



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>F61 and Children's Health Queensland Hospital and Health Service [2026] QICmr 54 (1 April 2026)</i></b>
<b>Application Number:</b>	<b>318674</b>
<b>Applicant:</b>	<b>F61</b>
<b>Respondent:</b>	<b>Children's Health Queensland Hospital and Health Service</b>
<b>Decision Date:</b>	<b>1 April 2026</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY - documents located as responsive then assessed as out of scope - section 43 of the <i>Information Privacy Act 2009</i> (Qld)</b> <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY - EXEMPT INFORMATION - whether exempt under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the <i>Right to Information Act 2009</i> (Qld)</b> <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY - CONTRARY TO PUBLIC INTEREST INFORMATION - medical records - whether contrary to public interest information 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)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> under the *Information Privacy Act 2009* (Qld) (**IP Act**)<sup>2</sup> to the

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<sup>1</sup> On 22 February 2025 with the application becoming compliant on 24 March 2025.

<sup>2</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**. These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> respectively.

Children's Health Queensland Hospital and Health Service (**CHQ**) for access to:

*All documents containing the applicant's personal information, or documentation regarding the applicant, held by the Queensland Children's Hospital between 1 November 2007 & 1 February 2008. Including but not limited to:*

- *Information contained within [the applicant's] medical chart.*
- *Information contained within [the applicant's child's] medical chart.*
- *Complaints made against [the applicant] and any related deliberations regarding the complaints.*
- *Security reports regarding [the applicant].*

2. In response to the access application, CHQ located 198 pages and decided<sup>3</sup> to refuse access in full to 198 pages, on the grounds that:
  - the information is either exempt information (seven pages) or disclosure of the information would, on balance, be contrary to the public interest (15 pages); and
  - 'a significant portion' of documents do not fall within the scope of the request, on the basis they are irrelevant to the scope of the application (the remaining 176 pages).
3. CHQ advised<sup>4</sup> the applicant that documents described as 'complaints made against' the applicant and 'security reports' regarding the applicant, were refused on the basis that these documents are nonexistent or unlocatable.
4. CHQ's decision noted that no information within the applicant's medical chart was located within the date range of the scope of the request. The decision also notes that 'much of the information obtained from searches' comprises the personal information of the applicant's child.<sup>5</sup>
5. The applicant sought an internal review of this decision.<sup>6</sup> On internal review, CHQ decided<sup>7</sup> to affirm its original decision, advising the applicant that:
  - 168 pages of the 198 pages '*identified as responsive to the subject matter of the request*' were deemed out of scope because they fell outside the specified date range
  - certain information had been correctly assessed as exempt from disclosure under schedule 3, section 12(1) of the RTI Act, as disclosure is prohibited by another Act;<sup>8</sup> and
  - '*a small number of pages*' relate to their (now adult) child's medical records and were refused on the grounds that disclosure would, on balance, be contrary to public interest.<sup>9</sup>
6. For reasons which follow, I vary the internal review decision of CHQ and find that:
  - 189 pages (pages 1-80, 88-101 and 104-198) are non-responsive to the application and therefore out of scope;
  - access to seven pages (pages 81-87) may be refused in full as they comprise exempt information;<sup>10</sup> and

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<sup>3</sup> By letter dated 16 May 2025.

<sup>4</sup> Decision dated 16 May 2025.

<sup>5</sup> Decision dated 16 May 2025.

<sup>6</sup> On 18 May 2025.

<sup>7</sup> By letter dated 26 May 2025.

<sup>8</sup> The relevant Act was not identified in the decision.

<sup>9</sup> The main factor relied upon was schedule 4, part 4, section 6 of the RTI Act.

<sup>10</sup> Under section 67(1) of the IP Act, and sections 47(3)(a), 49 and schedule 3, section 12(1) of the RTI Act.

- access to two pages (pages 102-103) may be refused on the basis that their disclosure would, on balance, be contrary to the public interest.<sup>11</sup>

### Reviewable decision

7. The reviewable decision is CHQ's internal review decision dated 26 May 2025.

### Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken account of the applicant's submissions to the extent they are relevant to the issues for determination in this review.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>12</sup> 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 RTI Act.<sup>13</sup> 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:<sup>14</sup> *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.*<sup>15</sup>

### Information in issue

10. The information in issue, as identified by CHQ in its original decision, concerns the personal information of the applicant's (now adult) child.

### Issues for determination

11. There are three issues for determination in this matter, including whether:
- the pages assessed as responsive to the application, yet out of scope, are in fact out of scope (**Category A Information**);
  - access to certain pages located may be fully refused on the basis they comprise exempt information (**Category B Information**); and
  - access to certain pages located can be refused on the basis that disclosure is, on balance, contrary to the public interest (**Category C Information**).

