



Decision and Reasons for Decision

Citation:	<i>P22 and Metro South Hospital and Health Service [2023] QICmr 5 (2 February 2023)</i>
Application Number:	316406
Applicant:	P22
Respondent:	Metro South Hospital and Health Service
Decision Date:	2 February 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - body worn camera footage depicting events in a hospital which involve the applicant - whether disclosure would on balance be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Metro South Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to access:²

...video footage of security cam footage from security guards on the 12th of the 12th 2019 and also on the ward hdu ward...
2. Although the Health Service purported to make a decision on 1 July 2021 in respect of the application, it did not make that decision within the required statutory timeframe³ and was therefore taken to have made a deemed decision refusing access to the requested information (**Deemed Decision**).⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Deemed Decision.⁵

¹ The Health Service confirmed to the applicant that the access application was received by the Health Service on 15 February 2021. The 'hdu ward' reference is to a High Dependency Unit, which I will refer to as '**the HDU**' in this decision.

² The Health Service allocated reference IP9777 to this application.

³ On the information before me, it appears that, on 18 June 2021, the Health Service asked the applicant to consent to an extension of time for processing the application, however, the applicant did not agree to that request.

⁴ Under section 66(1) of the IP Act. In its purported decision dated 1 July 2021, the Health Service decided to disclose edited copies of two body worn camera recordings (identified by the Health Service as AXON_Body_2_Video_2019-12-12_1524-2 and AXON_Body_2_Video_2019-12-12_1629), which removed all audio from those recordings and pixelated all images, apart from the applicant's face. In its purported decision, the Health Service decided that disclosure of this removed and pixelated information would, on balance, be contrary to the public interest.

⁵ External review application dated 9 November 2021. Due to complexities in how the Health Service processed the application (refer to the Background section of this decision), OIC notified the Health Service on 14 January 2022 that the external review application had been accepted, as the Information Commissioner's delegate had decided to allow a longer period within which the applicant could apply for external review (section 101(1)(d) of the IP Act).

4. During the course of the external review, the Health Service located and disclosed further information to the applicant. The applicant remains dissatisfied with the level of information that he has received.⁶
5. For the reasons explained below, I set aside the Deemed Decision and, in substitution for it, I find that:
 - some information is irrelevant to the terms of the application and may be deleted under section 88 of the IP Act
 - access to certain information may be refused under the IP Act on the ground that its disclosure would, on balance, be contrary to the public interest; and
 - there is no basis under the IP Act to refuse access to a small amount of information which was not disclosed by the Health Service.⁷

Background

6. After receiving the Health Service's purported decision, the applicant wrote to the Health Service on 16 July 2021 requesting unedited versions of the two recordings which had been released to him and the further footage requested in his application.⁸
7. The Health Service did not treat the applicant's request as an application for internal review. Instead, the Health Service:
 - a) notified the applicant that four recordings had been located by the Health Service in respect of his application but only two had been processed;⁹ and
 - b) proposed to deal with the applicant's request as a new access application for the two recordings it had not previously processed.¹⁰
8. The Health Service then issued a purported decision to the applicant in respect of this 'new application' on 16 November 2021,¹¹ in which it decided to grant the applicant partial access to one additional recording.¹² The Health Service also stated in that purported decision:

Reference is further made to your previous application IP9777, which this subsequent new application you agreed for us to process the remainder of the relevant footage (two items).

⁶ On 19 September 2022, the applicant sent an email to OIC which requested all video footage from the Emergency Department and HDU at the Princess Alexandra Hospital (**PA Hospital**). I have taken this to mean that he continues to seek access to all information which has not been disclosed to him.

⁷ This is described below as the 'Other Information'.

⁸ Namely, footage from all security officers who had cameras in the Emergency Department and HDU on 12 December 2019.

⁹ By email dated 3 August 2021, the Health Service notified the applicant that it had located three recordings (AXON_Body_2_Video_2019-12-12_1524, AXON_Body_2_Video_2019-12-12_1524-2 and AXON_Body_2_Video_2019-12-12_1524-3, which I will from hereon respectively refer to as **Recordings #1524**, **#1524-2** and **#1524-3**) of the applicant in the Emergency Department and one recording (AXON_Body_2_Video_2019-12-12_1629, hereafter referred to as **Recording #1629**) of the applicant being transported to the HDU. (Two of the recordings - ie Recordings #1524-2 and #1629 - were processed by the Health Service in IP9777).

¹⁰ In its email dated 3 August 2021, the Health Service proposed that the applicant's request could be addressed by continuing to process the other two recordings - ie Recordings #1524 and 1524-3 - as a new application. In response, the applicant stated: '*at this stage I will accept any footage and voice recordings that are in your possession*'. Although this response did not clearly accept the Health Service's proposal, the Health Service treated it as the applicant's agreement for his request to be processed as a new application and IP10090 was the Health Service reference allocated in this regard.

¹¹ Even if it were accepted that this decision related to a new application, it also appears to have been made outside the statutory timeframe for such an application, as the Health Service provided no evidence that any extension of the processing period was granted by the applicant.

¹² Being Recording #1524-3. This partially disclosed recording removed all audio and pixelated all images, apart from the applicant's face. In the purported decision, the Health Service decided that disclosure of this removed and pixelated information would, on balance, be contrary to the public interest.

However, I have only been able to achieve one being processed by the relevant Unit responsible for pixelating footage. Therefore, the scope of this application can only focus on Footage item #1524-3. Should you still seek access to the remaining item (#1524) you will need to reapply.

