



## Decision and Reasons for Decision

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**Citation:** *L78 and Queensland Health [2020] QICmr 5 (10 February 2020)*

**Application Number:** 314368

**Applicant:** L78

**Respondent:** Queensland Health

**Decision Date:** 10 February 2020

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information and privacy of other individuals - individuals' email addresses, officers' mobile telephone numbers and information provided by job applicants - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENTS - applicant contends additional documents exist - whether agency has taken all reasonable steps to locate documents but the documents cannot be found or do not exist - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009 (Qld)*

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Queensland Health under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for records about their employment with Queensland Health in two specific time periods: 1 November 2012 to 30 November 2013 (**Part One**) and 1 September 2017 to 30 July 2018 (**Part Two**).
2. In accordance with section 38 of the RTI Act, Queensland Health transferred to the Gold Coast Hospital and Health Service (**Health Service**)<sup>2</sup> Part One of the access application, as the applicant had worked at the Health Service in the relevant time period.
3. Queensland Health's decision<sup>3</sup> therefore dealt solely with Part Two of the access application which sought access to documents from the later period in time. Queensland Health located 146 pages and decided to release 134 entire pages and 12 part pages,

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<sup>1</sup> Access application dated 8 October 2018, received 11 October 2018, and compliant 31 October 2018.

<sup>2</sup> Email from Queensland Health to the applicant dated 8 November 2018.

<sup>3</sup> Dated 5 December 2018.

refusing access to information in 12 part pages on the ground that its disclosure would, on balance, be contrary to the public interest.<sup>4</sup>

4. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of Queensland Health's decision, contending that Queensland Health had not located all responsive Part Two documents.<sup>6</sup>
5. On external review Queensland Health:
  - identified that it did in fact hold Part One documents<sup>7</sup> and located Part One documents and additional pages of Part Two documents; and
  - gave the applicant access to the documents with the exception of some information which it considered was contrary to the public interest to disclose.
6. For the reasons set out below, I vary Queensland Health's decision and find that, in respect of:
  - Parts One and Two of the access application – access may be refused to certain information on the ground that disclosure would, on balance, be contrary to the public interest;<sup>8</sup> and
  - Part Two of the access application – access may be refused to further additional information sought by the applicant on the ground that it is non-existent or unlocatable.<sup>9</sup>

## Background

7. As noted at paragraph 5 above, further information was disclosed to the applicant on external review.
8. On external review, the applicant provided OIC with information indicating that they had been engaged by a recruitment agency to undertake employment with Queensland Health in the earlier time period. Based on this information, Queensland Health undertook searches and located 90 pages of documents responding to Part One of the access application. A third party was consulted and had no objection to the release of relevant Part One Information.<sup>10</sup> Consequently, Queensland Health released the majority of the Part One pages to the applicant.<sup>11</sup>
9. In addition to the above submission concerning the additional Part One documents,<sup>12</sup> the applicant submitted<sup>13</sup> that further information existed relating to Part Two of the application. Having considered the applicant's submissions, OIC asked Queensland

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

<sup>5</sup> External review application dated 27 December 2019.

<sup>6</sup> Also, on 27 December 2018, the applicant applied to OIC for external review of the Health Service's decision dated 27 November 2018 refusing access to the requested Part One documents under sections 47(3)(e) and 52(1) of the RTI Act on the ground that such documents were non-existent or unlocatable, as the Health Service held no Part One documents. OIC therefore commenced external review 314379 to review the Health Service's decision.

<sup>7</sup> As the Part One documents are held by Queensland Health and therefore could be dealt with in this review, OIC closed external review 314379 on 30 April 2019.

<sup>8</sup> Under section 47(3)(b) and 49 of the RTI Act.

<sup>9</sup> Under section 47(3)(e) and 52 of the RTI Act.

<sup>10</sup> The third party was advised that if they had no objection, they need not respond to OIC within the time period set out in OIC's letter and OIC would proceed on the basis they had no objection. As the third party did not respond within the time period set out in OIC's letter to it, OIC proceeded on the basis that the third party did not object to disclosure of the Part One information on which it was consulted.

