



Decision and Reasons for Decision

Citation:	<i>T90 and Wide Bay Hospital and Health Service [2021] QICmr 37 (21 July 2021)</i>
Application Number:	315861
Applicant:	T90
Respondent:	Wide Bay Hospital and Health Service
Decision Date:	21 July 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - medical records - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and section 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Wide Bay Hospital and Health Service (**WBHHS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to his medical records from 1 January 2017 to 31 December 2017.
2. WBHHS located 228 pages and decided² to refuse access to information contained within 8 pages³ on the ground that disclosure would, on balance, be contrary to the public interest. The remaining information was released in full to the applicant.⁴
3. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to some information and also raised concerns about the accuracy of certain medical records.
4. For the reasons set out below, I affirm WBHHS's decision and find that access to the information in this review may be refused on the basis disclosure would, on balance, be contrary to the public interest.⁶

¹ Access application received by WBHHS on 24 November 2020.

² By decision dated 6 January 2021.

³ Upon reviewing the information in issue it became apparent that access was refused in part to 9 pages as opposed to 8 pages and, as such, access was given in full to 219 pages. I have reviewed all relevant documents which were considered in the application, including the 9 pages with redacted information.

⁴ Being 219 pages in full and the remaining parts of 9 pages in issue.

⁵ External review application received 2 February 2021.

⁶ Under section 67 of the IP Act and section 47(3)(b) of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

Background

5. The information requested by the applicant relates to his mental health records with WBHHS. Some issues were raised by the applicant that are outside the scope of this external review.⁷ This included concerns regarding documents containing false and misleading information⁸ and the conduct of doctors at WBHHS.⁹
6. The powers of the Information Commissioner on external review are set out in the IP Act,¹⁰ and jurisdiction on external review is limited to review of an access or amendment decision.¹¹ In this current matter the applicant has made an access application¹² as opposed to an amendment application¹³ so I am only able to consider the reviewable decision made regarding access to the information in issue.¹⁴

Reviewable decision

7. The decision under review is WBHHS's decision dated 6 January 2021.

Evidence considered

8. Significant procedural steps taken during the external review are set out in the Appendix to this decision.
9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have carefully considered the applicant's submissions and have summarised them throughout this decision to the extent they are relevant to the issues in this review.¹⁵
10. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁶ A decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act.¹⁷ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁸ '*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.*'¹⁹

Information in issue

11. The information in issue in this review is comprised of parts of the applicant's medical records which have been redacted by WBHHS. The IP Act prohibits me from disclosing the Information in Issue in these reasons²⁰ and, given the context in which the Information

⁷ Section 99 and schedule 5 of the IP Act sets out the 'reviewable decisions' that I can consider.

⁸ Submissions dated 7 April 2021 and 20 May 2021.

⁹ Submissions dated 7 April 2021 and 20 May 2021.

¹⁰ Sections 111 to 122 of the IP Act.

¹¹ Section 99 of the IP Act.

¹² Under section 43 of the IP Act.

¹³ Under section 44 of the IP Act.

¹⁴ The applicant has been provided with information on the OIC's jurisdiction and powers and was referred to the Office of the Health Ombudsman (**OHO**) as an avenue to raise his concerns about a health professional's conduct. The applicant was also advised how to make an amendment application under the IP Act in relation to the personal information he considers is incorrect and misleading in the released documents (by letters dated 24 March 2021 and 4 May 2021).

¹⁵ Including the external review application received 2 February 2021, and submissions received on 8 April 2021 and 25 May 2021.

¹⁶ Section 21 of the HR Act.

¹⁷ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁸ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁹ *XYZ* at [573].

²⁰ Section 121(3) of the IP Act.

in Issue appears, I am limited in the level of detail I can provide. Broadly, the Information in Issue comprises information provided by third parties (other than WBHHS staff) and recorded in the applicant's mental health records.

12. The applicant agrees some names should be redacted to protect their privacy,²¹ and has indicated he considers one of the redactions applied to be acceptable.²² Given this, I understand that the applicant seeks access to unredacted copies of eight pages²³ of his medical records (**Information in Issue**).

Issue for determination

13. The issue for determination is whether access to the Information in Issue may be refused as disclosure would, on balance, be contrary to the public interest.

Relevant law

14. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁴ However, this right is subject to provisions of the IP Act including the grounds on which an agency may refuse access to documents.²⁵
15. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.²⁶
16. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁷
 - 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.
17. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,²⁸ together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias²⁹ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.³⁰

²¹ Submissions dated 7 April 2021.

²² Submissions dated 20 May 2021, referring to page 167 of the documents.