9. There is no evidence before me which indicates that the applicant was ever requested, or agreed, to exclude Recording #1524 from the scope of his application.
10. On external review, the Health Service located a further two relevant recordings.¹³ A total of six recordings¹⁴ relevant to the application have therefore been considered in this external review. I will refer to these collectively as the **Recordings**.

Procedural steps

11. As explained above, although the access application was received by the Health Service on 15 February 2021, there were significant delays and complexities in how the application was processed by the Health Service.
12. The procedure to be taken on external review is, subject to the IP Act, at the discretion of the Information Commissioner.¹⁵ The significant steps taken during the review are set out in the Appendix. Unfortunately, as the Appendix demonstrates, there were substantial periods of time when OIC could not progress the review due to outstanding responses from the Health Service.
13. During the review, I conveyed a written preliminary view¹⁶ to the Health Service that, subject to certain identified redactions, the applicant was entitled to access the Recordings under the IP Act.¹⁷ I also asked the Health Service to undertake redaction of the Recordings if it accepted the preliminary view. The Health Service accepted that preliminary view and requested further time to complete that redaction process.¹⁸
14. Taking into account the various delays by the Health Service in respect to this application and its review, OIC took the exceptional step of completing the required redaction of the Recordings (using Adobe Premier) to reflect the accepted preliminary view.¹⁹ This was done so as to ensure that the applicant was not further disadvantaged. These OIC edited Recordings were then provided to the Health Service on 17 June 2022, with a request that the Health Service review the edited Recordings and release them to the applicant by 30 June 2022. I also conveyed a preliminary view to the applicant on 20 June 2022 about the information removed from

¹³ AXON_Body_2_Video_2019-12-12_1854 and AXON_Body_2_Video_2019-12-12_1854-2, which I will respectively refer to as **Recordings #1854** and **#1854-2** in this decision).

¹⁴ That is, Recordings #1524, #1524-2, #1524-3, #1629, #1854 and #1854-2.

¹⁵ Section 108(1)(a) of the IP Act.

¹⁶ On 22 March 2022. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

¹⁷ In the preliminary view conveyed by letter dated 22 March 2022, I identified in a table the only information within the Recordings to which I considered access could be refused. That table identified approximate pinpoint references for the audio/video I considered should be redacted and confirmed that '*faces of individuals other than the applicant*' were to be pixelated but the background was to be included.

¹⁸ On 13 May 2022.

¹⁹ In a letter the then Acting Right to Information Commissioner sent to the Manager of the Health Service's RTI Unit on 17 June 2022, it was identified that four of the Recordings (Recordings #1524, #1629, #1854 and #1854-2) had been fully edited by an OIC staff member to incorporate redactions in accordance with the accepted preliminary view, and a 40 percent blur was placed over the full video in the two remaining Recordings (Recordings #1524-2 and #1524-3) rather than separately blurring the faces of individuals.

the OIC edited Recordings²⁰ and informed him that edited copies of the Recordings would be sent to him by 30 June 2022.

15. The Health Service then informed me²¹ that it would undertake additional edits to the Recordings. All six re-edited Recordings were sent to the applicant on 29 July 2022.²² I will refer to these collectively as the **Re-edited Recordings**.
16. I sought details of the further edits applied by the Health Service and invited it to provide a submission regarding any further edits which fell outside what was defined in the accepted preliminary view as the information to which access could be refused.²³
17. As the Health Service's response²⁴ did not identify the further edits that it had undertaken, the Re-edited Recordings were reviewed by OIC, to identify the extent of the Health Service's re-edits relative to OIC's redactions.
18. In summary, for the most part, the redactions in the Re-edited Recordings are consistent with the accepted preliminary view. However, some of the Health Service's re-edits appear to have redacted further information and indicate the Health Service may contest the preliminary view. It is therefore necessary for me to address those re-edits in this decision.

Reviewable decision

19. The decision under review is the Deemed Decision.²⁵

Evidence considered

20. Evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
21. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), in particular, the right of the applicant to seek and receive information²⁶ and the competing right to privacy in relation to the other individuals depicted in the Recordings.²⁷ I consider that a decision-maker will, when observing and applying the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**), be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act.²⁸ I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act.²⁹

²⁰ I also explained to the applicant that, as three of the Recordings depicted different angles of his examination in the Emergency Department, only one of those Recordings (ie #1524) had been fully edited and a 40 percent blur had been applied to the other two Recordings (ie #1524-2 and #1524-3), to enable the applicant to see everything but not make out specific details of the other individuals who were present.

²¹ On 13 and 20 July 2022.

²² A copy was also received by OIC on that date. While the Re-edited Recordings were initially sent to the applicant electronically, at his request, the Health Service sent a further copy to him on 2 September 2022 by post. The provided tracking details confirmed that the Re-edited Recordings were delivered to the applicant on 6 September 2022.

²³ On 2 August 2022.

²⁴ On 31 August 2022.

²⁵ Regarding the application reference IP9777 and, if it is accepted that the applicant made a new application (as contemplated by the Health Service's email dated 3 August 2021), IP10090 as well

²⁶ Section 21 of the HR Act.

²⁷ Section 25 of the HR Act.

²⁸ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

²⁹ I note the observations by Bell J on the interaction between equivalent pieces of Victorian legislation in *XYZ*, [573]: '*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.*' I also note that OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (noting that Judicial Member McGill saw '*no reason to differ*' from our position).