<sup>11</sup> The pages, from which some information was redacted, were provided to the applicant by Queensland Health by letter dated 17 September 2019.

<sup>12</sup> Submission dated 1 February 2019.

<sup>13</sup> In the external review application dated 27 December 2019 and in letters dated 1 February 2019, 29 April 2019, 11 June 2019, 7 August 2019, 18 September 2019 and 4 January 2020, and by telephone on 9 January 2019 and 29 March 2019.

Health to undertake further searches and enquiries for Part Two documents.<sup>14</sup> Queensland Health located 74 additional pages and released the majority of these to the applicant.<sup>15</sup> Queensland Health located some information relating to the applicant which, while not within the scope of this review, it nonetheless released to the applicant.<sup>16</sup>

10. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

### **Reviewable decision**

11. The decision under review is Queensland Health's decision dated 5 December 2018.

### **Evidence considered**

12. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

### **Information in issue**

13. The information in issue falls within the following categories:
  - Category A Information – being Queensland Health officers' mobile telephone numbers<sup>17</sup>
  - Category B Information – being non-government email addresses<sup>18</sup>
  - Category C Information – being names of other applicants for employment with Queensland Health, their candidate ranking and overall score, associated tendering agency, and proposed employment activity;<sup>19</sup> and
  - additional Part Two documents sought by the applicant.

### **Issues for determination**

14. The issues remaining in the review are whether:
  - disclosure of the Category A, B and C Information would, on balance, be contrary to the public interest;<sup>20</sup> and
  - access may be refused to the additional Part Two documents sought by the applicant on the ground it is non-existent or unlocatable.<sup>21</sup>

### **Category A, B and C Information: Contrary to public interest information**

#### ***Relevant law***

15. The RTI Act confers on an individual a right to access documents of an agency,<sup>22</sup>

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<sup>14</sup> Letters dated 4 October 2019, 19 November 2019 and 6 December 2019. OIC considered that, given the searches requested in these letters, it was unnecessary to request further searches in respect of issues raised in the applicant's submission dated 4 January 2020.

<sup>15</sup> These pages were provided to the applicant by Queensland Health by letter dated 3 December 2019.

<sup>16</sup> This information is contained in the 26 page pdf file "[applicant's last name] – application" released by Queensland Health by letter dated 3 December 2019, and 4 pages of Queensland Health notes assessing the applicant's job application released by letter dated 23 December 2019.

<sup>17</sup> On pages 7-9, 31, 32, and 59 of the Part One pages, 11-13, 17-18, 21, 26 and 28 of the pdf file *e-Health documents*, and 3-7 of the 7 page pdf document *4709 emails [Officer X] Part 1* and 1-3 of the 27 page pdf document *4709 emails [Officer X] Part 2*.

<sup>18</sup> On pages 5-6, 11-12 and 15-17 of the pdf file *4709 e-Health documents*

<sup>19</sup> On pages 11, 13-17, 35, 37 and 60-61 of the Part One pages.

<sup>20</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>21</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>22</sup> Section 23 of the RTI Act.

however this right of access is subject to certain limitations, including grounds for refusal of access.<sup>23</sup> Access to information may be refused to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.<sup>24</sup>

16. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the wellbeing 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>25</sup>
17. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>26</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.
18. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision.
19. Additionally, I have kept in mind the RTI Act's pro-disclosure bias<sup>27</sup> and Parliament's requirement that grounds for refusing access to information be interpreted narrowly,<sup>28</sup> and have not taken into account any irrelevant factors.
20. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>29</sup> particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,<sup>30</sup> and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian equivalents of Queensland's RTI Act and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>31</sup>

## **Findings**

### **Category A and B Information**

#### ***Factors favouring disclosure***

21. The RTI Act provides that there are factors favouring disclosure of information where such release could reasonably be expected to promote open discussion of public affairs,

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<sup>23</sup> Grounds for refusal of access are set out in section 47 of the RTI Act.

<sup>24</sup> Section 47(3)(b) of the RTI Act.

<sup>25</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>26</sup> Section 49(3) of the RTI Act.

