



Decision and Reasons for Decision

Citation:	<i>8RS6ZB and Metro North Hospital and Health Service [2015] QICmr 3 (13 February 2015)</i>
Application Number:	312004
Applicant:	8RS6ZB
Respondent:	Metro North Hospital and Health Service
Decision Date:	13 February 2015
Catchwords:	<p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – SCOPE OF ACCESS APPLICATION – whether information is outside scope of the access application – medical record of another individual – medical record of applicant’s child – section 40 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – medical records – information provided by other individuals during applicant’s medical treatment – whether disclosure would, on balance, be contrary to the public interest – whether access to information may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to Metro North Hospital and Health Service (**MNHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to her entire medical record.
2. MNHHS located 1,789 pages of information relevant to the access application and refused access to three pages in full and parts of 52 pages on the basis that the information was exempt as it would found an action for breach of confidence or because its disclosure would, on balance, be contrary to the public interest. MNHHS gave access to the remainder of the information.
3. MNHHS also located 15 additional pages which it refused access to on the basis that they were outside of the scope of the applicant’s access application.

4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of MNHHS's decision.
5. For the reasons set out below, I vary MNHHS's decision and find that some information is outside the scope of the access application, and access to the remaining information can be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Background

6. Significant procedural steps are set out in the Appendix.

Reviewable decision

7. The decision under review is MNHHS's decision dated 28 March 2014.

Evidence considered

8. The evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in Issue

9. The information in issue comprises:
 - 15 pages that MNHHS decided were outside the scope of the access application (**Category A Documents**); and
 - 52 pages in part¹ and two pages in full² that MNHHS found were within the scope of the access application but decided to refuse access to (**Category B Information**).

Issues for determination

10. The issues for determination in this review are whether:
 - the Category A Documents are outside the scope of the access application; and
 - disclosure of the Category B Information would, on balance, be contrary to the public interest.³
11. The applicant provided OIC with extensive submissions⁴ in support of her case. While I have carefully considered all of the applicant's submissions, not all matters raised are relevant to the issues for determination in this review. I have addressed the applicant's submissions below to the extent they are relevant to the issues identified above.

¹ While MNHHS's decision stated that parts of 54 pages were refused, I am satisfied, on my reading of MNHHS's decision and count of the pages, that only 52 pages were refused in part.

² The applicant advised OIC in her external review application that she accepted MNHHS' decision to refuse access to page 10 of Volume 1. Accordingly, this page is not in issue in this review.

³ MNHHS decided to refuse access to some of the Category B Information on the basis that it was exempt because its disclosure would found a breach of confidence. On 6 February 2015, OIC advised MNHHS that OIC considered this information was better characterised as information the disclosure of which would, on balance, be contrary to the public interest. MNHHS advised OIC it had no objection to OIC relying on the public interest test to refuse access. Section 118 of the IP Act enables the Information Commissioner to decide any matter on external review that the agency could have decided.

⁴ In her external review application dated 15 April 2014, by telephone on 15 May 2014 and in submissions on 3 December 2014.

Category A Documents

Relevant law

12. Under the IP Act, a person has a right to be given access to documents of an agency, to the extent the documents contain the individual's personal information.⁵ An entire document that does not contain any information which responds to an access application is outside the scope of that access application. An agency's determination that a document is outside scope should not form part of its decision and is not a reviewable decision.⁶ Accordingly, once OIC determines that a document is outside the scope of an access application, it cannot further consider the document in an external review arising from that application.

Findings

13. The applicant sought access to '*my whole medical file*'.⁷ The Category A Documents comprise medical records of the applicant's child at the time of the child's birth. I have carefully reviewed the Category A Documents. I am satisfied that none of the information on the 15 pages comprises the applicant's medical records and accordingly, all of the information is outside the scope of the access application. For this reason, the Category A Documents cannot be considered in this review.
14. The applicant submits⁸ that, even if these pages are entirely related to her child, they are '*still relevant to what I requested*' and, as the child is a minor and the applicant is her legal guardian '*it is in [the child's] interest for me to get those records, my request for those records should not have been rejected*'. However, the applicant did not seek access to her child's medical records—the terms of her access application were clear. It is not open for an access applicant to unilaterally expand the scope of an access application on external review.⁹ I am therefore satisfied that the Category A Documents fall outside the scope of the access application and may be excluded from further consideration in this decision.

Category B Information

Relevant law

15. The right of access under the IP Act is subject to limitations, including grounds for refusal of access.¹⁰ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹¹ 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁵ Section 40 of the IP Act.