²³ Pages 7, 8, 131, 148, 149, 150, 174 and 175 of the documents.

²⁴ Section 40 of the IP Act.

²⁵ 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.

²⁶ Section 67(1) of the IP Act and section 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.

²⁷ Section 49(3) of the RTI Act.

²⁸ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below (in relation to each category of documents). Some factors have no relevance, for example, the factor concerning innovation and the facilitation of research.

²⁹ Section 64 of the IP Act.

³⁰ Section 67(2) of the IP Act and section 47(2) of the RTI Act. In deciding whether disclosure of the information in issue would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

Findings

Irrelevant factors

18. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in reaching my decision.

Factors favouring disclosure

Personal information

19. The Information in Issue comprises the applicant's personal information³¹ in his medical records. This raises a factor favouring disclosure which is routinely afforded significant weight due to the fundamental importance of individuals having access to their personal information held by a government agency.³² In considering this factor, I note WBHHS have provided the applicant with 219 pages in full and nine pages in part of his mental health records. Generally, the weight that can be attributed to this factor in the context of an individual's own medical records can be quite high. In this case however, I have only attributed moderate weight to this factor given the volume of information that was released to the applicant, and the particular nature of the information in issue.
20. I am also satisfied that the applicant's personal information in the Information in Issue is inextricably intertwined with the personal information of others such that it cannot be separated to allow disclosure. I consider that this raises factors in favour of nondisclosure³³ (in relation to safeguarding the personal information and right to privacy of other individuals, discussed below).

Accountability and Transparency

21. I have considered whether disclosing the Information in Issue could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;³⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁵
22. I accept that disclosing the Information in Issue would provide the applicant with a more comprehensive understanding of what appears in his medical records that may have been considered by doctors when making decisions about his healthcare.
23. However, the applicant has been granted access to a vast majority of documents in the medical record. I am satisfied that the information already released largely satisfied the public interest factors identified above. Also, given the comparatively small number of pages which make up the Information in Issue and its particular contents, I do not consider its disclosure would advance these public interest factors to any significant degree.³⁶ I also note that the Information in Issue reveals little about the actions taken by WBHHS staff and is unlikely of itself to enhance the accountability of their actions. Accordingly, I afford the above factors only low weight.

³¹ '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'.

³² Schedule 4, part 2, item 7 of the RTI Act.

³³ Schedule 4, part 3, item 3 and schedule 4, part 4, item 6 of the RTI Act.

³⁴ Schedule 4, part 2, item 1 of the RTI Act.

³⁵ Schedule 4, part 2, item 11 of the RTI Act.

³⁶ As also found in *B7TG4G and Gold Coast Hospital and Health Service* [2015] QICmr 11 (1 May 2015) at [34].

Whether disclosure would reveal information that is incorrect or misleading

24. The applicant submits that access to the Information in Issue will enable him to identify false and misleading information and give him ‘...the ability to correct the various records’.³⁷ The applicant referred to a particular meeting with WBHHS involving other members of his family³⁸ and stated:

... We have RTI/IP from QPS and QAS that proves the false accusation of DVO was not from them, and request your decision in our favour to locate where the false information came from.³⁹

25. The RTI Act recognises that where disclosure of information could reasonably be expected to reveal that the information was incorrect or misleading, this will establish a public interest factor favouring disclosure.⁴⁰
26. I have reviewed the Information in Issue and I am satisfied there is nothing on its face to indicate it is inaccurate or misleading.⁴¹ The Information in Issue is, by its very nature, the particular opinions and versions of events expressed by other individuals. This inherent subjectivity does not mean that the Information in Issue is necessarily incorrect or misleading.⁴² On the material before me, I am not satisfied that disclosure of the Information in Issue could reasonably be expected to reveal that information recorded by WBHHS was incorrect or misleading. Accordingly, I have not given this public interest factor any weight in favour of disclosure.

Contributing to the administration of justice generally or for a person

27. I have considered whether the disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice, procedural fairness and/or advance the applicant’s fair treatment.⁴³
28. I accept that disclosure of the Information in Issue may permit the applicant to better understand the decisions made in relation to his mental health care.⁴⁴ The Information Commissioner has previously recognised that in an appropriate case there may be a public interest in a person who has suffered, or may have suffered, an actionable wrong, being permitted to obtain access to information which would assist the person to pursue any remedy which the law affords in those circumstances.⁴⁵
29. However, the mere assertion by an applicant that information is required to enable pursuit of a legal remedy is not sufficient to establish this pro-disclosure consideration.⁴⁶ An applicant must, at the least, demonstrate that he or she has suffered some kind of wrong in respect of which a remedy is, or may be, available under the law, and that he or she has a reasonable basis for seeking to pursue any such remedy.⁴⁷
30. The applicant has indicated he intends to take action to correct false or misleading information in his mental health records. However, I do not consider access to the

³⁷ Submissions dated 7 April 2021.