Information in issue

22. The Recordings depict three main events that occurred during the applicant's admission at the PA Hospital on 12 December 2019:
- the applicant's examination in the Emergency Department³⁰
 - transfer of the applicant to the HDU;³¹ and
 - the applicant's treatment in the HDU.³²
23. As noted above, the Health Service disclosed copies of the Re-edited Recordings to the applicant during the review and, for the most part, the information removed from the Re-edited Recordings appears to consistent with the accepted preliminary view. In summary, the information removed from the Re-edited Recordings (**Information in Issue**) comprises:
- audio and video that is not about the applicant or his care on 12 December 2019 at the PA Hospital (**Irrelevant Information**)
 - the faces of (i) Health Service staff (including mental health clinicians and others within the Acute Care Team) who were involved in the applicant's care on 12 December 2019 and (ii) other patients and visitors to the PA Hospital (**Identifying Information**)
 - audio of private conversations between individuals other than the applicant about non-work related (personal) matters (**Personal Information**); and
 - a small amount of additional information which was removed by the Health Service during its re-editing process, and which does not comprise Irrelevant Information, Identifying Information or Personal Information (**Other Information**).³³

Issues for determination

24. The Health Service bears the onus of establishing that a decision refusing access to Information in Issue is justified.³⁴
25. The issues for determination are whether:
- the Irrelevant Information may be deleted on the basis that it is not relevant to the terms of the access application; and
 - access to the Identifying Information, Personal Information and Other Information can be refused on the ground disclosure would, on balance, be contrary to the public interest.

Irrelevant information

Relevant law

26. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information.³⁵

³⁰ Three of the Recordings, which show three different angles of the same event: Recordings #1524, #1524-2 and #1524-3.

³¹ Recording #1629.

³² Two of the Recordings, which show two different angles of the same event: Recordings #1854 and #1854-2.

³³ This information can generally be described as non-identifying information—that is, information which does not appear to allow the identification of individuals other than the applicant. However, as it remains somewhat unclear what further information the Health Service removed from the Recordings when undertaking its re-edits, this category of Information in Issue necessarily includes information, apart from Irrelevant Information, Identifying Information and Personal Information, which the Health Service removed during its re-editing of the Recordings.

³⁴ Section 100(1) of the IP Act.

Section 88 of the IP Act permits information that is not relevant to the access application to be deleted from the document before giving access to a copy of the document.³⁶

27. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.³⁷

Findings

28. Having carefully considered the terms of the application and the Irrelevant Information, I am satisfied that the Irrelevant Information does not relate to the applicant or his admission to the PA Hospital on 12 December 2019 and it is therefore not relevant to the access application.³⁸
29. On this basis, I find that the Irrelevant Information has been validly deleted from the Re-edited Recordings.³⁹

Identifying Information and Personal Information

Relevant law

30. Although the IP Act is to be administered with a pro-disclosure bias,⁴⁰ the right to access documents of an agency is subject to certain limitations, including grounds for refusal of access.⁴¹ One such refusal ground is where disclosure of information would, on balance, be contrary to the public interest.⁴²
31. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁴³
- 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.
32. No irrelevant factors arise in the circumstances of this case, and I have not taken any into account in making my decision.

³⁵ Section 40 of the IP Act. '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'.

³⁶ This is simply a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.

³⁷ O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at [52] which was a decision made under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld).

³⁸ The applicant has made no submission addressing the issue of irrelevant information.

³⁹ Under section 88 of the IP Act.

⁴⁰ Section 64(1) of the IP Act.

⁴¹ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act. Section 47(2)(a) of the RTI Act confirms that it is Parliament's intention that these refusal grounds are to be interpreted narrowly.

⁴² Sections 47(3)(b) and 49 of the RTI Act. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

⁴³ Section 49(3) of the RTI Act.

Findings

Factors favouring disclosure

33. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;⁴⁴
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁴⁵ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁴⁶
34. The Health Service must be transparent and accountable in how it delivers health services to the community. The Re-edited Recordings which have been disclosed to the applicant provide a contemporaneous record of what occurred during the applicant's admission to the PA Hospital on 12 December 2019, particularly in respect of his examination and treatment. I consider this disclosed information has substantially advanced the Health Service's accountability and transparency, as it enables scrutiny of the actions taken during the applicant's hospital admission. Given the nature of the Identifying Information and Personal Information, I do not consider its disclosure would further advance the Health Service's transparency or accountability in any significant way. In these circumstances, I attach low weight to these factors favouring disclosure.
35. A public interest factor favouring disclosure also arises where information is an applicant's personal information.⁴⁷ On external review, the applicant submitted this factor favoured disclosure of information to him.⁴⁸ As noted above, the Recordings depict the applicant's examination, transfer and treatment within a Queensland public hospital and, as such, they include the images and voices of many individuals in addition to the applicant. I consider that, to the extent that it was practicable to do so, the applicant's personal information within the Recordings has been disclosed in the Re-edited Recordings, including by the application of a blur across two of three Recordings which depict the applicant's examination in the Emergency Department from different angles. In the circumstances, I consider the public interest in the applicant having access to his own personal information has been discharged.
36. The Identifying Information and Personal Information comprise the personal information of individuals other than the applicant. As such, I consider the public interest factor in schedule 4, part 2, item 7 of the RTI Act does not apply to favour disclosure of the Identifying Information and Personal Information.⁴⁹

⁴⁴ Schedule 4, part 2, item 1 of the RTI Act.