⁶ As defined in schedule 5 of the IP Act.

⁷ Access application dated 1 December 2013.

⁸ External review application dated 15 April 2014.

⁹ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17].

¹⁰ 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.

¹¹ Section 47(3)(b) and 49 of the RTI Act.

16. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹² and explains the steps that a decision-maker must take¹³ in deciding the public interest as follows:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

Findings

17. While I am precluded from describing the information in detail,¹⁴ the Category B Information can generally be described as information:

- i) about the applicant, provided by other individuals to the applicant's treating doctors (**Applicant Information**); and
- ii) about the medical history, behaviour and personal affairs of the applicant's family (**Family Information**).

18. In assessing the public interest, I have disregarded any irrelevant factors, including those set out in schedule 4, part 1 of the RTI Act. I will now consider the relevant factors for and against disclosure of the Category B Information, and will firstly address the Applicant Information.

Applicant Information

Prejudice future supply of confidential information

19. The RTI Act recognises:

- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information;¹⁵ and
- that disclosing information could reasonably be expected to cause a public interest harm if:
 - the information consists of information of a confidential nature that was communicated in confidence; and
 - disclosing it could reasonably be expected to prejudice the future supply of information of this type.¹⁶

20. The Applicant Information was provided by individuals other than the applicant to the applicant's treating doctors to assist with them with the applicant's treatment during times the applicant was perceived to be in need of medical assistance.

21. The applicant has made detailed submissions that commence with and proceed from the applicant's speculation or suspicions about who provided the Applicant Information. Before addressing these submissions, I confirm that nothing in this decision should be

¹² Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

¹³ Section 49(3) of the RTI Act.

¹⁴ Section 121(3) of the IP Act.

¹⁵ Schedule 4, part 3, item 16 of the RTI Act.

¹⁶ Schedule 4, part 4, section 8(1) of the RTI Act.

taken as indicating or affirming the identity of the individuals who provided the Applicant Information.

22. In summary, the applicant submits¹⁷ that:

- only particular individuals would have provided information to MNHHS in relation to her care and, for various reasons, these individuals would not have provided information in confidence and would have no expectation that the information would remain confidential
- OIC should contact particular family members to request their permission to disclose the Applicant Information
- she believes the Applicant Information comprises '*... information provided by "professionals". My guess is it is nearly entirely information from my (mis)treating team at the prince charles hospital*'; and
- disclosing this information would not prejudice the future supply of confidential information but rather prevent those persons from '*providing false information in future for fear of litigation*'.

23. As noted, I am not able to confirm the identity of the individuals who have provided the Applicant Information. However, from the nature of the information and the context in which it appears, I am satisfied this information was communicated in confidence and on the expectation that it would remain confidential. Health care providers often rely on information from persons known to patients to assist in their diagnosis and treatment. If information provided by individuals under these circumstances is disclosed under the IP Act, individuals may be discouraged from providing this information to health care providers. This in turn could significantly prejudice health care providers' ability to care for patients as they may not have all relevant information about the patient before them.

24. I have carefully considered the applicant's statements as to why particular individuals would not have an expectation that information provided would remain confidential and also her request that OIC consult particular individuals. Given the nature and context of the information, these submissions have not changed my view that the information was and remains information communicated in confidence. The Information Commissioner is not obliged to consult third parties in each and every matter involving information the disclosure of which is likely to concern a third party—rather, the obligation to consult arises where the Information Commissioner considers such information should be disclosed. This is not such a case.

25. For these reasons, I find that disclosing the Applicant Information could reasonably be expected to prejudice MNHHS's ability to obtain confidential information in the future, therefore causing a public interest harm and giving rise to a factor favouring nondisclosure. Taking into account the sensitivity of the information provided to MNHHS and the importance of this type of information for treating clinicians, I consider the public interest harm arising from disclosure of the relevant parts of the Applicant Information would be significant and accordingly afford the factor favouring nondisclosure significant weight.

Personal information and privacy

26. The Applicant Information is the applicant's personal information.¹⁸ The RTI Act recognises this as a factor favouring disclosure.¹⁹ As the information comprises part of the applicant's medical record, I consider this factor warrants significant weight.

¹⁷ Submission dated 3 December 2014.

27. However, the Applicant Information also comprises the thoughts and opinions of the individuals who provided it. Accordingly, I consider the Applicant Information is the other individuals' personal information as well.
28. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;²⁰ and
 - disclosing information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.²¹
29. I consider these factors apply to the Applicant Information. The information is sensitive in nature, comprising opinions, thoughts and feelings of individuals. For these reasons, I attribute these factors significant weight.

