



## Decision and Reasons for Decision

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Citation:	<i>C98 and Cairns and Hinterland Hospital and Health Service [2021] QICmr 46 (9 September 2021)</i>
Application Number:	315811
Applicant:	C98
Respondent:	Cairns and Hinterland Hospital and Health Service
Decision Date:	9 September 2021
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - access to deceased son's medical records - transparency and accountability of hospital - prejudice to right to privacy - public interest harm through disclosure of personal information - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to Cairns and Hinterland Hospital and Health Service (**CHHHS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the medical records of her deceased son.<sup>2</sup>
2. CHHHS located 1254 pages and fully refused access,<sup>3</sup> on the ground that disclosure would, on balance, be contrary to the public interest.<sup>4</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review<sup>5</sup> and confirmed that she sought access to her deceased son's medical records from May 2018 to April 2020.<sup>6</sup> CHHHS released information to the applicant during external review<sup>7</sup> that disclosed the interactions that the applicant had with CHHHS in relation to her son's care. The information remaining in issue comprises the mental health records (**Mental Health Records**) for the applicant's son.

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<sup>1</sup> On 2 October 2020.

<sup>2</sup> The applicant's son passed away in August 2020 and his death is under investigation by the Coroners Court Queensland, as noted in the applicant's submissions of 7 July 2021.

<sup>3</sup> Decision dated 14 December 2020.

<sup>4</sup> Section 47(3)(b) and 49 of the RTI Act.

<sup>5</sup> Application received on 4 January 2021.

<sup>6</sup> This is the date range confirmed in the applicant's written submissions to OIC on 7 July 2021.

<sup>7</sup> This information comprised entries recorded in the medical records where the applicant spoke with the treating team. It largely comprised her own personal information and is already known to her.

4. For the reasons set out below, I affirm CHHHS's decision and find that disclosure of the Mental Health Records would, on balance, be contrary to the public interest and access may be refused on this basis.

## Background

5. The circumstances of the death of the applicant's young adult son are tragic, and, as I understand from submissions made by CHHHS and the applicant, subject to a Coronial investigation. Given the highly personal nature of the records and the applicant's submissions, I have not stated the full background to this matter in this decision. This is because the relevant background impacts on the privacy of the applicant and other family members. In reaching my decision, I have considered the factual background set out in the applicant's submissions on 7 July 2021 as well as all other submissions made and mentioned in the Appendix to this decision.

## Reviewable decision

6. The decision under review is CHHHS's decision dated 14 December 2020.

## Evidence considered

7. Significant procedural steps taken during the external review are set out in the Appendix. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including in footnotes and the Appendix).
8. In reaching this decision, I have also had regard to the *Human Rights Act 2019* (Qld),<sup>8</sup> particularly the applicant's right to seek and receive information.<sup>9</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 RTI Act.<sup>10</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

## Information in issue and Issue for determination

9. The information in issue comprises the Mental Health Records of the deceased.<sup>11</sup> If the deceased were alive, the Mental Health Records would be considered his personal information.<sup>12</sup> It also comprises personal information about other individuals, including private individuals and healthcare practitioners.
10. The issue for determination is whether disclosure of the Mental Health Records would, on balance, be contrary to the public interest.<sup>13</sup>

## Relevant law

11. Under the RTI Act, access to documents may be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.<sup>14</sup>

<sup>8</sup> Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

<sup>9</sup> Section 21 of the HR Act.

<sup>10</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>11</sup> The applicant's submissions on 7 July 2021 confirming the applicant is seeking medical records of the deceased held by the CHHHS between May 2018 and April 2020.

<sup>12</sup> Defined in section 12 of the *Information Privacy Act 2009* (Qld) (**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.*' See also schedule 4, part 3, item 5(a) of the RTI Act.

<sup>13</sup> Section 47(3)(b) and 49 of the RTI Act.

<sup>14</sup> Section 47(3)(b) of the RTI Act. Section 47(2)(a) of the RTI Act requires the grounds to be interpreted narrowly.