⁴⁵ Schedule 4, part 2, item 3 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 11 of the RTI Act.

⁴⁷ Schedule 4, part 2, item 7 of the RTI Act.

⁴⁸ Email dated 20 June 2022. While the applicant also referenced the factor in schedule 4, part 2, item 9 of the RTI Act—which arises where information relates to a person who has died—he did not explain how that factor applied to favour disclosure of any information which has not been disclosed to him in the Re-edited Recordings he has received.

⁴⁹ To the extent the Identifying Information and Personal Information relates to any person who has died, I also consider the factor in schedule 4, part 2, item 9 of the RTI Act does not apply to favour disclosure, as there is no evidence before me that the applicant is an eligible family member of any such person.

37. The applicant submitted⁵⁰ that a number of additional factors favour disclosure, namely those which arise where disclosing information could reasonably be expected to:
- contribute to positive and informed debate on important issues or matters of serious interest⁵¹
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct⁵²
 - reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant⁵³
 - reveal environmental or health risks or measures relating to public health and safety⁵⁴
 - contribute to the maintenance of peace and order⁵⁵
 - contribute to the administration of justice generally, including procedural fairness, or for a person;⁵⁶ and
 - contribute to the enforcement of the criminal law.⁵⁷
38. I have carefully considered the Identifying Information and Personal Information (together with the applicant's submissions and the information which has been released to the applicant). There is nothing before me which suggests that the Identifying Information and Personal Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Although the applicant expressed concerns about the treatment he received on the day of his admission,⁵⁸ I am also satisfied that there is nothing within the Identifying Information and Personal Information which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. Given the particular nature of this information, I do not consider its disclosure could be expected to contribute to the maintenance of peace and order or the enforcement of the criminal law. Accordingly, I do not consider the disclosure factors in schedule 4, part 2, items 5, 6, 12, 15 and 18 of the RTI Act apply to favour disclosure of the Identifying Information and Personal Information.
39. Given the limited and personal nature of this information—which in part depicts various private individuals present in a Queensland public hospital on the day of the applicant's admission—I do not consider its disclosure would contribute in any substantive way to a debate on important issues or matters of serious interest. On this basis, to the extent the disclosure factor in schedule 4, part 2, item 2 of the RTI Act applies,⁵⁹ I afford it only low weight.

⁵⁰ By email dated 20 June 2022. Apart from listing these factors, the applicant did not explain how he considered they applied to favour disclosure of any particular information which has not been disclosed to him. The applicant also referenced various legislative provisions (including the Information Privacy Principles listed in schedule 3, sections 10 and 11 of the IP Act, which relate to the limits on use of personal information and limits on disclosure) and case law in support of his request to access all video footage. I do not consider those referenced provisions and cases are relevant to my determination of whether disclosing information would, on balance, be contrary to the public interest.

⁵¹ Schedule 4, part 2, item 2 of the RTI Act.

⁵² Schedule 4, part 2, item 6 of the RTI Act. I have also considered whether the similar factor in schedule 4, part 2, item 5 of the RTI Act—which arises where disclosing information could reasonably be expected to allow or assist enquiry into possible deficiencies in the conduct or administration of an agency or official—applies in this matter.

⁵³ Schedule 4, part 2, item 12 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 14 of the RTI Act.

⁵⁵ Schedule 4, part 2, item 15 of the RTI Act.

⁵⁶ Schedule 4, part 2, items 16 and 17 of the RTI Act. I have also considered whether the factor in schedule 4, part 2, item 10 of the RTI Act—which arises where disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies—applies in this matter.

⁵⁷ Schedule 4, part 2, item 18 of the RTI Act.

⁵⁸ For example, in an email dated 27 December 2021 and in conversations with OIC on 14 January 2022 and 23 March 2022.

⁵⁹ Schedule 4, part 2, items 2, 5, 6 and 12 of the RTI Act.

40. I accept that the Recordings generally relate to the applicant's hospital admission and could therefore reveal measures relating to public health and safety. However, I do not consider that information of the nature of the Identifying Information and Personal Information—which includes the incidental depiction of other patients and visitors at the hospital and audio of other individuals' personal conversations—could be expected to reveal such measures. On that basis, I am satisfied the factor in schedule 4, part 2, item 14 of the RTI Act does not apply to favour disclosure of this information.
41. In determining whether the disclosure of the Identifying Information and Personal Information could reasonably be expected to contribute to the administration of justice for the applicant, I must consider whether:⁶⁰
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
42. The Re-edited Recordings generally depict the treatment the applicant received and his interactions with other individuals during his hospital admission on 12 December 2019. The applicant referred to his attendance at the PA Hospital on 12 December 2019 as a 'wrongdoing' and that the '*the occurrence happened unlawfully*'.⁶¹ He also submitted that he required unedited footage as '*key evidence in criminal proceedings*'.⁶² However, he has not identified that he is wishing to pursue any particular remedy in respect of his treatment. Taking into account the information which has been disclosed within the Re-edited Recordings, I am satisfied the applicant has sufficient information before him about what occurred on 12 December 2019 to pursue any remedy available to him, or assess whether doing so is possible or worthwhile. On the other hand, there is no evidence before me which indicates disclosing the Identifying Information and Personal Information is required to enable the applicant to pursue any remedy or evaluate whether a remedy (legal or otherwise) is available or worth pursuing. For these reasons, I do not consider this factor favouring disclosure⁶³ applies.
43. While the applicant referenced the factor in schedule 4, part 2, item 16 of the RTI Act as favouring information disclosure, he has not enunciated how disclosure of this particular Identifying Information and Personal Information would contribute to procedural fairness for him, or any other person.⁶⁴ Noting the content of the Re-edited Recordings which has been disclosed and the particular nature of the Identifying Information and Personal Information, I am not satisfied that that there is a reasonable expectation disclosure of the Identifying Information and Personal Information would meaningfully contribute to the general administration of justice, including procedural fairness, or advance the fair treatment of the applicant or any other person. On this basis, while these factors may apply,⁶⁵ I afford them only low weight due to the nature of the Identifying Information and Personal Information.

