



## Decision and Reasons for Decision

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**Citation:** *A12 and Metro North Hospital and Health Service [2020] QICmr 52 (18 September 2020)*

**Application Number:** 314928

**Applicant:** A12

**Respondent:** Metro North Hospital and Health Service

**Decision Date:** 18 September 2020

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PREJUDICE TO SYSTEM OR PROCEDURE - medical records relating to applicant's referral to the Queensland Fixated Threat Assessment Centre - prejudice effectiveness of a system or procedure for the protection of persons or property - whether information is exempt under schedule 3, section 10(1)(i) of the *Right to Information Act 2009* (Qld) - whether access to information may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information or other individuals - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(b) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - whether agency has taken all reasonable steps to locate the relevant documents - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(e) of the *Right to Information Act 2009* (Qld)

### REASONS FOR DECISION

#### Summary

1. The applicant applied to Metro North Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a range of documents

relating to her, including communications involving particular officers and other government agencies, and particular medical records.<sup>1</sup>

2. The Health Service located 32 pages, released 11 whole and 3 in part, and decided<sup>2</sup> to refuse access to the remaining requested information under the IP Act on various grounds.<sup>3</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision.<sup>4</sup> During the review, the Health Service agreed to disclose further information to the applicant.<sup>5</sup> However, the applicant remains dissatisfied with the level of information released and has raised concerns that the Health Service has not located all relevant documents.<sup>6</sup>
4. For the reasons set out below, I vary the Health Service's decision and find that:
  - access to the information remaining in issue may be refused on the grounds that it is exempt information or its disclosure would, on balance, be contrary to the public interest;<sup>7</sup> and
  - access to any further documents may be refused on the basis they do not exist.<sup>8</sup>

## Background

5. Significant procedural steps relating to the external review are set out in the Appendix.
6. 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).<sup>9</sup>
7. The applicant provided submissions to OIC in support of her case<sup>10</sup> which I have reviewed, and, to the extent they are relevant to the issues for determination, I have considered them below. The applicant also seeks to raise concerns beyond the jurisdiction of the Information Commissioner and which fall outside the scope of this review.<sup>11</sup> In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination in *this particular review*.

<sup>1</sup> For the date range 1 January 2017 to 19 August 2019 (ie.the date of the access application).

<sup>2</sup> Decision dated 4 October 2019.

<sup>3</sup> Including: (i) exempt information; (ii) its disclosure would, on balance, be contrary to the public interest; (iii) its disclosure would be prejudicial to the physical and mental health or wellbeing of the applicant; and (iv) the information is nonexistent or unlocatable. The Health Service also refused to deal with part of the application on the basis of a previous application for the same documents.

<sup>4</sup> On 18 October 2019.

<sup>5</sup> Comprising information which had previously been disclosed to the applicant and appears in mental health service progress notes concerning the applicant's referral to Queensland Fixated Threat Assessment Centre (**QFTAC**).

<sup>6</sup> Submissions dated 30 March 2020.

<sup>7</sup> Under section 67(1) of the IP Act and sections 47(3)(a) and (b) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

<sup>8</sup> Under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

<sup>9</sup> Generally, it is necessary that decision makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**). However, given section 11(1) of the HR Act provides that [a]ll individuals in Queensland have human rights' (my emphasis), and given the applicant resides in a State other than Queensland, I have not had direct regard to the HR Act in this review. I have, of course, observed and respected the law prescribed in the IP and RTI Acts in making this decision. Where the HR Act applies, doing so is construed as 'respecting and acting compatibly with' the rights prescribed in the HR Act (*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]). Accordingly, had it been necessary for me to have regard to the HR Act in this review, the requirements of section 58(1) of that Act would be satisfied, and the following observations of Bell J about the interaction between the Victorian analogues of Queensland's IP and RTI Acts and HR Act would apply: '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' (*XYZ* at [573]).

<sup>10</sup> External review application and the applicant's emails dated 5 and 30 March 2020 and 15 and 29 June 2020. I also note that the applicant has corresponded with OIC on multiple occasions in relation to other external review applications and that all such correspondence is examined by OIC to determine its relevance to particular reviews.