### Relevant law

12. The IP Act provides a right to access an applicant's personal information held by government.<sup>16</sup> This is not an absolute right but subject to certain limitations including grounds of refusal.<sup>17</sup>
13. Section 67 of the IP Act provides that an agency may refuse access to a document of the agency in the same way and to the same extent the agency could refuse access to

<sup>11</sup> Under section 67(1) of the IP Act and sections 49(3)(b) and 49 of the RTI Act.

<sup>12</sup> Section 21(2) of the HR Act.

<sup>13</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573], endorsed in Queensland by *Deemal-Hall v Office of the Director of Prosecutions* [2024] QCATA 131.

<sup>14</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>15</sup> *XYZ* at [573].

<sup>16</sup> Section 40 of the IP Act, subject to the application requirements outlined in section 43 of the IP Act.

<sup>17</sup> Section 40(1) of the IP Act.

the document under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.

14. Relevantly, access to a document may be refused<sup>18</sup> to the extent that the document comprises exempt information under section 48 of the RTI Act.
15. 'Exempt information' is defined in section 48(3) of the RTI Act as information which is exempt information under schedule 3 of that Act.
16. Schedule 3, section 12(1) provides:

*Information is exempt information if its disclosure is prohibited by 1 of the following provisions—*

- *Aboriginal Cultural Heritage Act 2003, section 29(2)*
- *Adoption Act 2009, section 314*
- *Auditor-General Act 2009, section 53*
- *Australian Crime Commission (Queensland) Act 2003, sections 19 and 20, to the extent they apply to a summons or notice that includes a notation under section 21 of that Act*
- *Child Protection Act 1999, sections 186 to 188*
- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004, sections 51C and 70*
- *Financial Intermediaries Act 1996, section 239*
- *G20 (Safety and Security) Act 2013, section 85*
- *Maintenance Act 1965, section 129*
- *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020, section 102*
- *Mineral and Energy Resources (Financial Provisioning) Act 2018, section 80(2) or 82(2)*
- *Ombudsman Act 2001, section 92*
- *Public Health Act 2005, chapter 8, part 7A, division 6 and chapter 12, part 8, division 1A*
- *Public Interest Disclosure Act 2010, section 65(1)*
- *Taxation Administration Act 2001, part 8, so far as it applies to personal confidential information under that Act*
- *Torres Strait Islander Cultural Heritage Act 2003, section 29(2)*
- *Witness Protection Act 2000, sections 36 and 38*
- *Youth Justice Act 1992, section 288.*

17. Access to information may be also refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.<sup>19</sup>
18. The term 'public interest' is not defined within the RTI Act. The determination of the public interest is a balancing exercise undertaken by the decision-maker in each application. When looking at the documents, the decision-maker must consider all relevant factors for and against disclosure. After identifying the relevant public interest factors, the decision-maker decides how important each factor is and how much 'weight' to give to it.
19. 'Public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens.<sup>20</sup> This means that, in

<sup>18</sup> Under section 47(3)(a) of the RTI Act.

<sup>19</sup> Under section 47(3)(b) of the RTI Act.

<sup>20</sup> Office of the Information Commissioner, 'How to balance the public interest' <https://www.oic.qld.gov.au/guidelines-for-government/access-and-amendment/decision-making/public-interest-balancing-test>

general, a public interest consideration is one which is common to all members, 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.

20. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must (as a summary):<sup>21</sup>
- identify factors irrelevant to the public interest and disregard them
  - identify factors in favour of disclosure of information
  - identify factors in favour of non-disclosure of information; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.
21. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these<sup>22</sup> together with all other relevant information, in reaching my decision. I have kept in mind the RTI Act's pro-disclosure bias and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.<sup>23</sup> In deciding whether disclosure of the information in issue would, on balance, be contrary to the public interest, no irrelevant factors arise, and I have taken not taken them into account in making my decision.

### Agency's Submissions

22. During the review, OIC asked CHQ to provide a submission about why it declined to provide the applicant with the name of the relevant Act and provision cited by schedule 3, section 12(1) of the RTI Act in its decision, concerning the information claimed to be exempt.
23. In summary, CHQ submitted<sup>24</sup> that, even though the documents refused on this basis were refused in full, confirming the relevant provisions could, when taken together with other information, reveal sensitive information that the provisions are designed to protect.