³⁸ Submissions dated 20 May 2021.

³⁹ Submissions dated 7 April 2021.

⁴⁰ Schedule 4, part 2, item 12 of the RTI Act.

⁴¹ The IP Act prohibits me from releasing information that is contrary to public interest in a decision on an external review; section 121 of the IP Act.

⁴² *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20].

⁴³ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁴⁴ Giving rise to the disclosure factor at schedule 4, part 2, item 17 of the RTI Act.

⁴⁵ *Willsford and Brisbane City Council* (1996) 3 QAR 368 (**Willsford**).

⁴⁶ *Willsford* at [17].

⁴⁷ *Willsford* at [17]. The third key requirement is to demonstrate disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.

Information in Issue is necessary to enable the applicant to pursue this course of action. The IP Act provides that an individual who has had access to a document of an agency may apply for amendment to any part of the individual's personal information contained in the document that the individual claims is inaccurate, incomplete, out of date or misleading.⁴⁸ WBHHS have released 228 pages of the applicant's mental health records to him, with redactions on nine pages, and so the applicant has access to the document he requires in order to make an application for amendment under the IP Act.

31. The applicant also indicates he intends to report '*Medical Deception by Doctors*' and investigate the misuse of an Emergency Examination Order.⁴⁹ I do not consider access to the Information in Issue is required for the applicant to make this report and note the applicant indicated he has already commenced the process of investigating the misuse of an Emergency Examination Order.⁵⁰
32. Further, to the extent the applicant seeks to make a complaint about medical professionals, OIC has informed the applicant that the Office of the Health Ombudsman (OHO) is the statutory body empowered to assess and investigate complaints regarding healthcare providers. OHO has wide ranging powers under the *Health Ombudsman Act 2013* (Qld), including the power to require a person to give the OHO any document relevant to an investigation.
33. Taking into account the information which has already been released to the applicant, I consider the public interest factors have been sufficiently discharged and disclosure of the Information in Issue would not significantly advance these factors favouring disclosure. Accordingly, I afford low weight to the above factors favouring disclosure.

Revealing misconduct, improper conduct or deficiencies in conduct

34. The public interest will favour disclosure of information where it could reasonably be expected to:
 - allow or assist inquiry into possible deficiencies of conduct or administration by an agency or official;⁵¹ or
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁵²
35. Aside from the applicant's assertions,⁵³ there is no other evidence, before me to suggest possible misconduct, improper conduct or deficiencies in the conduct of WBHHS. Accordingly, I do not consider that these factors apply.

Factors favouring nondisclosure

Personal information and privacy

36. The Information in Issue comprises the intertwined personal information of the applicant and other individuals. This gives rise to two factors favouring nondisclosure relating to protecting the personal information⁵⁴ and safeguarding the right to privacy of those individuals.⁵⁵ Given the sensitive nature of the information and the circumstances of its

⁴⁸ Section 44(1) IP Act.

⁴⁹ Submissions dated 7 April 2021.

⁵⁰ Submissions dated 7 April 2021.

⁵¹ Schedule 4, part 2, item 5 of the RTI Act.

⁵² Schedule 4, part 2, item 6 of the RTI Act.

⁵³ Submissions dated 20 May 2021 and 7 April 2021.

⁵⁴ Schedule 4, part 4, item 6 of the RTI Act.

⁵⁵ Schedule 4, part 3, item 3 of the RTI Act.

provision to WBHHS, I am satisfied that disclosure of the Information in Issue would disclose personal information of the third parties and prejudice their privacy.⁵⁶

37. The Information in Issue predominantly comprises the opinions, thoughts, feelings and concerns of individuals other than the applicant.⁵⁷ While the Information in Issue appears within the applicant's medical records, it also comprises the personal information of third parties who are readily identifiable. Given the nature of the Information in Issue, I afford significant weight to each of these nondisclosure factors.
38. The applicant submits that he is aware of the other parties concerned in the medical records and that therefore the relevant nondisclosure factor does not apply.⁵⁸ I have considered this submission and note that in some cases the weight to be attributed to these factors can be reduced where the applicant may be a close family member and the relevant information known to the applicant.⁵⁹ However, I do not consider that, in the circumstances of this case, the personal information or privacy factors are in any way reduced.