<sup>11</sup> For example, matters relating to the applicant's concurrent reviews.

8. The applicant contends that she has been unable to adequately pursue her '*rights of consultation with OIC*' because of a requirement to participate in the review process in writing.<sup>12</sup>
9. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.<sup>13</sup> To ensure procedural fairness,<sup>14</sup> OIC routinely issues a written preliminary view to an adversely affected party, based on an assessment of the material before the Information Commissioner or delegate at that time. This approach ensures that the party understands the case against them and affords them the opportunity to put forward information in reply, in support of their case.
10. During this review, I conveyed two written preliminary views to the applicant.<sup>15</sup> On each occasion, I invited the applicant to provide submissions in response.<sup>16</sup> The applicant provided submissions in response to the first preliminary view<sup>17</sup> but did not respond to the second.<sup>18</sup> In these circumstances, I am satisfied that the applicant has been afforded adequate opportunities to put forward her views and has not been disadvantaged by OIC's processes.

### Reviewable decision

11. The decision under review is the Health Service's decision dated 4 October 2019 refusing access to information requested by the applicant.

### Information in issue

12. The information which remains in issue appears in medical progress notes and email communications between the Health Service and other agencies.<sup>19</sup> The IP Act limits the extent to which I can describe the content of the information in issue in these reasons.<sup>20</sup> Broadly, it consists of the following:
  - Information in mental health service progress notes concerning the applicant's referral to QFTAC<sup>21</sup>
  - the name of another person identified as the intended recipient of an email sent to the Health Service by the applicant<sup>22</sup> (**Intended Recipient**); and
  - sections of emails sent to the Health Service by Queensland Police Service (**QPS**) and Community Forensic Outreach Service (**CFOS**) in response to a third party consultation process under the IP Act (**Emails**).<sup>23</sup>

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<sup>12</sup> Submissions dated 30 March 2020 and 4 September 2020

<sup>13</sup> Section 108(1)(a) of the IP Act.

<sup>14</sup> As required by section 110 of the IP Act and common law.

<sup>15</sup> By letters dated 30 March and 8 June 2020.

<sup>16</sup> I invited the applicant to respond by audio file or written documents, which could either be emailed to OIC or saved to a USB or CD and posted.

<sup>17</sup> By email dated 30 March 2020.

<sup>18</sup> By email dated the 23 June 2020, the applicant was provided with additional time to provide any response she wished to make concerning OIC's letter dated 8 June 2020, however, no response was received from the applicant.

<sup>19</sup> 3 full pages of progress notes, parts of 16 pages of progress notes and parts of 2 pages of emails.

<sup>20</sup> Section 121 of the IP Act.

<sup>21</sup> This is information not disclosed in 18 pages which were the subject of a previous application finalised by decision *V29 and Metro North Hospital and Health Service* [2020] QICmr 10 (21 February 2020) (**V29**). The Health Service has not objected to these pages being considered again in this review and, as noted in paragraph 3 above, the Health Service has re-released the information previously disclosed to the applicant in respect of that previous application.

<sup>22</sup> Pages numbered 16 of 21 (progress note dated 8 March 2019) the remainder of which has been released to the applicant.

<sup>23</sup> Parts of two pages, the remainder of which were released to the applicant.

## Issues for determination

13. The issues for determination are whether access may be refused to:
- information in the progress notes on the basis it comprises exempt information<sup>24</sup>
  - the Intended Recipient and redacted sections of Emails on the basis that disclosure would, on balance, be contrary to the public interest;<sup>25</sup> and
  - any further information on the basis it is nonexistent or unlocatable.<sup>26</sup>

## Findings

14. An individual has the right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>27</sup> However, this right is subject to limitations, including grounds for refusing access.<sup>28</sup>