### Applicant's Submissions

24. I have summarised the applicant's submissions received during the review<sup>25</sup> as follows:
- CHQ did not explain why redaction is not reasonably practicable so that the applicant's personal information could be released with third-party information redacted.
  - With respect to the 'out of scope' pages, if these documents contain the applicant's personal information within the requested timeframe, they should fall within the scope of the access application.
  - As the application is exclusively for the applicant's personal information, the exception in schedule 3, section 12(2), to the exemption in section 12(1) applies. Prior decisions of the Information Commissioner may be distinguishable where applicants sought access to entire documents (including third-party information), rather than explicitly requesting only their personal information.

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<sup>21</sup> Section 49(3) of the RTI Act.

<sup>22</sup> I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed throughout (in relation to each category of documents).

<sup>23</sup> Section 47(2) of the RTI Act.

<sup>24</sup> Received on 26 November 2025.

<sup>25</sup> Received on 21 November 2025.

- The factors favouring disclosure in the public interest are significant and include:
  - the right of individuals to access their own personal information
  - that the information may contain 'exculpatory material' which may exonerate the applicant or allow them to respond to allegations made against them
  - accountability and transparency in Government decision making, and
  - natural justice, being a meaningful opportunity to respond to information contained in these records.

25. In relation to the information claimed to be exempt, the applicant further submits:

*If the interpretation is that "only" means the documents themselves must contain exclusively the applicant's information with no mention of any other person, then:*

- *Child protection documents (covered by sections 186-188 of the CP Act) would never qualify for the 12(2) exception, because they will always mention at least a child and adults*
- *Adoption records (section 314 of the Adoption Act 2009) would never qualify, because they necessarily involve multiple parties*
- *Youth justice records (section 288 of the Youth Justice Act 1992) would never qualify, because they involve young persons and adults*
- *Hospital incident reports would never qualify, because they necessarily involve patients and staff.*

*This interpretation renders subsection (2) effectively inoperative for the very documents it was most clearly designed to address.*

26. The applicant also made submissions in relation to the non-disclosure of the name of the Act and provision relied on in refusing information claimed to be exempt:

*This places me in an impossible position. I cannot meaningfully participate in this external review if I am not permitted to know the statutory provision being used to refuse me access to my own personal information. Natural justice requires that a person be informed of the case against them and be given a meaningful opportunity to respond.*

## Findings

### Category A Information

27. CHQ confirmed the access application met the requirements of section 43 of the IP Act on 24 March 2025, including that it gave sufficient information to enable officers of the agency to identify documents sought.

28. The scope of the applicant's request is:

*All documents containing the applicant's personal information, or documentation regarding the applicant held by the Queensland Children's Hospital between 1 November 2007 & 1 February 2008...*

29. Having independently reviewed the information in issue, I find that 189 pages (pages 1-80, 88-101 and 104-198) do not fall within the scope of the applicant's request because

they do not meet both necessary criteria, being documents that:

- contain the applicant's personal information; and
- fall within the stated date range.

30. Therefore, these pages are non-responsive to the application and do not require further consideration.

### **Category B Information**

31. I have considered the Category B Information and am satisfied that its disclosure is prohibited by one of the applicable legislative provisions in schedule 3, section 12(1) of the RTI Act.

32. The exception at schedule 3, section 12(2) applies where the information 'is *only* the personal information of the applicant' (my emphasis). The Information Commissioner has previously found the above exception does not apply where the information is 'intertwined', 'interwoven', or 'mixed' with information of others such that it cannot be separated and therefore, is not 'only' the personal information of the applicant.<sup>26</sup> To the extent the Category B Information contains the applicant's personal information, this is inextricably intertwined with information about other people such that the applicant's personal information cannot be released without also releasing the personal information of other individuals. Accordingly, I find that this exception does not apply.

33. While the applicant has asked that I consider distinguishing this case from previous decisions,<sup>27</sup> I find no reason to do so. I am also satisfied no other exception to the exemption is applicable or appropriate.

34. I acknowledge the applicant's frustrations about not being able to properly argue against an unidentified exemption. However, I consider section 121(3) of the IP Act prevents me from providing any further explanation, including discussing the nature of the Category B Information, how it was obtained, the relevant date range or identifying the specific legislative provision or provisions prohibiting disclosure. I consider that doing so could lead to the particular prejudice or harm that the exemption is designed to prevent.

35. The same constraints also applied during this review. Given these considerations, I was satisfied that not giving the applicant details of the specific provision or provisions prohibiting disclosure, as listed in schedule 3, section 12(1) of the RTI Act, was both reasonable and necessary, notwithstanding the obligations of procedural fairness in the IP Act<sup>28</sup> and at common law.<sup>29</sup> I am satisfied that, during this review, I adopted procedures that are fair, having regard to the obligations of the commissioner under the IP Act,<sup>30</sup> as is within my discretion as a delegate of the Information Commissioner.

