actions described from the EQL Manager.³⁸

41. In respect of the submission extracted immediately above, I note there is no incident listed in the Cease and Desist letter dated 7 February 2022.

Findings

42. The access application seeks access to information that was used to identify the applicant as the person referred to in the Cease and Desist letter. In his access application, the applicant described the type of documents he was seeking as '*Evidence, Documenst [sic], Emails, Messages, communication that identified the complaint [sic] in these allegations*'.
43. It is clear from his external review application, and his submission dated 27 August 2024 (see paragraph 34 above), that the applicant's primary concern was to establish that EQL/Energex had obtained unauthorised access to information that the applicant believed he had sent only to OIR, and that they had improperly used that information in

³⁷ Email of 10 October 2024.

³⁸ Email of 11 October 2024.

the Cease and Desist letter. Upon being reminded that he had also sent the incident notifications to EQL, the applicant then contended that he also required access to information proving that he was both present and had 'participated' at the relevant worksites in the manner described in the letter.

44. I consider it is reasonably open to conclude, from the information he included in the Incident Notification Forms, that the applicant was at least in the vicinity of the relevant worksites on 24 February 2022 in order to be able to describe what he had observed.
45. However, in respect of the applicant's request for documents that prove that he 'participated' in the worksites, and was involved in interactions on 24 February 2022 as described in the Cease and Desist letter (that is, filming workers and verbally engaging with them in an aggressive manner), and even accepting that the terms of the access application are sufficient to cover such documents, I have already noted that EQL/Energex have admitted that such a description was an error and should not have been included in the letter. The Area Manager conceded that there was no interaction between the applicant and workers on 24 February 2022 of the type described in the letter.
46. As to the date of February 2023, as I noted at paragraph 32 above, Energex refused access in its decision to source information relating to this date on the grounds that it was nonexistent. Energex stated that its searches had not located any record of an incident involving the applicant occurring on or about February 2023, and that this date had been included in the Cease and Desist letter in error.
47. I therefore find, on the basis of the explanations/concessions provided by EQL/Energex, as well as the searches and inquiries conducted for responsive documents,³⁹ and the contents of the responsive documents, that there are reasonable grounds to be satisfied that the additional information sought by the applicant – information relating to the dates of 24 February 2022 and February 2023 that evidences interactions involving the applicant as described in the Cease and Desist letter for those dates – does not exist.⁴⁰ Access may therefore be refused on that basis.

DECISION

48. For the reasons explained above, I decide to affirm Energex's decision to the extent that it decided that:
 - access to pages 4-91 may be refused because they comprise exempt information pursuant to 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act; and
 - access to the additional information sought by the applicant for the dates of 24 February 2022 and February 2023 (as contained in the Cease and Desist letter) may be refused because it is nonexistent pursuant to section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.
49. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

³⁹ EQL/Energex advised that searches had been conducted of its One Note and email databases, Health and Safety SAP module, and inquiries made of relevant legal and operational staff.

⁴⁰ Section 52(1)(a) of the RTI Act.

R Moss
Principal Review Officer

Date: 28 November 2024

APPENDIX**Significant procedural steps**

Date	Event
20 March 2024	OIC received the application for external review. OIC requested preliminary information from Energex.
22 March 2024	OIC received preliminary information from Energex.
4 April 2024	OIC advised the parties that the application had been accepted.
8 and 15 April 2024	OIC received copies of the documents in issue and the requested search information from Energex.
10 July 2024	OIC expressed a preliminary view to Energex and requested further information.
9 August 2024	OIC received a response from Energex.
20 August 2024	OIC expressed a preliminary view to the applicant. OIC asked Energex to release additional information to the applicant.
22 August 2024	OIC received notification from Energex that the additional information had been released.
27 August 2024	OIC received a submission from the applicant.
28 August 2024	OIC expressed a preliminary view to the applicant and requested that the applicant provide further information. OIC received a response from the applicant. OIC requested clarification from the applicant. OIC received further information from the applicant.
29 August 2024	OIC advised Energex of the further information provided by the applicant and requested that Energex conduct additional searches.
20 September 2024	OIC received a submission from Energex.
23 September 2024	OIC expressed a preliminary view to Energex and requested that Energex conduct additional searches.
8 October 2024	OIC received a response from Energex attaching a copy of the applicant's email to EQL dated 25 March 2022.
10-11 October 2024	OIC expressed preliminary views to the applicant and received responses from the applicant.