<sup>27</sup> Section 44 of the RTI Act.

<sup>28</sup> Section 47(2) of the RTI Act.

<sup>29</sup> Which came into force on 1 January 2020.

<sup>30</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

<sup>31</sup> *XYZ* at [573].

enhance the Government's accountability, and inform the community of the Government's operations.<sup>32</sup>

22. Queensland Health must be transparent and accountable about how it deals with its staff; however, as explained below, I consider that the disclosure of the Category A and B Information would not advance Queensland Health's accountability and transparency for its dealings with the applicant in any significant way, particularly in light of the information which has been disclosed to the applicant.
23. As previously set out, the Category A Information comprises the mobile phone contact details of public service officers and the Category B Information consists of non-government email addresses. In the case of each of the Category A and B Information, the surrounding information that has been released to the applicant, discloses the names<sup>33</sup>, and in the case of the Category A Information, position description, work area and land line phone numbers, of the individuals associated with the Category A and B Information. In these circumstances, disclosure of the Category A and B Information will do little, if anything, to promote open discussion of public affairs, enhance the Government's accountability or inform the community of the Government's operations. I therefore afford the accountability and transparency factors favouring disclosure low weight for the Category A and B Information.
24. The applicant submitted that information may '*legally implicate*' a Queensland Health Officer (**Officer X**).<sup>34</sup> In light of that submission I have considered whether any of the information in Category A and B 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>35</sup> If such could be demonstrated, public interest factors favouring disclosure would arise. However, none of the Category A and B Information concerns Officer X nor the conduct of other officers. Therefore, I consider that none of these pro-disclosure factors are enlivened by the Category A and B Information and these factors therefore carry no weight.

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

25. The RTI Act recognises that disclosing an individual's personal information<sup>36</sup> to someone else can reasonably be expected to cause a public interest harm<sup>37</sup> and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>38</sup>
26. The Category A and B Information solely comprises the personal information of persons other than the applicant. However, the Category A Information relates to public service officers, which necessitates a consideration of whether the information is routine personal work information. Routine personal work information is information that is solely and wholly related to the routine day to day work duties and responsibilities of a public sector employee, such as the fact of authorship of a work document or a work responsibility. Generally, it is not considered to be contrary to the public interest to

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

<sup>33</sup> In some cases the name is not disclosed, but is already known to the applicant.

<sup>34</sup> In the applicant's email to OIC dated 4 January 2020. The Officer has been deidentified for the purpose of this decision.

<sup>35</sup> Schedule 4, Part 2, items 5 and 6 of the RTI Act.

<sup>36</sup> *Personal information* is defined at section 12 of the *Information Privacy Act 2009* (Qld) as: 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

<sup>37</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>38</sup> Schedule 4, part 3, item 3 of the RTI Act.

disclose routine personal work information.<sup>39</sup> In this case, I do not consider that the Category A Information is routine personal work information as it allows officers to be contacted directly and outside of work hours. Disclosure of this type of information permits potential contact with a public service officer when off duty and/or engaged in private activity, thus giving rise to a reasonable expectation of intrusion into the officer's private life or personal sphere.

27. The applicant contended that:<sup>40</sup>

*[The Category A and B] information may consist of Queensland Health, its [sic] agencies and other Departments employee personal information, but, if those private email addresses, phone numbers and other such devices were used to conduct Queensland Health business on or from, then they can no longer be considered private and the data must become of Public Interest and released per the Right to Information Act 2009 (Qld). If on the other hand, they have not been used to conduct Queensland Health's business on or from, or that of its agencies, then I agree with the OIC's view, this information should be kept private and not released due to privacy concerns.*

28. I agree with the applicant's submission that information created by a public servant using a personal email address or a mobile number that is pertinent to the work of that public servant might form part of the public record and therefore be subject to the RTI Act and possible disclosure. However, in this case the Category A and B Information is not the information created using a personal email address or mobile device but rather, the personal email address or mobile telephone number itself. Additionally, I consider that the mere use of a personal device or email address to 'conduct Queensland Health's business' does not necessarily then render any and all activity conducted on the device or via the email address the property of the government agency or department for or with whom the "business" was conducted.