Accountability and transparency

30. The applicant submits²² that:
- withholding the information prevents her from being correctly assessed and treated in the future; and
 - *'... this isn't just about me – this is about every single patient in Qld who has been maligned and slandered and given second rate treatment by medical professionals as a result of the slanderous things said about them'.*
31. It is therefore relevant for me to consider whether disclosing the Applicant Information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability²³
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;²⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²⁵
32. I am satisfied that disclosing the Applicant Information could assist the applicant to better understand her medical treatment and the reasons for certain treatment actions taken by her doctors, by giving the applicant access to the background information that the doctors had before them. I also consider it could help the applicant to better understand the process her treating team undertook in deciding on a course of treatment.
33. However, the applicant has been given access to the vast majority of her medical records. The Applicant Information comprises a very small component of these

¹⁸ 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

¹⁹ Schedule 4, part 2, item 7 of the RTI Act

²⁰ Schedule 4, part 3, item 3 of the RTI Act.

²¹ Schedule 4, part 4, item 6(1) of the RTI Act.

²² Submission dated 3 December 2014.

²³ Schedule 4, part 2, item 1 of the RTI Act.

²⁴ Schedule 4, part 2, item 10 of the RTI Act.

²⁵ Schedule 4, part 2, item 11 of the RTI Act.

records. I consider the information already disclosed to the applicant significantly satisfies the public interest factors identified above. Given the relatively small amount of Applicant Information and its nature, I do not consider its disclosure would advance these public interest factors to any significant degree. Accordingly, while I find the factors mentioned above are relevant, I afford them low weight in the circumstances.

34. In light of the applicant's submissions, I have also considered whether disclosing the Applicant Information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.²⁶ I acknowledge that the applicant considers she received 'substandard'²⁷ treatment at MNHHS. I also note that issues relating to alleged deficiencies in the health system are matters of serious public interest that benefit from public attention and debate. However, for this public interest factor to be relevant, it must arise from disclosure of the information itself. Having carefully reviewed the Applicant Information, I do not consider that its disclosure would contribute to positive and informed debate on issues relating to the health system. Accordingly, I find this factor favouring disclosure is not relevant.

Allowing inquiry into possible deficiencies in conduct

35. The applicant submits²⁸ that:
- *'the information is not true and RBWH does not wish me to have the proof that I have been grossly defamed and have received substandard care ... based on false information provided by professionals who have made knowingly false statements about me'; and*
 - *'it is not in the public interest to protect people who provide false information and allow innocent people to be slandered in their medical records'.*
36. It is therefore relevant for me to consider whether disclosing the Applicant Information could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official²⁹
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;³⁰ or
 - reveal that information is incorrect, misleading or unfairly subjective.³¹
37. As noted above, almost all of the applicant's medical records have been disclosed to her by MNHHS. The Applicant Information is a record of other individuals' comments to the applicant's doctors that express their opinions, thoughts and, at times, feelings, and is therefore necessarily subjective in nature. However, there is nothing before me to suggest that the Applicant Information is not an accurate reflection of these comments. While I acknowledge that the applicant disagrees with the comments, I do not consider that this renders the Applicant Information to be an incorrect, misleading or unfairly subjective record of those comments. Nor, taking into account the small amount of Applicant Information and its nature, can I discern any evidence that could be construed as supporting the applicant's contention that disclosure of this particular information would reveal possible deficiencies in the conduct of officials. For these

²⁶ Schedule 4, part 2, item 2 of the RTI Act.

²⁷ Submission dated 3 December 2014.

²⁸ Submission dated 3 December 2014.

²⁹ Schedule 4, part 2, item 5 of the RTI Act.

³⁰ Schedule 4, part 2, item 6 of the RTI Act.

³¹ Schedule 4, part 2, item 12 of the RTI Act.

reasons, I find these factors favouring disclosure are not relevant in the circumstances of the review.

Balancing the public interest

38. There is a significant public interest in the applicant having access to her personal information, particularly where it forms part of her medical records. Disclosing the Applicant Information would also enhance MNHHS's accountability and transparency to some extent. However, these public interest factors must be balanced against the factors favouring nondisclosure. I am satisfied that disclosing the Applicant Information could reasonably be expected to prejudice the protection of other individuals' personal information and prejudice the free flow of information by individuals to health care providers in the circumstances of someone needing medical treatment.
39. In these circumstances, I consider the prejudice to the future supply of confidential information to MNHHS is determinative and tips the balance of the public interest against disclosure. Accordingly, I find that MNHHS is entitled to refuse access to the Applicant Information on the basis that its disclosure would, on balance, be contrary to the public interest.
40. I will now consider the relevant factors for and against disclosure of the Family Information.