Ability to obtain confidential information

39. A further factor favouring nondisclosure arises where disclosure of the Information in Issue could reasonably be expected to prejudice an agency's ability to obtain confidential information.⁶⁰ I am satisfied that people who provide information to health care professionals, do so with an expectation of confidentiality. Previous decisions of the Information Commissioner have found that disclosure of this type of information could prejudice the ability of healthcare providers to effectively treat patients and have afforded significant weight to this factor in favour of nondisclosure.⁶¹
40. I acknowledge that the applicant considers the information recorded to be inaccurate. However, even where the content of the information is disputed, disclosure of that information could reasonably be expected to discourage other individuals from coming forward with confidential information to hospitals in the future, and this can be particularly detrimental to patient care in the mental health context.⁶²
41. I have considered the Information in Issue and the specific context in which it occurs. I am satisfied that the disclosure of this type of information, could reasonably be expected to prejudice the supply of full and frank information to health professionals and I afford this factor significant weight.

Balancing the public interest factors

42. In determining the balance of the public interest in this case, I acknowledge the pro-disclosure bias contained in section 64 of the IP Act. I have also attributed moderate weight in favour of the public interest in the applicant accessing his own personal information. I have also attributed some low weight to the public interest factors relevant to WBHHS being accountable and transparent and the applicant accessing information

⁵⁶ 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 (Volume 1)*, released 30 May 2008

⁵⁷ The Information Commissioner has previously found this kind of information is personal and sensitive in nature, and that disclosure would be a significant intrusion into the privacy of the individuals concerned: *BTG4G and Gold Coast Hospital and Health Service* [2015] QICmr 11 (1 May 2015) (**BTG4G**) at [32]; *VA6Q6J and Sunshine Coast Hospital and Health Service* [2015] QICmr 18 (14 August 2015) (**VA6Q6J**) at [36]; *E9IH9N and Metro South Hospital and Health Service* [2016] QICmr 18 (27 May 2016) at [39].

⁵⁸ Submissions dated 20 May 2021.

⁵⁹ This has been previously found to be the case in matters relating to the medical records of deceased family members: see *Summers and Cairns District Health Service; Hintz (Third Party)* (1997) 3 QAR 479; *Keogh and Department of Health* (Unreported, Queensland Information Commissioner, 31 August 2010).

⁶⁰ Schedule 4, part 3, item 16 and schedule 4, part 4, item 8 of the RTI Act.

⁶¹ *B7TG4G* at [35]-[37]; *VA6Q6J* at [39]-[40].

⁶² *B7TG4G* at [36]; *VA6Q6J* at [39].

that may potentially assist him evaluate or pursue a legal remedy. While I have turned my mind to the other factors favouring disclosure set out in schedule 4 of the RTI Act, I consider that no further factors apply in this case.

43. On the other hand, I have attributed significant weight to the factors favouring nondisclosure that seek to protect the personal information and privacy of third parties. I have also attributed significant weight to the nondisclosure factor in relation to the prejudice to the Health Service's ability to obtain confidential information particularly in the context of mental health care.
44. On balance, the significant weight I have attributed to the factors favouring nondisclosure outweigh the weight attributed to the factors in favour of disclosure. Accordingly, I am satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on this basis.⁶³

DECISION

45. As a delegate of the Information Commissioner, under section 139 of the IP Act, I affirm WBHHS' decision to refuse access to the Information in Issue under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

S Martin
Assistant Information Commissioner

Date: 21 July 2021

⁶³ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
2 February 2021	OIC received the application for external review dated 29 January 2021.
4 February 2021	OIC notified WBHHS that the application for external review had been received and requested procedural documents.
8 February 2021	OIC received the requested procedural documents from WBHHS.
17 February 2021	OIC notified WBHHS that the application for external review had been accepted and requested a copy of the documents located in response to the access application clearly showing the information to which access was refused.
17 February 2021	OIC notified the applicant the external review application had been accepted.
19 February 2021	OIC received the requested documents from WBHHS.
17 March 2021	OIC notified WBHHS that the documents received did not show the information to which access was refused and requested unredacted copies of the documents of the documents showing the refused information.
17 March 2021	OIC received the requested documents showing the refused information from WBHHS.
24 March 2021	OIC conveyed a preliminary review to the applicant.
8 April 2021	OIC received a submission from the applicant dated 7 April 2021.
4 May 2021	OIC wrote to the applicant asking that the applicant confirm that he wished to progress the external review to a formal decision.
25 May 2021	OIC received a further submission from the applicant dated 20 May 2021.
2 June 2021	OIC wrote to WBHHS requesting a copy of an additional page to which access was partially refused showing the refused information.
2 June 2021	OIC received a copy of the additional requested page from WBHHS.