29. I consider that disclosure of the Category A and B Information could reasonably be expected to prejudice the protection of the right to privacy of individuals other than the applicant and cause a public interest harm by disclosing their personal information. Given the nature of the information and the context in which it appears, I afford moderate weight to both of these factors in respect of the Category A and B Information.

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

30. As outlined above, I afford accountability and transparency factors favouring disclosure low weight and the factors favouring disclosure that provide for inquiry into conduct, no weight. On the other hand, I afford the factors favouring nondisclosure regarding the personal information and privacy of individuals other than the applicant moderate weight.

31. On balance, for the Category A and B Information, I consider the nondisclosure factors outweigh the disclosure factors. Accordingly, I find that access to the Category A and B Information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

### **Category C Information**

#### ***Factors favouring disclosure***

32. I have considered whether disclosure of the Category C Information would advance

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<sup>39</sup> However, it is considered to be contrary to the public interest to disclose sensitive personal information of public sector employees, such as complaints made by or about a public sector employee.

<sup>40</sup> Submissions dated 18 September 2019.

Queensland Health's accountability and transparency for its dealings with the applicant and its recruitment processes<sup>41</sup> and would reveal reasons for a government decision and background information that informed the employment decisions made regarding those applicants.<sup>42</sup> The Category C Information concerns employment information of individuals other than the applicant which appears in tables and lists.<sup>43</sup> Disclosing the Category C information would inform the applicant of some considerations regarding those job applications. However, little of the Category C Information identifies the issues considered in the employment decisions about those individuals, rather, it is administrative in nature. I note also that, as the rows of the tables and lists which contain information about the applicant have been disclosed to the applicant, together with the table headings, the applicant is aware of the general nature of the information about other job applicants contained in the Category C Information. Accordingly, disclosure would not much advance these factors and I therefore afford them low weight.

33. None of the Category C Information concerns Officer X or the conduct of other officers. For the same reasons as are given above in respect of the Category A and B Information, I consider that disclosing the Category C Information will not advance either of the pro-disclosure factors of allowing or assisting 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>44</sup> These factors therefore do not arise for consideration.

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

34. As noted above at paragraph 25, the RTI Act recognises public interest factors in favour of non-disclosure of personal information of others, where disclosure would intrude into the private, personal spheres of the individual. The Category C Information concerns employment information of individuals other than the applicant. This information is not known to the applicant and its disclosure, identifying the job applicants, would disclose the job applicants' personal information and would represent an intrusion of a significant nature into the privacy of those individuals. Given the sensitivity of the Category C Information I afford significant weight to these nondisclosure factors.
35. I also consider that disclosure of the Category C Information could reasonably be expected to prejudice Queensland Health's management function,<sup>45</sup> as job applicants are likely to provide less detail in applications in consideration of those details being routinely disclosed. Thus impacting the quality of information available to the employer decision maker. I therefore afford significant weight to these factors in respect of the Category C Information.

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

36. The pro-disclosure factors of accountability and transparency, and revealing reasons for a government decision and background information all attract low weight. The nondisclosure factors favouring protection of others' privacy and personal information, and of avoiding prejudice to Queensland Health's ability to obtain information pertinent to its management function, all attract significant weight. In the circumstances, the factors favouring nondisclosure outweigh the pro-disclosure factors. Accordingly, I find that access to the Category C Information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

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<sup>41</sup> Schedule 4, part 2, items 1 and 3 of the RTI Act.

<sup>42</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>43</sup> One segment on page 11 of the Part One pages contains only the name of one of these job applicants.

<sup>44</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>45</sup> Schedule 4, part 3, item 19 of the RTI Act.

37. In relation to the Category A, B and C Information, I have carefully considered all other factors listed in schedule 4 of the RTI Act, and have not identified any other factors as relevant in the circumstances of this review. In terms of the factors favouring disclosure, for example, I have noted that the applicant's submissions have at no stage raised matters that could reasonably be viewed as necessitating my consideration of the factors listed in schedule 4, part 2, items 2, 4, 9, 13-15, or 18, or any other public interest factors favouring disclosure not listed in the RTI Act.<sup>46</sup> Accordingly, I can identify no other public interest considerations telling in favour of disclosure of the Category A, B and C Information, beyond those identified above.