Family Information

Personal information and privacy

41. The Family Information forms part of the applicant's medical records and I am satisfied it comprises her personal information, giving rise to a factor favouring disclosure. However, much of the Family Information has been provided by the applicant to her doctors in the course of outlining her own medical history and therefore the applicant is aware of the content of much of this information. For this reason, the public interest is not significantly advanced by disclosing this personal information to the applicant.³² Accordingly, this factor warrants only moderate weight.
42. The Family Information comprises details of the medical histories, behaviour and personal affairs of members of the applicant's family. I am satisfied the Family Information comprises the personal information of the family members referred to within and that disclosing it could reasonably be expected to prejudice their privacy.
43. The applicant submits³³ there is no reason to withhold the Family Information as she provided it to MNHHS and that the information is '*open knowledge*' within her family. I agree that where information is already known to an applicant, the privacy interests of those individuals identified are somewhat diminished³⁴ – however, they are not negated entirely.³⁵ In this case, given that the Family Information is highly sensitive in nature and appears as part of clinicians' records, I am satisfied that the extent of the public interest harm that could reasonably be anticipated from disclosure, while somewhat diminished by the applicant's knowledge, remains significant. Similarly, I am

³² *OZH6SQ and Queensland Health* (Unreported, Queensland Information Commissioner, 21 May 2012) (**OZH6SQ**) at [16] in which Assistant Information Commissioner Jefferies considered the balance of the public interest with respect to information forming part of a psychiatric report, in circumstances where the information had been provided by the applicant and was therefore known to the applicant.

³³ Submission dated 3 December 2014.

³⁴ *Beale and Department of Community Safety* (Unreported, Queensland Information Commissioner, 11 May 2012) at [32].

³⁵ *OZH6SQ* at [18].

satisfied that disclosure could reasonably be expected to prejudice the family members' privacy, and that this factor should, in the circumstances, be given significant weight.

Accountability and transparency

44. I have considered whether disclosing the Family Information could reasonably be expected to enhance MNHHS's accountability and transparency by allowing the applicant to better understand her medical treatment and allowing her to verify that the information she provided to her doctors was recorded correctly by MNHHS. However, for the same reasons outlined at paragraph 33, I consider this factor warrants only low weight in the circumstances.

Balancing the public interest

45. In relation to the Family Information, I consider that there is a public interest in the applicant accessing her personal information, and afford this moderate weight in the circumstances. Also, I have identified the public interest in enhance MNHHS's accountability and transparency, but afford this low weight in the circumstances of this review. On the other hand, I consider that there is significant public interest in protecting the personal information and privacy of the individuals named in the Family Information. Balancing these factors against one another, I am satisfied that this public interest in protecting personal information and privacy outweighs the factors favouring disclosure. Accordingly, I find that MNHHS is entitled to refuse access to the Family Information on the basis that its disclosure would, on balance, be contrary to the public interest.

DECISION

46. I vary MNHHS' decision and find that:

- the Category A Documents are outside the scope of the applicant's access application; and
- MNHHS is entitled to refuse access to the Category B Information on the ground that its disclosure would, on balance, be contrary to the public interest.³⁶

47. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Acting Assistant Information Commissioner

Date: 13 February 2015

³⁶ Under sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
6 December 2013	MNHHS received the access application.
28 March 2014	MNHHS issued its decision on the access application.
28 April 2014	The applicant applied to OIC for external review.
2 May 2014	OIC advised MNHHS that the external review application had been accepted and asked MNHHS to provide information relevant to the review.
12 May 2014	MNHHS provided OIC with the requested information, including a copy of the information to which access was refused.
15 May 2014	OIC and the applicant discussed the external review application by telephone.
19 May 2014	OIC advised the applicant that the external review application had been accepted.
12 August 2014	OIC updated the applicant on progress of the review.
12 September 2014	OIC updated the applicant on progress of the review.
3 December 2014	OIC conveyed its preliminary view to the applicant that the relevant information was outside the scope of the access application, or its disclosure would be contrary to public interest, and invited the applicant to provide submissions in support of her case if she did not accept the preliminary view.
3 December 2014	The applicant advised OIC that she did not accept OIC's preliminary view and provided submissions supporting her case.
10 December 2014	OIC advised the applicant that the next step in the external review was to issue a formal decision.