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>15</sup>

12. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>16</sup>
  - identify factors irrelevant to the public interest and disregard them
  - identify factors in favour of disclosure of information
  - identify factors in favour of nondisclosure of information; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.
13. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.<sup>17</sup>

### Applicant submissions

14. The applicant made detailed submissions throughout the external review,<sup>18</sup> all of which I have considered carefully to the extent they are relevant to the issue for determination. In particular, the applicant's legal representative made comprehensive written submission on 7 July 2021. In essence, the applicant stated:
  - concerns regarding the treatment provided by CHHHS to the deceased, and their management of his privacy and overall care, required disclosure of the Mental Health Records to allow the applicant to determine if there was a proper basis to lodge a complaint to the health regulator
  - that OIC must follow the '*leading case authority on determining (and reducing) [sic] a deceased's person right to privacy*' that recent decisions have refined to the consideration of three elements<sup>19</sup>
  - the three elements outlined in *Lowe* are evidence of involvement in care, extent of knowledge of medical history/incident, and evidence of special dependence/relationship
  - the deceased's request for privacy should not be considered by OIC when considering the relationship between the applicant and the deceased, due to his state of mental health
  - the special dependence/relationship is evidenced by the applicant and deceased being mother and son, as well as the deceased's dependence on the applicant for love, care, financial assistance, advice, guidance, and transport; and
  - the *Willsford* criteria, in relation to the administration of justice for the applicant, are satisfied and '*given the magnitude of the loss the public interest consideration favours disclosure.*'

<sup>15</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>16</sup> Section 49(3) of the RTI Act.

<sup>17</sup> The applicant's submissions received on 7 July 2021 noted that disclosure of the Mental Health Records may cause possible embarrassment to the Government. This is an irrelevant factor and has not been considered.

<sup>18</sup> Received by email on 4 January 2021, 5 May 2021, and 7 July 2021, and by telephone on 23 February 2021, 26 May 2021, and 8 June 2021.

<sup>19</sup> In submissions received on 7 July 2021, the applicant relied on *Summers and Department of Health; Hintz (Third Party)* (1997) 3 QAR 479 at [19] (**Summers**); *Lowe and Department of Health* (Unreported, Queensland Information Commissioner, 25 November 2010) at [14] (**Lowe**); *Keogh and Department of Health* (Unreported, Queensland Information Commissioner, 31 August 2010) at [24] (**Keogh**); *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [16]-[18] (**Willsford**); and *Bultitude and Princess Alexandra Hospital and District Health Service* (2000) 5 QAR 352 (**Bultitude**).

15. Finally, the applicant has submitted I ‘*must have regard to the principles established in earlier OIC authorities in order to afford the applicant procedural fairness*’.<sup>20</sup> In reaching this decision, I have considered these earlier authorities and the applicant’s submissions in relation to those authorities, and I have decided this matter on the basis of its own factual background.
16. Some of the applicant’s submissions identify other parties. I have not included these in this decision but have considered the submissions carefully when evaluating the public interest factors for and against disclosure of the Mental Health Records.<sup>21</sup>

## Findings

### *Factors favouring disclosure*

17. A very small portion of the Mental Health Records comprise the applicant’s personal information. This enlivens a public interest factor favouring disclosure.<sup>22</sup> There is a strong public interest in an individual having access to their personal information held by government. Here, the applicant’s information appears in the context of information provided to CHHHS by the deceased. The comments appear in an intertwined way such that it cannot be disclosed without disclosing the personal information of the deceased.<sup>23</sup> Given the context in which the applicant’s personal information appears, I consider that moderate weight applies to this factor only in relation to the limited information that can be considered the applicant’s personal information.
18. The applicant is an eligible family member of the deceased, which enlivens a public interest factor favouring disclosure.<sup>24</sup> As the Mental Health Records comprise the deceased’s personal information this factor applies across all documents. As the applicant is the mother of the deceased, and the personal information in question is that of her deceased son, I consider this factor holds high weight favouring disclosure.
19. I am also satisfied that having the complete picture of her son’s health and wellbeing, including details of the care provided to him, may provide the applicant with answers about his health and the care he received in the months preceding his death. This raises a public interest in favour of disclosure.<sup>25</sup> In this regard, I note the applicant requested and attended a clinical disclosure meeting with CHHHS after the deceased’s death, during which the deceased’s diagnosis and treatment were discussed with the close family members. In my view the information provided to the applicant during this meeting has reduced the weight of this factor. Accordingly, I afford moderate weight to this factor.
20. The applicant has raised concerns about the treatment provided by CHHHS to the deceased and identified a number of related public interest factors favouring disclosure.<sup>26</sup> I have considered whether the accountability of CHHHS is advanced by disclosure<sup>27</sup> and

<sup>20</sup> Submission received 7 July 2021.