## Exempt information

15. Access may be refused to exempt information.<sup>29</sup> Information will qualify as exempt where its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.<sup>30</sup> For this exemption to apply, the following three elements must be satisfied:<sup>31</sup>
- a) there exists an identifiable system or procedure
  - b) it is a system or procedure for the protection of persons, property or the environment; and
  - c) disclosure could reasonably be expected to prejudice that system or procedure.<sup>32</sup>
16. As noted above, the information in issue within the progress notes relates to the applicant's referral to QFTAC. In V29, the Information Commissioner considered whether information relating to the applicant's referral to QFTAC was exempt on the above basis and relevantly found that:<sup>33</sup>
- the evaluation of concerns by QFTAC comprises an identifiable system
  - the QFTAC system is designed to ensure the safety and security of the subject individuals, the broader community and, in some instances, publicly/privately-owned property
  - revealing to the applicant the specifics of the evaluation methods undertaken by QFTAC and the Health Service to assess the applicant's behaviour could reasonably be expected to allow the applicant to use that information to modify her behaviour in such a way that would impact upon the effectiveness of the QFTAC system
  - any broader dissemination of the refused information, which includes QFTAC's evaluation methods and processes, may possibly enable others to modify their behaviour in a way that could also reasonably be expected to impact upon the effectiveness of the QFTAC system; and

<sup>24</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the RTI Act.

<sup>25</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>26</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

<sup>27</sup> Section 40 of the IP Act.

<sup>28</sup> As noted in footnote 7, access to information may be refused under the IP Act in the same way and to the same extent that the agency could refuse access under section 47 of the RTI Act. Section 47(2) of the RTI Act states that it is Parliament's intention that the grounds on which access may be refused are to be interpreted narrowly.

<sup>29</sup> Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 to the RTI Act identifies the types of exempt information.

<sup>30</sup> Schedule 3, section 10(1)(i) of the RTI Act.

<sup>31</sup> *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at [9] applying *Ferrier and Queensland Police Service* (1996) 3 QAR 350.

<sup>32</sup> This exemption is subject to the exceptions in schedule 3, section 10(2) of the RTI Act.

<sup>33</sup> Paragraphs [15]-[19] of V29.

- none of relevant the exceptions to the exemption<sup>34</sup> apply.
17. As the information in issue in the progress notes duplicates the information considered in V29, I consider the above findings in V29 also apply in this case.
  18. The applicant contends she requires her medical information in relation to a diagnosis and to examine whether standard of care and patient rights were breached.<sup>35</sup> This submission goes to the issue of accountability and transparency in the health system. However, when information qualifies as exempt, I am precluded from considering arguments which seek to advance public interest factors favouring disclosure because Parliament has already decided that it would be contrary to the public interest to disclose exempt information.<sup>36</sup>
  19. Accordingly, I find that the information in issue in the progress notes comprises exempt information as its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, and access may be refused on that basis.<sup>37</sup>

### **Contrary to public interest**

20. Access to information may also be refused if disclosure of it would, on balance, be contrary to the public interest.<sup>38</sup> 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.<sup>39</sup>
21. In deciding where the balance of the public interest lies, the RTI Act requires a decision maker to identify factors for and against disclosure and decide, on balance, whether disclosure would be contrary to the public interest.<sup>40</sup> In balancing the public interest, a decision maker is prohibited from taking into account irrelevant factors.<sup>41</sup>
22. In making this decision, I have not taken into account any irrelevant factors.

### **Factors favouring disclosure**

23. The public interest will favour disclosure of information where it could reasonably be expected to:
  - reveal, or assist inquiry into, possible deficiencies in agency conduct<sup>42</sup>
  - reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;<sup>43</sup> and/or
  - contribute to the administration of justice for a person.<sup>44</sup>

<sup>34</sup> Schedule 3, section 10(2) of the RTI Act sets out the types of information which will not be exempt under schedule 3, section 10(1) of the RTI Act. Generally, these exceptions relate to information concerning law enforcement investigations.

<sup>35</sup> Submissions dated 30 March 2020 and 29 June 2020.

<sup>36</sup> Section 48(2) of the RTI Act. The Information Commissioner has no discretion to direct that access be given to exempt information (section 118(2) of the IP Act). Refer also to *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17]-[18] and *BL v Office of the Information Commissioner & Anor* [2012] QCATA 149 at [13] and [15].