⁶⁰ *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].

⁶¹ Email dated 27 December 2021.

⁶² Email dated 27 December 2021.

⁶³ Schedule 4, part 2, item 17 of the RTI Act.

⁶⁴ The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

⁶⁵ Schedule 4, part 2, items 10 and 16 of the RTI Act.

44. Having regard to the particular nature of the Identifying Information and Personal Information, I can identify no other public interest considerations in favour of disclosure.⁶⁶

Factors favouring nondisclosure

45. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm.⁶⁷ A further factor favouring nondisclosure will also arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁶⁸
46. I am satisfied that the Identifying Information and Personal Information comprises the personal information of individuals other than the applicant.
47. For the Personal Information and the faces of other patients and hospital visitors, I am also satisfied that disclosing information of this nature would be a significant intrusion into the privacy of those other individuals and the extent of the harm that could be expected to arise from such disclosure would be significant. For these types of information, I afford significant weight to these factors favouring nondisclosure.
48. I acknowledge that the remaining Identifying Information—namely, the faces of Health Service staff—is personal information which relates to the routine employment duties of those individuals. However, I understand the Acute Care Team (which is the hospital's point of access for its mental health services) was involved in the applicant's admission on 12 December 2019. The Health Service must carefully manage the safety and security of its staff within the Acute Care Team. Taking this into account, I consider the privacy and personal information considerations are higher for staff working in that environment, than for staff performing duties in other areas of the hospital. As such, I find that the context and environment in which the Recordings were made gives rise to a heightened public interest in protecting the personal information and privacy interests of the Health Service staff. On this basis, I am also satisfied that disclosing the faces of Health Service staff within the Recordings would be a significant intrusion into the privacy of those individuals and the extent of the harm that could be expected to arise from such disclosure would be significant, particularly as there can be no restriction on the use, dissemination or republication of information which is disclosed under the IP Act. I acknowledge that the applicant may be aware of the identity of some of the Health Service staff involved in his admission on 12 December 2019; however, I do not consider that reduces the weight of these nondisclosure factors to any significant degree. Accordingly, I consider that these nondisclosure factors are also deserving of significant weight in respect of the faces of Health Service staff.
49. The RTI Act also recognises that a public interest harm can result from the disclosure of information that could have a substantial adverse effect on the management or assessment by an agency of its staff.⁶⁹ A public interest factor favouring nondisclosure will also arise where disclosing information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an

⁶⁶ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Identifying Information and Personal Information could, for example, ensure effective oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act). 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 significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Identifying Information and Personal Information.

⁶⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

⁶⁸ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in either the IP Act or RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (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 paragraph 1.56).

⁶⁹ Schedule 4, part 4, section 3(c) of the RTI Act.

agency.⁷⁰ As noted above, the Recordings were made in a highly sensitive work environment. It is reasonable to expect that the Health Service has measures in place to protect the safety and security of its staff within that workplace. In these circumstances, I also consider that disclosure, under the IP Act, of the faces of Health Service staff who were involved in the applicant's assessment and treatment could reasonably be expected to have some impact the ability of the Health Service to manage its staff and I therefore afford these public interest considerations moderate weight in favour of nondisclosure.

Balancing the relevant factors

50. Given the context in which the Identifying Information and Personal Information appears, I have afforded significant weight to the nondisclosure factors which relate to protecting the personal information and right to privacy of other individuals.⁷¹ Additionally, I consider that nondisclosure factors relating to protecting the Health Service's ability to manage its staff deserve moderate weight in respect of the images depicting the faces of staff who were involved in the applicant's admission on 12 December 2019.⁷²
51. On the other hand, and for the reasons outlined above, I have identified factors favouring disclosure of the Identifying Information and Personal Information (including those relating to the Health Service's transparency and accountability, fair treatment and administration of justice).⁷³ However, taking into account the nature of the Identifying Information and Personal Information, I afford these factors only low weight.
52. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that the Identifying Information and Personal Information within the Re-edited Recordings provided to the applicant would, on balance, be contrary to the public interest to disclose and access to that information may be refused on this basis.⁷⁴

Other Information

53. As noted in paragraph 23 above, the Other Information comprises information in addition to the Irrelevant Information, Identifying Information and Personal Information, which was removed from the Re-edited Recordings (as part of Health Service's re-editing process).
54. Although the Health Service bears the onus of establishing that access may be refused to the Other Information,⁷⁵ it has not provided details (such as pinpoint references) for the re-edits it performed⁷⁶ and has not provided any submissions supporting the refusal of access to the Other Information.⁷⁷ Notwithstanding this, after reviewing the Re-edited Recordings, I can confirm that the Other Information appears to be limited in nature and includes the backs of peoples' heads and images of individuals which were depicted in shadow (making it difficult to make out their features).⁷⁸

⁷⁰ Schedule 4, part 3, item 19 of the RTI Act.