### **Additional Part Two documents sought by the applicant**

38. As noted in paragraph 9 above, Queensland Health conducted further searches on external review, located additional documents and released almost the entirety of them to the applicant.
39. Despite the additional documents located, the applicant maintained that not all relevant Part Two documents had been located. OIC required Queensland Health to undertake further searches and inquiries for documents<sup>47</sup> on the basis that reasonable grounds existed to believe that Queensland Health had not discharged the obligation to locate all relevant documents.<sup>48</sup> The applicant also submitted that Queensland Health's search results were unreliable as officers had searched their own documents, stating that the searches '*are not independent*'.<sup>49</sup>

### **Relevant law**

40. On external review, the functions of the Information Commissioner include investigating and reviewing whether an agency has taken all reasonable steps to identify and locate documents applied for by applicants.<sup>50</sup> However, access to a document may be refused if it is nonexistent or unlocatable.<sup>51</sup>
41. To be satisfied that documents are nonexistent, I consider relevant key factors.<sup>52</sup> If searches are relied on to justify a finding that documents do not exist, I must be satisfied that all reasonable steps have been taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the particular circumstances of the matter.
42. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency, or on external review – the Information Commissioner, to be satisfied that the requested document has

<sup>46</sup> Which I must also consider, given that the public interest factors listed in the RTI Act are non-exhaustive—see section 49(3)(a), (b) and (c) of the RTI Act.

<sup>47</sup> Being documents in rows 1, 2, 5 and 8-10 of the schedule prepared by OIC (**Schedule**).

<sup>48</sup> However OIC had been unable to be satisfied that such grounds existed in respect of documents in rows 3, 4, 6, 7 and 11-15 of the Schedule.

<sup>49</sup> Submission dated 4 January 2020.

<sup>50</sup> Section 130(2) of the RTI Act.

<sup>51</sup> Sections 47(3)(e) and 52 of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act.

<sup>52</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19] as including the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); the agency's practices and procedures (including but not exclusive to its information management approach); and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates. These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017).

been or should be in the agency's possession; and whether the agency has taken all reasonable steps to locate the document. In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors.<sup>53</sup>

### **Findings**

43. Queensland Health provided information about its recordkeeping system and searches, as set out below. It relied on searches and inquiries conducted by its officers to justify its position that reasonable steps have been taken to locate documents responsive to the application.
44. Information before me shows that Queensland Health's payroll records are maintained in the Payroll Portfolio of the Health Support Division. Records concerning recruitment, workforce establishment, rehabilitation and leave and training, are held in both the eHealth Queensland Division, in its People and Culture section of the Corporate Services Branch, and in the Corporate Services Division, in its Human Resources Branch. Also, documents generated in connection with the applicant's work are held in the Digital Solutions Delivery Branch of the eHealth Queensland Division.
45. Queensland Health submitted<sup>54</sup> to OIC that it conducted the following searches in relation to the Part Two documents:<sup>55</sup>
  - records held by the Health Support Division in its Payroll Portfolio
  - records held by the eHealth Queensland Division, in:
    - the Digital Solutions Delivery Branch's Project Services section
    - the Corporate Services Branch's People and Culture sections dealing with recruitment, workforce establishment, rehabilitation, leave and training, including the Occupational Health and Safety team and Workforce Services (Workforce Relations) team
    - the Technology Services Branch's Cyber Security Group; and
    - the Chief Solutions Delivery Office, the Chief Executive Office and Shared Application Services; and
  - records held by the Corporate Services Division, in the Human Resources Branch's Recruitment and Capability section and Human Resources Intelligence and Strategy section, and in the People, Safety and Performance Section, in its Occupational Health and Safety team and Statewide People and Performance team.
46. I have reviewed Queensland Health's search records and search certifications and am satisfied that staff with working knowledge of the relevant areas undertook appropriately targeted searches for the requested documents. Given the types of Part Two documents sought, the subject matter of the requested documents<sup>56</sup> and the nature of the applicant's employment in Queensland Health,<sup>57</sup> I consider that Queensland Health has conducted comprehensive searches of locations where it would be reasonable to expect the types of information requested to be stored. There is no information before me to indicate that Queensland Health's submissions about its searches, and practices and procedures relating to information management, set out above, are not credible.