<sup>37</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the RTI Act.

<sup>38</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>39</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

<sup>40</sup> Section 49(3) of the RTI Act.

<sup>41</sup> Including those at schedule 4, part 1 of the RTI Act.

<sup>42</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>43</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>44</sup> Schedule 4, part 2, item 17 of the RTI Act.

24. The Intended Recipient is the name of another individual appearing in a progress note which records an email sent by the applicant through an automated system. As noted above, all remaining information in this progress note has been disclosed to the applicant.<sup>45</sup>
25. The applicant submits that she requires the names of all individuals appearing within the information in issue to include those individuals in ongoing litigation,<sup>46</sup> however, I am not satisfied that the disclosing the Intended Recipient is required to assist the applicant to pursue a remedy, or evaluate whether a remedy is available or worth pursuing.<sup>47</sup> On this basis, while these factors may apply, I afford them low weight due to the limited nature of the Intended Recipient.
26. As stated above, the Emails were sent to the Health Service in response to a third party consultation process under the IP Act.<sup>48</sup> The redacted parts of the Emails comprise information given by a psychiatrist regarding the applicant. While they are not clinical or medical records as such, they comprise a medical opinion given about the applicant.<sup>49</sup>
27. The Health Service found that disclosure of the redacted parts of the Emails could likely prejudice the applicant's mental health or wellbeing. In relation to this information, the applicant argues that no one has explained *how* her health would be harmed by knowing this information.<sup>50</sup>
28. I am satisfied that the information in the Emails comprises the applicant's personal information and that this factor carries significant weight in favour of disclosure.<sup>51</sup> I am also satisfied that disclosure of the Emails could reasonably be expected to enhance the accountability and transparency of the Health Service, and provide background and contextual information to decisions made by the Health Service.<sup>52</sup> I have also given consideration to advancing the applicant's fair treatment given her submissions at paragraph 27 above.<sup>53</sup> Given the nature of the refused information in the Emails and the context in which it appears, I afford these factors moderate weight.
29. I have considered all factors listed in schedule 4, part 2 of the RTI Act,<sup>54</sup> and I can identify no other public interest considerations favouring disclosure of the Intended Recipient and Emails.<sup>55</sup>

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<sup>45</sup> The prodisclosure factors concerning the Health Service's accountability and transparency (schedule 4, part 2, items 1, 3 and 11 of the RTI Act) have been substantially advanced by this disclosure and would not be further advanced in any meaningful way by disclosing the Intended Recipient.

<sup>46</sup> Submissions dated 30 March 2020 and 29 June 2020.

<sup>47</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

<sup>48</sup> Under section 56 of the IP Act, third parties are required to be consulted about disclosure of information which may reasonably be expected to be of concern to that party.

<sup>49</sup> One email is authored by the psychiatrist and the other, authored by QPS, paraphrases that medical opinion.

<sup>50</sup> Submissions dated 29 June 2020. The Director Mental Health/Consultant Liaison determined that the release of this healthcare information to the applicant would be detrimental to her physical or mental health under section 47(3)(d) of the RTI Act. I have however, considered this information under the alternative ground for refusal in section 47(3)(b) of the RTI Act.

<sup>51</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>52</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>53</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>54</sup> Including the factor in schedule 4, part 2, item 16 of the RTI Act.

<sup>55</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the moderate weight that I have afforded to the public interest factors that favour nondisclosure.