⁷¹ Schedule 4, part 4, section 6 and schedule 4, part 3, items 3 and 6 of the RTI Act.

⁷² Schedule 4, part 3, item 19 and schedule 4, part 4, section 3(c) of the RTI Act.

⁷³ Schedule 4, part 2, items 1, 2, 3, 10, 11 and 16 of the RTI Act.

⁷⁴ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁷⁵ Under section 100(1) of the IP Act.

⁷⁶ I afforded the Health Service three opportunities to provide details of the further edits it made to the Recordings (in my emails dated 2, 22 and 26 August 2022).

⁷⁷ I invited the Health Service to provide such submissions, for example, in my email dated 26 August 2022.

⁷⁸ These images were redacted in Recording #1629, however, similar information was not redacted from Recording #1524-3.

55. I have not taken into account any irrelevant factors in making my decision about the Other Information.

Findings

Factors favouring disclosure

56. Taking into account the information which has been disclosed in the Re-edited Recordings and the limited nature of the Other Information, I do not consider disclosure of the Other Information would advance the Health Service's transparency or accountability in any meaningful way. Accordingly, I attach very low weight to these factors favouring disclosure.⁷⁹
57. As the Other Information does not comprise the applicant's personal information, the public interest factor in schedule 4, part 2, item 7 of the RTI Act does not apply to favour its disclosure.
58. For the same reasons as set out above regarding the Identifying Information and Personal Information, I also afford low weight to the factors favouring disclosure which relate to the administration of justice and fair treatment and I find that no other public interest considerations apply to favour disclosure of the Other Information.

Factors favouring nondisclosure

59. Although the Health Service's submissions confirmed its acceptance of the preliminary view issued in this matter, it appears that the Health Service's re-editing included the pixelation or blurring of images in addition to the Identifying Information (ie images in addition to the faces of other individuals). I understand that, in respect of these types of re-edits, the Health Service's position is that disclosure of these additional images could allow the identification of certain individuals and, on that basis, the nondisclosure factors relating to personal information and privacy apply to favour nondisclosure.⁸⁰
60. I have noted in paragraph 54 above that the Other Information includes images of the backs of peoples' heads and images depicted in shadow. For the reasons outlined below, I am not satisfied the nondisclosure factor relating to personal information applies to these components of the Other Information, due to the angle and/or quality of the recording.
61. Some information, such as an individual's name or face, clearly comprises that individual's personal information. As a general proposition, I also accept that an individual depicted in video footage may have certain attributes that could allow for their identification (for example, a distinctive tattoo or an unusual gait). However, images of the backs of peoples' heads and images depicted in shadow do not possess attributes of this nature.
62. I also acknowledge that, even where an individual's identity is not readily apparent from the information in question, it may be possible with the assistance of additional information to identify the individual. Whether an individual's identity can reasonably be ascertained will depend on a number of factors:⁸¹

⁷⁹ Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

⁸⁰ However, given the inconsistencies in the Health Service's re-edits and the lack of submissions about the basis for refusal of access to the Other Information, the Health Service's position is not entirely clear.

⁸¹ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [21]. The Information Commissioner also noted at [19] that the following questions are relevant in determining whether information is a particular individual's personal information:

- Can an individual be identified from the information sought?

- how available the additional information is
- how difficult it is to obtain
- how many steps are required to identify the individual
- how certain the identification will be
- whether it will identify one specific individual or a group of people; and
- whether the individual receiving the information can use it to identify the individual.

63. In this regard, I accept that the individuals depicted in the Other Information may be in a position to identify themselves and, potentially, each other. I also consider that a small cohort of persons may possess additional information⁸² that would enable them to identify the individuals depicted in the Other Information (such as their family and friends, acquaintances and work colleagues). The then Acting Right to Information Commissioner has previously determined that *'if certain individuals hold the relevant additional information by virtue of their particular relationship with a person or personal involvement in relevant events, and are able to use this specialist knowledge in order to identify the individual, this information is not sufficiently available, and is difficult to obtain.'*⁸³ Accordingly, I do not consider that identification of the individuals depicted in the Other Information through this *'specialist knowledge'* is sufficient to demonstrate that their identities can *'reasonably be ascertained'* from the Recordings.

64. In terms of whether a larger segment of the community would be in a position to ascertain the identities of the relevant individuals, I note that the Recordings are not particularly clear and, for the most part, were filmed at a distance. The faces of individuals in the Re-edited Recordings have been pixelated or blurred, and there is no evidence before me that any other particular physical attributes in the Other Information would be sufficient to allow for individuals' identities to reasonably be ascertained through general knowledge.⁸⁴ I am therefore satisfied that it would be difficult for general community members to ascertain the identity of the individuals depicted in the Other Information and, even then, I am not satisfied that their identification would be certain.

65. On this basis, I find that the identities of the individuals depicted in the Other Information are not apparent and cannot reasonably be ascertained. Accordingly, I am satisfied that the nondisclosure factor concerning personal information does not apply to the Other Information. However, if I am wrong and the Other Information can be characterised as the personal information of these depicted individuals, I am satisfied that any harm that could be expected to flow from their disclosure would, due to the nature of these images, be minimal and only low weight can be attributed to this nondisclosure factor.

66. I accept that disclosing the Other Information may cause some level of prejudice to the privacy of the depicted individuals. In considering the weight that should be attributed to the nondisclosure factor relating to the privacy of individuals,⁸⁵ I have taken into account:

- the brief nature and sometimes poor quality of the Other Information; and

-
- If so, is the information sought *about* that individual?