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<sup>53</sup> Pryor at [21].

<sup>54</sup> Search records and certifications were provided with Queensland Health's letters dated 15 February 2019, 14 June 2019, 4 November 2019, 2, 18 and 20 December 2019. In its electronic searches in processing the access application and on external review, Queensland Health used various search terms, namely the applicant's first, middle and last names; and on external review, also using the applicant's first and last names, and the applicant's last name.

<sup>55</sup> On external review, by letter dated 4 October 2019, OIC required Queensland Health to undertake searches for documents identified in rows 1, 2, 5 and 8-10 of the Schedule.

<sup>56</sup> The requested information concerns matters related to the applicant's employment with Queensland Health in the Later Period.

<sup>57</sup> To avoid identifying the applicant, I have not included details in these reasons.

47. I understand from the applicant's submissions that the applicant believes Queensland Health, and particular officers, are deliberately withholding information the applicant seeks. The applicant questioned the independence of searches of Officer X's emails for a particular email sent to the applicant containing links to an organisational chart, in circumstances where Officer X conducted the searches.<sup>58</sup> The applicant also submitted that, in respect of another officer (Officer Y), who had access to the organisational chart itself, any searches of Officer Y's emails could not be regarded as independent if Officer Y had themselves conducted the searches. However, searches were also undertaken by the Senior Specialist, Messaging, in the eHealth Queensland Division, who searched in the section's Enterprise Vault, a comprehensive store of emails including archived emails for emails containing the link.<sup>59</sup> No relevant emails were located as a result.
48. On careful consideration of the search results provided by Queensland Health and the information before me, including the information released to the applicant, the applicant's contentions do not appear to be supported. I am satisfied relevant search results are reliable and that there is no information before OIC suggesting that officers have acted improperly. On this basis, I am satisfied that all reasonable searches for relevant Part Two documents have been undertaken, and that it is not necessary for any further searches to be undertaken.
49. In view of the above and considering the documents that were located by Queensland Health, including the information in issue, I consider that:
- Queensland Health has taken all reasonable steps to locate additional relevant Part Two documents; and
  - access to them may be refused on the basis they do not exist, or cannot be located.<sup>60</sup>

## DECISION

50. For the reasons set out above, I vary Queensland Health's decision, and find that in respect of:
- Parts One and Two of the access application – access may be refused to the Category A, B and C Information on the ground that disclosure would, on balance, be contrary to the public interest;<sup>61</sup> and
  - Part Two of the access application – access may be refused to further additional Part Two information sought by the applicant on the ground that it is non-existent or unlocatable.<sup>62</sup>
51. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Assistant Information Commissioner Corby**

**Date: 10 February 2020**

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<sup>58</sup> Officer X's searches undertaken on 28 October 2019.

<sup>59</sup> Also on 28 October 2019

<sup>60</sup> Under section 47(3)(e) of the RTI Act.

<sup>61</sup> Under section 47(3)(b) and 49 of the RTI Act.