<sup>21</sup> The applicant also identified concerns in a telephone call with OIC on 26 May 2021 regarding the documents disclosed to her during the review, as they were electronic records and no audit log was provided to her. In this respect, I note section 28 of the RTI Act applies regarding metadata.

<sup>22</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>23</sup> And is incapable of being severed from the personal information of the deceased.

<sup>24</sup> Schedule 4, part 2, item 9 of the RTI Act. I have viewed the death certificate of the deceased and I am satisfied that the applicant is the deceased’s mother and an eligible family member in accordance with schedule 5, ‘*eligible family member*’, 1(c) of the RTI Act. I am also satisfied that the Mental Health Records are the personal information of the deceased, per section 12 of the IP Act (see also *Keogh and X19 and Metro South Hospital and Health Service* [2020] QICmr 12 (26 February 2020) at [23] (**X19**)).

<sup>25</sup> *OKP and Department of Communities* (Unreported, Queensland Information Commissioner, 9 July 2009) at [82] – [84] which considered the public interest considerations under similar provisions in the now repealed *Freedom of Information Act 1992* (Qld).

<sup>26</sup> Submissions received on 7 July 2021.

<sup>27</sup> Schedule 4, part 2, items 1, 2 and 3 of the RTI Act, per the applicant’s submissions on 7 July 2021.

accept the applicant's submission that '*there is a legitimate public interest in the accountability of public hospitals for the provision of medical services*'.<sup>28</sup> The Mental Health Records detail the daily care provided to the deceased, including assessments, observations, and discussions between health staff and the deceased. Disclosure of the Mental Health Records would generally advance the transparency and accountability of CHHHS, contribute to positive and informed debate on important issues, and would inform the community of the Government's operations in its dealings with members of the community.

21. In considering the weight that should be afforded to these public interest factors, firstly, I note that the records comprise the day-to-day healthcare records of one individual. Release of these medical records, in themselves, would not inform the community in any great detail about the CHHHS general treatment of mental health concerns nor would it indicate any systemic issues. I also note the current investigation by the Coroners Court into the manner and circumstances of the death of the deceased.<sup>29</sup> The Coroners Court has significant powers to investigate the circumstances of the deceased's death,<sup>30</sup> and may release further information to the applicant through its processes.<sup>31</sup> CHHHS has confirmed that the Coroners Court has received a copy of the deceased's full medical records including the Mental Health Records, as part of its investigation.<sup>32</sup> Given the independent review underway by the Coroners Court, and as the Mental Health Records are limited to the experiences and treatment of one individual, I afford moderate weight to these public interest factors in the specific circumstances of this matter.
22. The applicant has submitted concerns about the care provided by CHHHS healthcare staff to the deceased, including their management of his privacy. I have considered whether disclosure of the Mental Health Records could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official; or reveal or substantiate that an agency or official has engaged in misconduct, or negligent, improper or unlawful conduct.<sup>33</sup> In order for this (and any) public interest factor to be enlivened, the expectation must be reasonably based, neither irrational, absurd or ridiculous,<sup>34</sup> nor merely a possibility.<sup>35</sup>
23. While I am unable to disclose the information in issue in this review<sup>36</sup> I accept that the public interest factor regarding possible deficiencies of conduct or administration is enlivened. The threshold to enliven this factor is low, and disclosure of the Mental Health Records may assist inquiry into certain parts of the deceased's care. The current Coronal process into the deceased's death significantly reduces the weight of this factor also. It is also unclear, on the face of the documents, whether there were any deficiencies in the CHHHS provision of health care. For these reasons, I afford moderate weight to this factor.
24. Notwithstanding the applicant's general assertion, there is no evidence in any of the material before me of any misconduct, or negligent, improper or unlawful conduct by any of the healthcare providers who treated the deceased.<sup>37</sup> Consequently I am satisfied this factor does not apply to disclosure of the Mental Health Records.

<sup>28</sup> Summers at 27.

<sup>29</sup> Confirmed by emails between CHHHS and the Coroners Court of Queensland on 9 November 2020.

<sup>30</sup> Sections 7, 11, 16 and 45 of the *Coroners Act 2003* (Qld).

<sup>31</sup> Section 54 of the *Coroners Act 2003* (Qld).

<sup>32</sup> By phone and email on 22 July 2021. CHHHS confirmed that the Mental Health Records were requested by the Coroners Court Queensland under section 16(2) of the *Coroners Act 2003* (Qld). Accordingly schedule 1, section 8 of the RTI Act does not apply.