### Factors favouring nondisclosure

30. The RTI Act recognises that there is a public interest harm<sup>56</sup> in disclosing the personal information<sup>57</sup> of other individuals and also seeks to safeguard an individual's right to privacy.<sup>58</sup> The name of the Intended Recipient appears as part of an automated email system record, in connection with that person's public sector employment. Ordinarily, this context would not equate with a high weighting for these nondisclosure factors, however, given it is within the applicant's mental health progress notes in relation to the QFTAC referral, I consider there is a level of sensitivity attached to the Intended Recipient and therefore, afford these factors moderate weight.
31. As noted above, the redacted parts of the Emails appear within responses obtained by the Health Service from other agencies in relation to an IP Act consultation process. I consider that disclosure of this particular information could reasonably be expected to prejudice the Health Service's ability to obtain relevant information from consulted third parties in the future.<sup>59</sup> The purpose of the statutory consultation process is to enable third parties to detail any concerns they may have about disclosure of information, often in a highly sensitive context. If responses were routinely disclosed under the IP Act, this could lead to consulted third parties being reluctant to comprehensively express their concerns. In turn, this could prejudice the consultation process as an agency may not be apprised of all relevant information when making its decision on disclosure. Given the particularly sensitive context to which the Emails relate, I afford this factor significant weight against disclosure.
32. Also, I have taken into account the decision made by the Health Service in relation to potential prejudice to the applicant's health or wellbeing. I consider this raises a further public interest factor favouring nondisclosure to the extent that disclosure may prejudice measures taken by the public health system in relation to patient care and treatment. In the particular context of mental health treatment and involvement of QFTAC, I consider this to be a significant consideration weighing against disclosure.<sup>60</sup>

### Balancing the public interest

33. I have taken into account the pro-disclosure bias of the IP Act.<sup>61</sup> As outlined above, I have found that the factors favouring disclosure of the Intended Recipient are deserving of low weight, given the limited nature of that information and taking into account the information to which the applicant was granted access. On the other hand, considering the context in which the Intended Recipient appears, I afford moderate weight to the nondisclosure factors regarding the personal information and privacy of other individuals.
34. In respect of the Emails, I have afforded moderate weight to enhancing the accountability and transparency of the Health Service and advancing the applicant's fair treatment, and significant weight to disclosing the applicant's own personal information. However, there are also public interest factors favouring nondisclosure of the Emails which I consider carry higher weight, namely, the risk of prejudice to a statutory consultation process and measures taken by the public health system in relation to patient care and treatment.

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<sup>56</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>57</sup> 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

<sup>58</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>59</sup> The list of factors in schedule 4 of the RTI act is non-exhaustive and therefore, other unlisted factors may be relevant in a particular case. In this review, I consider this additional factor applies.

<sup>60</sup> I have considered the disclosure impacts of this information as an additional factor favouring nondisclosure.

<sup>61</sup> Section 64 of the IP Act.

35. On balance, I am satisfied that the public interest factors favouring nondisclosure are determinative. Therefore, I find that access to the Intended Recipient and redacted parts of the Emails may be refused as disclosure would, on balance, be contrary to the public interest.<sup>62</sup>

### **Nonexistent or Unlocatable Documents**

36. The functions of the Information Commissioner on external review include investigating and reviewing whether an agency has taken reasonable steps to identify and locate documents applied for by applicants.<sup>63</sup> However, access may be refused to a document if it is nonexistent or unlocatable.<sup>64</sup>
37. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.<sup>65</sup> 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, depending on which of the key factors are most relevant in the circumstances. For a document to be unlocatable, a decision-maker must consider 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, a decision-maker must consider the circumstances of the case and the key factors.<sup>66</sup>
38. During processing, the Health Service did not locate any documents relating to particular parts of the application.<sup>67</sup> The applicant contends that the Health Service's searches were inadequate because *'there are no records of referral and content, no record dealing with [the applicant's] PID and complaints or showing each executive and staff involved'*.<sup>68</sup>
39. As a result of the applicant's above concern, I asked the Health Service to provide further details about the searches it conducted and information about the Health Service's recordkeeping systems and practices. In responding to that request, the Health Service conducted further searches for documents relevant to the application but did not locate any additional relevant documents. The Health Service relies on searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents relevant to the application and provided information to me about its recordkeeping systems and searches, as set out below.
40. The Health Service's electronic records management system, Content Manager, stores the records of its Legal Services department, the Office of the Chief Executive, the Health Service Board Office and the Public Health Unit. The Health Service submitted<sup>69</sup> that it conducted searches, both on external review and in processing of the application, of the following:

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<sup>62</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>63</sup> Section 137(2) of the IP Act.

<sup>64</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

<sup>65</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19] as including the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); 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. These factors were more recently considered in *Van Veendendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017).