<sup>62</sup> Under section 47(3)(e) and 52 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
27 December 2018	OIC received the external review application.
3 January 2019	OIC notified Queensland Health and the applicant that the application for external review had been received, and requested procedural documents from Queensland Health.
7 January 2019	OIC received the requested documents from Queensland Health.
9 January 2019	OIC received oral submissions from the applicant by telephone regarding issues in the review.
15 January 2019	OIC received oral submissions from Queensland Health by telephone about searches it had conducted for responsive documents.
4 February 2019	OIC notified Queensland Health and the applicant that the application for external review had been accepted, and asked Queensland Health to provide located Part two documents and search records for Part Two documents.
15 February 2019	OIC received the requested documents from Queensland Health.
14 March 2019	OIC wrote to Queensland Health, asking it to undertake searches and enquiries for Part One documents.
8 April 2019	OIC received the Part One documents from Queensland Health.
10 April 2019	OIC informed the applicant that Queensland Health had located the Part One documents, and requested submissions on additional Part Two documents sought by the applicant.
29 April 2019	OIC received the applicant's submission.
28 May 2019	OIC conveyed to the applicant a written preliminary view about the Category A Information, identified some additional Part Two documents sought by the applicant that were out of scope of the access application, and requested submissions regarding an issue in the review. OIC invited the applicant, if they did not accept the preliminary view, to provide submissions in response. OIC asked Queensland Health for its further submission regarding its searches for Part Two documents.
11 June 2019	OIC received written submissions from the applicant.
14 June 2019	OIC received from Queensland Health the requested submission.
15 July 2019	OIC wrote to a third party, consulting them about some Part One documents.
24 July 2019	OIC conveyed to the applicant a written preliminary view about the Category B Information, identified some additional Part Two documents sought by the applicant that were out of scope of the access application, and requested submissions regarding additional Part Two documents sought by the applicant. OIC invited the applicant, if they did not accept the preliminary view, to provide submissions in response.

Date	Event
7 August 2019	OIC received the requested submissions from the applicant, together with a table about additional Part Two documents sought by the applicant.
10 September 2019	OIC wrote to the applicant, providing a Schedule about additional Part Two documents sought by the applicant and requested submissions about additional Part Two documents sought by the applicant. The applicant provided a submission to OIC.
16 September 2019	OIC wrote to the applicant identifying that an additional document sought by the applicant was outside the scope of the access application.
17 September 2019	OIC received from Queensland Health notification that the majority of the Part One documents had been provided to the applicant.
18 September 2019	OIC received from the applicant submissions about additional Part Two documents sought by the applicant.
4 October 2019	OIC wrote to Queensland Health, asking it to undertake searches and enquiries for additional Part Two documents. OIC wrote to the applicant, conveying the preliminary view that some additional documents sought by the applicant were outside the scope of Part Two of the access application. OIC invited the applicant, if they did not accept the preliminary view, to provide submissions in response.
18 October 2019	OIC received submissions from the applicant.
25 October 2019	OIC received oral submissions from Queensland Health by telephone.
1 November 2019	OIC received from Queensland Health additional Part Two documents located in its searches
4 November 2019	OIC received from Queensland Health search records regarding recent searches and oral submissions by telephone.
19 November 2019	OIC received oral submissions from Queensland Health by telephone. OIC wrote to Queensland Health, asking it to undertake further searches and enquiries for additional Part Two documents.
20 November 2019	OIC wrote to the applicant informing them that Queensland Health had located additional Part Two documents and conveying a preliminary view about the Category C Information. OIC asked that the applicant advise OIC if they continued to seek access to the Category C Information.
25 November 2019	OIC wrote to Queensland Health requesting clarification of searches undertaken.
2 December 2019	OIC received oral submissions from Queensland Health by telephone about Queensland Health's structure. OIC received organisational charts from Queensland Health.

Date	Event
3 December 2019	OIC received from Queensland Health notification that additional Part Two documents had been provided to the applicant.
6 December 2019	OIC wrote to Queensland Health, asking it to provide a further submission regarding additional Part Two documents sought by the applicant.
18 December 2019	OIC received oral submissions from Queensland Health by telephone about its searches for additional Part Two documents sought by the applicant. OIC received from Queensland Health a written submission and search records regarding additional Part Two documents, and additional documents located by Queensland Health.
20 December 2019	OIC received from Queensland Health further search records and written submissions about its searches for additional Part Two documents, and additional documents located by Queensland Health.
23 December 2019	OIC conveyed to the applicant a written preliminary view about the additional Part Two documents sought by the applicant and informed the applicant that Queensland Health had located additional documents. OIC invited the applicant, if they did not accept the preliminary view, to provide submissions in response. OIC received from Queensland Health notification that additional documents had been provided to the applicant.
4 January 2020	OIC received from the applicant notification that the applicant did not accept the preliminary view, together with further submissions.