<sup>33</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act, per the applicant's submissions received on 7 July 2021.

<sup>34</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

<sup>35</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 at [44]; *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154] – [160].

<sup>36</sup> Section 108 of the RTI Act.

<sup>37</sup> Schedule 4, part 2, item 6 of the RTI Act.

25. The applicant also contends that disclosure of the Mental Health Records could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.<sup>38</sup> I have carefully reviewed the Mental Health Records and I am not satisfied that disclosure of the Mental Health Records would reveal any environmental or health risks, nor any measures relating to public health and safety. Accordingly, I find that this factor does not apply in the circumstances.
26. The applicant submitted that she sought access to the Mental Health Records to evaluate whether a legal remedy might be available to her in respect of the death of her son and identifies the *Willsford* criteria as applying to the disclosure of the Mental Health Records.<sup>39</sup> The *Willsford* criteria, if satisfied, apply to favour disclosure of third party personal information, where an applicant is pursuing a legal remedy. Disclosure of the third party personal information will contribute to the administration of justice for that person.<sup>40</sup> Crucially, establishing the applicability of the *Willsford* criteria does not serve as a determinative factor, but simply one factor that must be weighed and balanced against any factors favouring nondisclosure.<sup>41</sup> The criteria are cumulative, and are as follows:<sup>42</sup>
  - i) loss or damage or some kind of wrong had been suffered in respect of which a remedy was, or might be, available under the law
  - ii) the applicant had a reasonable basis for seeking to pursue the remedy; and
  - iii) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy was available, or worth pursuing.
27. In respect of the first element, the applicant submits that she has suffered a significant loss and damage by the death of her son, which I accept. However, the applicant does not specify the particular legal remedy she seeks to pursue. For this reason, it is unclear to me whether the first limb of the test above is satisfied.
28. Secondly, the applicant contends that the reasonable basis for seeking to pursue the remedy is that '*her son was admitted as a patient to the respondent for the specific purpose of psychiatric care [and] the care provided by the respondent was unsuccessful and led to [the deceased's] death.*' The applicant has not proffered any finding from the Coroners Court or other relevant agency in support of this statement. The applicant relies on *Bultitude*, where the Information Commissioner found that the applicant satisfied the *Willsford* criteria in requiring access to her deceased husband's medical records to evaluate whether workplace exposure to chemicals caused or contributed to his death. The circumstances and evidence in this case are different to those in *Bultitude*, where the applicant in that case identified the specific claim they were pursuing, and proffered significant supporting evidence (including from medical experts) regarding the likelihood of the workplace chemical exposure causing, or contributing to, the death of the applicant's husband.<sup>43</sup>
29. In my reasoning above,<sup>44</sup> I explained that I accept that the applicant's submissions raise questions regarding the accountability of CHHS in relation to the care it provided her

<sup>38</sup> Schedule 4, part 2, item 14 of the RTI Act, per the applicant's submissions received on 7 July 2021.

<sup>39</sup> Submissions received 7 July 2021.

<sup>40</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>41</sup> *Willsford* at [18].

<sup>42</sup> *Willsford* at [16] – [18].

<sup>43</sup> *Bultitude* at [26] – [35].

<sup>44</sup> At [19] – [21].

son. I also note that other complaint avenues are open to the applicant, based on the information she already has.

30. While I accept that the applicant has suffered a significant loss, with regards to the *Willsford* factors, and any legal remedy that the applicant may pursue, I note that the applicant has not provided any supporting evidence or advice regarding the claim she may make. Should the applicant seek to initiate any personal legal action against CHHHS, she may commence the claim based on the information that she currently has. Having considered the Mental Health Records, it is also unclear to me how disclosure of this information would assist the applicant to evaluate whether a remedy was available or worth pursuing. In this regard, I note that the Coronial investigation will consider these matters and may provide the applicant with further information that will enable her to evaluate legal action. Accordingly, I consider low weight applies with respect to this public interest factor.
31. Having considered the remaining factors set out in Schedule 4 of the RTI Act, I have not identified any further factors telling in favour of disclosure.<sup>45</sup>