⁸² Including about the individual's physical attributes (e.g. height, weight, hairstyle and clothing) or events that the individual has been involved in (either through their own involvement, or through communication with the individual concerned).

⁸³ *Seven Network (Operations) Limited and Logan City Council* [2018] QICmr 21 (11 May 2018) at [40].

⁸⁴ That is, I do not consider that the backs of individuals' heads or an individual's head where their features could not be made out due to the image depicted in shadow, would be sufficient to allow for individuals' identities to reasonably be ascertained through general knowledge.

⁸⁵ Schedule 4, part 3, item 3 of the RTI Act.

- that only the individuals themselves and those with ‘*specialist knowledge*’ would be in a position to identify the depicted individuals (as outlined above).

67. In these circumstances, I afford this factor concerning prejudice to an individual’s right to privacy low weight in respect of the Other Information.

68. In the absence of any submissions from the Health Service and taking into account the limited nature of the Other Information, I can identify no additional factors favouring nondisclosure of this information.

Balancing the relevant factors

69. I have identified factors favouring disclosure of the Other Information (including those relating to the Health Service’s transparency and accountability, fair treatment and administration of justice).⁸⁶ However, taking into account the limited nature of the Other Information, I afford these factors only low, or very low, weight.

70. For the reasons set out above, I also consider that, to the extent they apply, the nondisclosure factors relating to personal information and privacy⁸⁷ are only deserving of low weight.

71. Accordingly, the factors favouring disclosure and nondisclosure of the Other Information are finely balanced. However, taking into account the nature of this information and the pro disclosure bias of the IP Act, I find that the cumulative weight of the factors favouring disclosure slightly outweighs the weight of the factors favouring nondisclosure. On this basis, I find that disclosure of the Other Information within the Re-edited Recordings would not, on balance, be contrary to the public interest and the Health Service has not discharged its onus of establishing that access to the Other Information can be refused.

DECISION

72. I set aside the Deemed Decision and in substitution, I find that:

- the Irrelevant Information may be deleted under section 88 of the IP Act
- disclosure of the Identifying Information and Personal Information would, on balance, be contrary to the public interest and access to it may be refused under sections 67(1) of the IP Act and 47(3)(b) of the RTI Act; and
- disclosure of the Other Information would not, on balance, be contrary to the public interest and there is no basis under the IP Act to refuse access to this information.⁸⁸

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

T Lake
Acting Assistant Information Commissioner

Date: 2 February 2023

⁸⁶ Schedule 4, part 2, items 1, 2, 3, 10, 11 and 16 of the RTI Act.

⁸⁷ Schedule 4, part 3 item 6 and schedule 4, part 4, section 6 of the RTI Act.

⁸⁸ As the Health Service has full details of the re-edits it performed, the Health Service may disclose the Other Information to the applicant in accordance with this decision, for example, by releasing copies of the relevant OIC edited Recordings.

APPENDIX

Significant procedural steps

Date	Event
9 November 2021	OIC received the application for external review and requested information from the Health Service about its processing of the application.
16 November 2021 and 7 December 2021	OIC received the requested information from the Health Service.
27 December 2021	OIC received submissions from the applicant.
14 January 2022	OIC advised the applicant and the Health Service that the application for external review had been accepted and requested information (including a copy of the Recordings) from the Health Service by 31 January 2022.
31 January 2022	The Health Service requested an extension until 11 February 2022.
2 February 2022	OIC granted an extension to 11 February 2022.
13 February 2022	The Health Service requested a further extension until 18 February 2022.
14 February 2022	OIC granted the further extension to 18 February 2022.
16 February 2022	OIC received the information requested on 14 January 2022 from the Health Service.
1 March 2022	OIC contacted the applicant by telephone and he confirmed that he did not wish to inspect the Recordings but instead sought to access copies of the Recordings. OIC received further submissions from the applicant.
22 March 2022	OIC conveyed a preliminary view to the Health Service. OIC requested that, if the Health Service accepted OIC's view, the Health Service redact the Recordings to reflect OIC's disclosure position and provide a copy of such edited Recordings to OIC by 12 April 2022. OIC also requested that the Health Service advise if it considered that additional information should be redacted.
13 April 2022	The Health Service requested an extension to 22 April 2022.
14 April 2022	OIC granted an extension to 22 April 2022.
28 April 2022	OIC wrote to the Health Service about its overdue response and granted it a further extension to 6 May 2022 to provide a response.
2 May 2022	OIC received further submissions from the applicant.
10 May 2022	The Health Service requested a further extension until 12 May 2022.
11 May 2022	OIC granted the further extension to 13 May 2022 ⁸⁹ and noted that if a response was not received by that date, a notice under section 116 of the IP Act would be issued.

⁸⁹ By email dated 10 May 2022, the Health Service had requested an extension to Friday 12 May 2022. As the date on the Friday was 13 May 2022, so OIC granted an extension until this date.