### **Category C Information**

36. The Category C Information contains the applicant's personal information, a factor favouring disclosure in the public interest.<sup>31</sup> I afford this factor significant weight.

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<sup>26</sup> See *XX5WZ9 and Queensland Police Service* [2019] QICmr 3 (14 February 2019) at [16], *W38 and Department of Child Safety, Youth and Women* [2020] QICmr 71 at [23] and *SYT and Department of Health* (270019) (15 March 2010) at [32]- [33].

<sup>27</sup> Submissions dated 21 November 2025.

<sup>28</sup> Section 110(2)(a) of the IP Act.

<sup>29</sup> See for example *Kioa v West* (1985) 159 CLR 550 at 584.

<sup>30</sup> Section 110(2)(a) of the IP Act.

<sup>31</sup> Schedule 4, part 2, item 7 of the RTI Act.

37. I recognise that providing the applicant with their own personal information would serve to somewhat enhance the accountability and transparency of CHQ as a Government entity.<sup>32</sup>
38. However, having regard to the role and function of CHQ and the circumstances in which the applicant's personal information arises in the Category A Information;<sup>33</sup> I do not consider that its disclosure would advance the accountability of CHQ in any material way.
39. Further, there is nothing before me to indicate that CHQ has made any decisions directly affecting the applicant, nor been unfair in its treatment of the applicant in any way. Therefore, I afford these factors low weight.
40. I have also had regard to the applicant's submissions that additional factors favouring disclosure in the public interest apply, including that disclosure of the information could reasonably be expected to contribute to the administration of justice.<sup>34</sup>
41. In *Willsford and Brisbane City Council* (1996) 3 QAR 368<sup>35</sup> (***Willsford***), the Information Commissioner found that the administration of justice factor will arise where an applicant can demonstrate that:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - they have a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information would assist them to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
42. I am unable to identify how disclosing the Category C Information would assist the applicant in identifying or pursuing any legal remedy against CHQ or its staff. Accordingly, I do not consider the criteria set out in *Willsford* have been met and this factor does not apply.
43. In terms of factors favouring nondisclosure, I consider disclosure of the Category C Information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>36</sup>
44. The concept of '*privacy*' is not defined in the RTI Act, nor the IP Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>37</sup> The nature of the information on the pages is sensitive and personal. Therefore, in my view, disclosure would also prejudice the protection of an individual's right to privacy.<sup>38</sup>
45. Both pages contain the personal information of individuals other than the applicant, and this is intertwined with personal information of the applicant, such that their privacy would be infringed if the pages were disclosed. I afford this factor significant weight.
46. In addition, schedule 4, part 4, item 6(1) of the RTI Act recognises that disclosing the personal information of another person could reasonably be expected to cause a public

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<sup>32</sup> Schedule 4, part 2, items 1, 3, 10 and 11 of the RTI Act.

<sup>33</sup> That is, within their child's medical record, as opposed to their own.

<sup>34</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>35</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

<sup>36</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>37</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at [1.56]. Cited in *Balzary and Redland City Council; Tidbold* (Third Party) [2017] QICmr 41 (1 September 2017) at [28].

<sup>38</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

interest harm.<sup>39</sup> The refused information comprises the personal information of other individuals, including medical information. Whilst some of this information may, to a degree, already be known by the applicant, I note that there is no legislative restriction upon the further use, dissemination or publication of information released under the IP Act.<sup>40</sup> I also afford significant weight to this nondisclosure factor.

47. On balance, the nondisclosure factors outweigh the disclosure factors and are determinative. Accordingly, it is my view that access to the Category C Information may be refused, as disclosure would, on balance, be contrary to the public interest.<sup>41</sup>

## DECISION

48. For the reasons set out above, I vary the reviewable decision<sup>42</sup> and find that:

- the Category A Information can be refused because it is outside the scope of the access application;
- access to the Category B Information may be refused in full because it comprises exempt information;<sup>43</sup> and
- access to the Category C Information may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.<sup>44</sup>

49. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Stephanie Davis**  
**Assistant Information Commissioner**

**Date: 1 April 2026**

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<sup>39</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>40</sup> As Judicial Member McGill SC of QCAT observed '*... the effect of the... [RTI Act] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17].

<sup>41</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>42</sup> Under section 123(1)(b) of the IP Act.

<sup>43</sup> Under section 67(1) of the IP Act, and sections 47(3)(a), 49 and schedule 3, section 12(1) of the RTI Act.

<sup>44</sup> Under section 67(1) of the IP Act and sections 49(3)(b) and 49 of the RTI Act.