### ***Factors favouring nondisclosure***

32. In making this decision, I have considered the Mental Health Records. As I must ensure nondisclosure of information claimed to be contrary to the public interest information, I am limited in what I can explain in my reasons below.<sup>46</sup>
33. The eligible family member public interest factor at [18] raises a converse public interest factor favouring nondisclosure of the Mental Health Records.<sup>47</sup> I am satisfied that the Mental Health Records would, if the deceased were alive, comprise their personal information; the applicant is an eligible family member and disclosure of the Mental Health Records could reasonably be expected to impact on the deceased's privacy if they were alive. The weight of this factor favouring nondisclosure is determined by an assessment of the impact on the deceased's privacy as if they were alive.<sup>48</sup>
34. The applicant acknowledges this factor is enlivened in the present matter and has made submissions regarding the weight of this factor.<sup>49</sup> In determining the weight that should be afforded to the deceased's right to privacy, I have considered the applicant's submissions in respect of the application of the *Lowe* criteria; and the wishes of the deceased as expressed throughout the Mental Health Records. While the applicant has questioned the capacity of the deceased in respect of his privacy requests,<sup>50</sup> there is no evidence before me, including in the Mental Health Records, that the medical team identified any capacity issues with respect to the deceased's wishes for privacy.<sup>51</sup> I am not satisfied that an individual's state of mental health can be considered as negating their right to privacy.
35. Previous decisions of the Information Commissioner have identified elements to consider when assessing the weight of the privacy that should be afforded to deceased medical records in the particular circumstances of each case.<sup>52</sup> These elements include evidence

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<sup>45</sup> For example, I am satisfied that disclosure of the Mental Health Records would not reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant, nor contribute to the protection of the environment.

<sup>46</sup> Section 108 of the RTI Act.

<sup>47</sup> Schedule 4, part 3, item 5 of the RTI Act.

<sup>48</sup> *X19* at [38].

<sup>49</sup> Received 7 July 2021.

<sup>50</sup> In submissions received on 7 July 2021.

<sup>51</sup> I am unable to provide further information because of the nondisclosure obligation on OIC in section 108 of the RTI Act.

<sup>52</sup> *Summers* at [19]; *Lowe* at [14].

of involvement in care, extent of knowledge of medical history or incident, and evidence of special dependence or relationship.<sup>53</sup>

36. The applicant provided detailed submissions to evidence her close relationship with the deceased. Having considered these submissions alongside the Mental Health Records I do not accept that the level of the applicant's involvement in the care of the deceased, and the extent of the applicant's knowledge in relation to the deceased's mental health, support any reduction in the weight of the privacy factors.
37. In *Lowe*, the Right to Information Commissioner considered that the weight of the privacy interest in a deceased's medical records had been reduced as there was evidence, in the information in issue, that the applicant had significant knowledge and involvement in the deceased's admissions and treatments. That is not the case here. As the applicant's submissions acknowledge, she had limited involvement in the applicant's hospital admissions for the relevant timeframe. For this reason, and having regard to the Mental Health Records, I consider this case can be distinguished from *Lowe*. I am satisfied that the deceased did not openly share his mental health condition and the applicant was not privy to the day-to-day medical care of the deceased for the timeframe of Mental Health Records. I acknowledge that, as his mother, the applicant had a very close relationship with the deceased. However, it is also clear that the Mental Health Records remained the private and personal information of the deceased.
38. Having considered the information in the Mental Health Records, the applicant's submissions, and the healthcare rights of the deceased when he was alive, including the right to have his personal privacy respected,<sup>54</sup> I afford significant weight to this factor favouring nondisclosure.<sup>55</sup>
39. I am also satisfied that disclosure of the deceased's Mental Health Records could reasonably be expected to cause a public interest harm, by disclosing the personal information of persons other than the applicant.<sup>56</sup>
40. The information in the Mental Health Records comprises the thoughts, beliefs, feelings and opinions of the deceased about himself and others<sup>57</sup> as well as medical opinions of his state of mental health. The delivery of comprehensive and effective healthcare depends on a patient's full and frank disclosure, and patients are much less likely to disclose information if they know it may be disclosed to someone else,<sup>58</sup> including their closest family members. I consider that this type of personal information, being an individual's mental health records, can be considered some of the most sensitive information held by a government agency. I am satisfied that the public interest harm resulting from disclosure of such personal information through a process where there is no further limit on its use and dissemination is of great significance.<sup>59</sup> Accordingly, I afford the highest weight to this public interest harm factor favouring nondisclosure.

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<sup>53</sup> *WEU27L and Mackay Hospital and Health Service* [2017] QICmr 44 (11 September 2017) at [26] (**WEU27L**); *X19* at [27].

<sup>54</sup> The Australian Charter of Healthcare Rights, by the Australian Commission on Safety and Quality in Health Care.