Date	Event
13 May 2022	The Health Service confirmed that it did not disagree with the preliminary view dated 22 March 2022 but was unable to redact the Recordings due to resource issues. The Health Service requested additional time to complete the redaction process.
20 May 2022	<p>I spoke with the Health Service, noting the delays in the matter to date. The Health Service confirmed to me that it accepted the preliminary view, however, it stated that it was unable to redact the recordings due to resource issues and had obtained quotes from an external provider to complete the redaction process.</p> <p>Subsequently, OIC received the Health Service's written acceptance of the preliminary view dated 22 March 2022 and confirmation that it would make the necessary arrangements to undertake redaction of the Recordings to reflect the accepted preliminary view and would advise of a timeframe for completion of this process as soon as possible.</p>
25 May 2022	<p>I spoke with the Health Service to obtain a timeframe for completion of the redaction process. The Health Service advised that two of the Recordings would be redacted 'in house' by 24 June 2022 and it intended to outsource redaction of the four remaining Recordings.</p> <p>OIC then received the Health Service's written confirmation of the proposed redaction arrangements and a request for an extension to 24 June 2022 for completing redaction of all the Recordings.</p>
26 May 2022	I spoke with the Health Service to advise that, as the then Acting Right to Information Commissioner was considering its request for an extension, it would be prudent to await a formal response in that regard before proceeding with the redaction arrangements proposed on 25 May 2022.
30 May 2022	Taking into account the delays by the Health Service during its processing of the application and on external review, OIC performed the required redactions of the Recordings to reflect the preliminary view and to ensure that the applicant was not further disadvantaged.
17 June 2022	After an OIC staff member had completed redaction of the Recordings to reflect the accepted preliminary view, OIC provided those edited Recordings to the Health Service and asked that the Health Service review them and release them to the applicant by 30 June 2022. OIC also identified its concerns about the Health Service's processing of the application and response delays during the external review.
20 June 2022	OIC conveyed a preliminary view to the applicant and received submissions from the applicant.
21 June 2022	OIC received further submissions from the applicant.
24 June 2022	OIC received correspondence from the Health Service raising generalised concerns about OIC's edits of the Recordings.
27 June 2022	OIC requested that the Health Service provide details of its concerns by 30 June 2022.

Date	Event
29 June 2022	OIC received an email from the Health Service indicating that snips of images to which its concerns related would be provided to OIC for review.
13 July 2022	<p>OIC received the Health Service's confirmation that it had undertaken further edits to two of the Recordings⁹⁰ and that these could now be disclosed to the applicant.</p> <p>OIC requested the Health Service release those two Re-edited Recordings to the applicant and that matters raised in its 29 June 2022 email were still being considered.</p> <p>The Health Service then confirmed it would arrange for the two Re-edited Recordings to be disclosed to the applicant by 18 July 2022.</p>
15 July 2022	OIC asked the Health Service to incorporate any further edits to the four remaining Recordings ⁹¹ that the Health Service considered necessary to reflect the Health Service's position on disclosure and then disclose these Re-edited Recordings to the applicant. OIC also asked the Health Service to advise its expected timeframe for that to occur.
20 July 2022	OIC sought an update from the Health Service about the release of the first two Re-edited Recordings and the timeline for re-editing the remaining four Recordings. In response, the Health Service advised that the remaining re-edits would be completed 'in house' and all six of the Re-edited Recordings would be ready for disclosure to the applicant by 25 July 2022.
25 July 2022	OIC received the Health Service's advice that the re-edit process was ongoing and that all six of the Re-edited Recordings would be sent to the applicant on 27 July 2022.
28 July 2022	OIC received the Health Service's advice that the re-edits were complete, and it was anticipated that a copy of all six Re-edited Recordings would be sent to the applicant by 29 July 2022.
29 July 2022	The Health Service sent all six Re-edited Recordings to the applicant and provided a copy to OIC.
2 August 2022	<p>OIC asked the Health Service to provide, by 5 August 2022, details of the further edits that it had incorporated into the Re-edited Recordings.</p> <p>OIC wrote to the applicant and confirmed that the Re-edited Recordings had been sent to him on 29 July 2022 (by Kiteworks) and asked the applicant to confirm by 14 July 2022 if he wished to proceed with the external review.</p>
12 August 2022	The Health Service requested an extension of time to provide details of its edits of the Re-edited Recordings until 19 August 2022.
15 August 2022	OIC granted the Health Service's requested extension.

⁹⁰ Recordings #1524-3 and #1629.

⁹¹ Recordings #1524, #1524-2, #1854 and #1854-2.

Date	Event
22 August 2022	Having not received a response, OIC advised the Health Service that, without details of its further edits in the six Re-edited Recordings, there was insufficient information to be satisfied that the Health Service had discharged its onus of establishing that a decision refusing access to those further edits was justified.
25 August 2022	The Health Service advised that the applicant had not yet accessed the provided link it sent to him for the Re-edited Recordings and requested an extension to 31 August 2022 to provide OIC with the requested details about its further edits.
26 August 2022	OIC invited the Health Service to provide a submission in support of its position that access may be refused to the further edits it had made and noted the Health Service had indicated it would provide the requested details about those further edits by 31 August 2022.
29 August 2022	OIC spoke with the applicant and he requested a copy of the Re-edited Recordings by post, rather than the provided Kiteworks link. OIC asked the Health Service to post a further copy of the Re-edited Recordings to the applicant by 31 August 2022.
31 August 2022	OIC received the Health Service's response about the re-edits that it had undertaken. The Health Service also confirmed a further copy of the Re-edited Recordings would be posted to the applicant by 1 September 2022.
7 September 2022	OIC wrote to the applicant to confirm that a further copy of the Re-edited Recordings had been posted to him on 2 September 2022 and asked the applicant to advise by 23 September 2022 whether he wished to continue with this external review.
19 September 2022	OIC received the applicant's response, which requested all video footage. This was taken to mean that he continues to seek access to all information in the Re-edited Recordings which has not been disclosed to him.