<sup>66</sup> *Pryor* at [21].

<sup>67</sup> Items 2, 3 and 5 of the access application.

<sup>68</sup> Applicant's submissions dated 30 March 2020.

<sup>69</sup> Submissions dated 8 May 2020, which included search records and certifications.



- Content Manager
  - the electronic and hard copy records held by the Metro North Board (including correspondence files); and
  - the Board's public email account, the Board's feedback email account and the email account of RS (the Board Chair).<sup>70</sup>
41. On external review, the question I must determine is whether the Health Service has taken reasonable steps to locate documents relevant to the access application.<sup>71</sup>
42. On the information before me, I am satisfied that the types of information requested in the access application would be stored in the locations which the Health Service has searched. Having reviewed the Health Service's search certifications and submissions,<sup>72</sup> I am also satisfied that appropriately targeted searches were undertaken and staff with requisite knowledge of the relevant areas made relevant enquiries to locate relevant information.
43. Taking into account the Health Service's record keeping practices, the conducted searches and the documents that were located, there is nothing before me, other than the applicant's general assertion,<sup>73</sup> to support an expectation that further relevant documents exist. I am therefore, satisfied that the Health Service has taken all reasonable steps to locate information relevant to the access application and access to any further information may be refused on the basis that it does not exist.<sup>74</sup>

## DECISION

44. For the reasons set out above, I vary the Health Service's decision. I find that:
- access to the mental health progress notes may be refused on the basis it is exempt information under schedule 3, section 10(1)(i) of the RTI Act<sup>75</sup>
  - access to the Intended Recipient and Emails may be refused as disclosure would, on balance, be contrary to the public interest<sup>76</sup>; and
  - the Health Service has taken reasonable steps to locate information and access to any further information may be refused on the basis it does not exist.<sup>77</sup>
45. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 18 September 2020**

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<sup>70</sup> Using a variety of search terms, including the applicant's name and 'QFTAC'.

<sup>71</sup> Section 137(2) of the IP Act.

<sup>72</sup> Including search records and certifications.

<sup>73</sup> On 8 June 2020, I conveyed details of the Health Service's searches and record keeping practices to the applicant and invited the applicant to identify any further specific documents she believed existed, were relevant to the application and had not been located by the Health Service. The applicant did not make any further submission about the adequacy of the Health Service's searches.

<sup>74</sup> Section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

<sup>75</sup> Section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

<sup>76</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

<sup>77</sup> Section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
22 October 2019	OIC received the application for external review.
25 October 2019	OIC received preliminary documents from the Health Service.
19 November 2019	OIC notified the applicant and the Health Service that it had accepted the application for external review and asked the Health Service to provide relevant information. OIC received an email response from the applicant.
20 November 2019	OIC received the requested information from the Health Service.
December 2019 to February 2020	OIC progressed the earlier external review, given it concerned some of the same information in issue, and provided a general update to the applicant on 30 January 2020.
26 February and 5 March 2020	OIC received an email from the applicant concerning a number of external reviews.
30 March 2020	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions if she did not accept the preliminary view. OIC received the applicant's submissions.
6 April 2020	OIC requested further information from the Health Service.
8 May 2020	OIC received the requested information from the Health Service.
1 June 2020	OIC provided an update to the applicant.
8 June 2020	OIC conveyed a further preliminary view to the applicant and invited the applicant to provide submissions if she did not accept the preliminary view.
15 June 2020	The Health Service provided to the applicant a further copy of information disclosed in the earlier external review. OIC received an email from the applicant.
23 June 2020	Having received no submissions from the applicant responding to the preliminary view, OIC again invited the applicant to provide submissions if she did not accept the preliminary view.
26 June 2020	In the absence of any further response from the applicant, OIC notified the applicant and the Health Service that the external review had been finalised.
29 June 2020	OIC received an email from the applicant requesting that the external review be re-opened and raising matters that concerned a number of external reviews.
2 July 2020	OIC notified the applicant and the Health Service that the external review had been re-opened.
4 September 2020	OIC received an email from the applicant concerning a number of external reviews.