<sup>55</sup> Schedule 4, part 3, item 5 of the RTI Act.

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

<sup>57</sup> *WEU27L* at [32] – [33].

<sup>58</sup> *X19* at [31] – [32].

<sup>59</sup> *James and Queensland Police Service* [2018] QICmr 8 (22 February 2018) at [23] – [24]; *Cherry and Department of Justice and Attorney-General* [2021] QICmr 26 (4 June 2021) at [39]; *I6XD0H and Department of Community Safety* (Information Commissioner Qld, Decision No 310820, 26 Jun 2012) at [20]–[22].



### ***Balancing the public interest***

41. I have applied the pro-disclosure bias intended by Parliament<sup>60</sup> and with respect to factors weighing in favour of disclosure, I find that:
- considerations of accountability, transparency and allowing inquiry into possible deficiencies of care and contributing to the social wellbeing of the community<sup>61</sup> raise factors that carry moderate weight
  - the applicant's personal information factor in certain parts, raises a factor that carries moderate weight<sup>62</sup>
  - the administration of justice for a person as considered in *Willsford* raises a factor that carries low weight; and
  - the eligible family member factor<sup>63</sup> attracts high weight.
42. Balancing against all the above factors is the significant weight I have attributed to both the nondisclosure factor that protects the privacy of the deceased, where the applicant is an eligible family member, and the personal information harm factor. Both these factors weigh heavily in favour of nondisclosure of the Mental Health Records.<sup>64</sup>
43. On balance, I am satisfied that the significant weights of the two nondisclosure factors outweigh the disclosure factors.<sup>65</sup> While there are other processes available to the Applicant both through the Coroner and the Courts that may provide further insight into the accountability of CHHHS, and avenues for the applicant to pursue the administration of justice, once the sensitive personal information of the deceased is released through this process, there are no further limits on how this information can be used or distributed.<sup>66</sup> I consider that the public interest harm that results from the disclosure of an individual's sensitive Mental Health Records, is significant and determinative in this case. As I consider the nondisclosure factors carry greater weight in the specific circumstances of this case, I am satisfied that disclosure of the Mental Health Records would, on balance, be contrary to the public interest and access may be refused.<sup>67</sup>

### **DECISION**

44. I affirm the decision under review. I find that access to the Mental Health Records may be refused under section 47(3)(b) and section 49 of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
45. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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S Martin  
**Assistant Information Commissioner**  
**Date: 9 September 2021**

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<sup>60</sup> Section 44 of the RTI Act.

<sup>61</sup> Schedule 4, part 2, items 1, 2, 3 and 5 of the RTI Act.

<sup>62</sup> Schedule 4, part 2, item 7 and 17 of the RTI Act.

<sup>63</sup> Schedule 4, part 2, item 9 of the RTI Act.

<sup>64</sup> Schedule 4, part 3, item 5; and schedule 4, part 4, section 6 of the RTI Act.

<sup>65</sup> Section 49 of the RTI Act.

<sup>66</sup> Noting his Honour's comments that '*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*' – see *FLK v Information Commissioner* [2021] QCATA 46 at [17] per McGill J. His Honour's comments relate to the IP Act but I am satisfied the RTI Act similarly has no provisions regarding restrictions on the use or dissemination of information received under the Act.

<sup>67</sup> Section 47(3)(b) of the RTI Act.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
4 January 2021	OIC received the application for external review.
5 January 2021	OIC notified CHHHS and the applicant that the application for external review had been received and requested procedural documents from CHHHS.
7 January 2021	OIC received the requested documents from CHHHS.
25 January 2021	OIC received submissions from the applicant.
1 February 2021	OIC notified CHHHS and the applicant that the application for external review had been accepted.
12 February 2021	OIC received the information in issue from CHHHS.
23 February 2021	OIC called the applicant to discuss the review, and received submissions from the applicant.
18 March 2021	OIC issued a preliminary view to CHHHS.
31 March 2021	CHHHS confirmed they accepted OIC's preliminary view.
1 April 2021	OIC issued a preliminary view to the applicant.
16 April 2021	CHHHS disclosed further documents to the applicant in response to OIC's preliminary view.
5 May 2021	OIC received submissions from the applicant.
12 May 2021	OIC issued a further preliminary view to the applicant.
7 July 2021	OIC received submissions from the applicant.
22 July 2021	OIC received information from CHHHS resolving a procedural issue.
17 August 2021	OIC advised the applicant that the review would proceed to a formal decision.