



Decision and Reasons for Decision

Citation: E33 and Metro South Hospital and Health Service [2021] QICmr 50 (12 October 2021)

Application Number: 315884 and 315885

Applicant: E33

Respondent: Metro South Hospital and Health Service

Decision Date: 12 October 2021

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to Examination Authority and clinical records - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - documents relating to processes under *Mental Health Act 2016* (Qld) - whether information exempt under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48, and schedule 3, section 10(1)(i) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information provided by or about other individuals in clinical records - personal information and privacy - whether information would, on balance, be contrary to the public interest to disclose under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant made two applications to Metro South Hospital and Health Service (**MSHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) on the same date. Both applications requested access to the applicant's medical records with different date ranges.¹ Due to the similarities of the applications both are dealt with concurrently in this decision.

¹ One application for the date range of 9 January 2018 - 31 January 2018 (external review 315884) and the other application for the date range of 19 July 2020 - 4 August 2020 (external review 315885).

2. In its decision dated 19 January 2021,² MSHHS located 340 pages and decided to refuse access to 11 full pages on the grounds that they contained information that was exempt,³ and to refuse access in part to another 27 pages on the basis that some of the information was exempt⁴ and that disclosure of the other refused information would, on balance, be contrary to the public interest.⁵
3. In its decision dated 20 January 2021,⁶ MSHHS located 279 pages and decided to refuse access in part to 13 pages on the basis that the information was with exempt⁷ or disclosure would, on balance, be contrary to the public interest.⁸
4. The applicant applied⁹ to the Office of the Information Commissioner (**OIC**) for external review of both decisions.
5. During these reviews, MSHHS agreed to release some additional information to the applicant.¹⁰ These parts of the documents are no longer in issue. The information remaining in issue for these reviews comprises nine full pages¹¹ and 40 part pages.¹²
6. For the reasons set out below, I affirm MSHHS's decisions to refuse access to the information remaining in issue; however partly for different reasons to those set out in MSHHS's decisions.¹³ I have not considered these provisions in my decision as I am satisfied that access to all of the information in issue can be refused on the basis that it is exempt pursuant to section 47(3)(a) and schedule 3, section 10(1)(i) of the RTI Act or it would, on balance, be contrary to the public interest to disclose under section 47(3)(b) of the RTI Act.

Background

7. Some issues raised by the applicant are outside the scope of these external reviews¹⁴, such as, concerns regarding the accuracy and confidentiality of the applicant's medical records, and alleged breaches of other parties' personal information. To the extent they relate to the issues for consideration in this review, I have addressed these submissions below.
8. The powers of the Information Commissioner on external review are set out in the IP Act,¹⁵ and jurisdiction on external review is limited to review of an access or amendment decision.¹⁶ In this current matter the applicant has made access

² This decision is subject to external review 315884.

³ Section 47(3)(a) and schedule 3, section 10(1)(i) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁴ Section 47(3)(a) and schedule 3, section 10(1)(b) and 8(1) of the RTI Act.

⁵ Section 47(3)(b) and schedule 4, part 3, item 3 of the RTI Act.

⁶ This decision is subject to external review 315885.

⁷ Section 47(3)(a) and schedule 3, section 8(1) of the RTI Act.

⁸ Section 47(3)(b) and schedule 4, part 3, item 3 of the RTI Act.

⁹ On 11 February 2021.

¹⁰ On 14 June 2021, MSHHS released two pages that had previously been fully refused and six part refused pages showing additional information that was previously refused.

¹¹ External review 315884.

¹² 27 part refused pages from external review 315884 and 13 part refused pages from external review 315885.

¹³ While the reviewable decisions made by MSHHS contemplated the two grounds of refusal that are addressed in this decision, MSHHS also refused access to some information on the basis that disclosure would found an action for breach of confidence or reveal the existence or identity of a confidential source of information and would therefore comprise exempt information. As identified in schedule 3, sections 8 and 10(1)(b) of the RTI Act.

¹⁴ Section 99 and schedule 5 of the IP Act sets out the 'reviewable decisions' that I can consider.

¹⁵ Sections 111 to 122 of the IP Act.

¹⁶ Section 99 of the IP Act.

applications¹⁷ as opposed to amendment applications¹⁸ so I am only able to consider the reviewable decisions made regarding access to the information in issue.¹⁹

Reviewable decisions

9. The decisions under review are MSHHS's decisions dated 19 and 20 January 2021 refusing access to information under section 67(1) of the IP Act and sections 47(3)(a) and (b) of the RTI Act.

Evidence considered

10. The applicant provided OIC with extensive submissions²⁰ in support of her case. While I have considered the applicant's submissions,²¹ not all matters raised are relevant to the issues for determination in these reviews. In this decision, I have addressed the applicant's submissions to the extent they are relevant to the issues for determination.
11. Significant procedural steps taken during these external reviews are set out in the Appendix to this decision.
12. 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).
13. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.²² 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.²³ 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:²⁴ '*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*'.²⁵

Information in issue

14. The information in issue in these reviews is comprised of parts of the applicant's mental health records. The IP Act prohibits me from disclosing the information in issue in these reasons.²⁶ Broadly, the information in issue can be categorised as:

- Examination Authority information (**EA Information**);²⁷ and

¹⁷ Under section 43 of the IP Act.

¹⁸ Under section 44 of the IP Act.

¹⁹ The applicant was provided with information on the OIC's jurisdiction and powers in relation to the external reviews. The applicant was referred to the Office of the Health Ombudsman (**OHO**) as an avenue to raise concerns about a health professional's conduct. The applicant was also given information regarding how to make an amendment application under the IP Act in relation to the personal information she considers is incorrect and misleading in the released documents and, also, the right to make a privacy complaint under the IP Act if she or her family members were concerned about the handling of their personal information (by letters dated 17 March 2021 and 8 June 2021).

²⁰ Dated 9 May 2021 and 22 June 2021.

²¹ Including the external review application received 11 February 2021, and submissions received on 9 May 2021 and 22 June 2021.

²² Section 21 of the HR Act.

²³ *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].

²⁴ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

²⁵ *XYZ* at [573].

²⁶ Section 121(3) of the IP Act.

²⁷ In external review 315884, nine full pages to which MSHHS refused access pursuant to section 67(1) of the IP Act and section 48 and schedule 3, section 10(1)(i) of the RTI Act on the basis that its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons property or the environment. Whilst the Examination Authority document is 11 pages long, MSHHS released two of these pages in full to the applicant during the external review.

- information about or provided by third parties (**Third Party Information**).²⁸

Issues for determination

15. The issues for determination are whether:

- disclosure of the EA Information could reasonably be expected to prejudice a system or procedure for the protection of persons;²⁹ and
- disclosure of the Third Party Information would, on balance, be contrary to the public interest.³⁰

Relevant law

16. Under section 40 of the IP Act, an individual has a right to be given access to documents to the extent they contain the individual's personal information. This right is subject to provisions of the IP Act, including the grounds on which an agency may refuse access to documents.³¹
17. Access may be refused to a document to the extent that it comprises 'exempt information'³² or would, on balance, be contrary to the public interest to disclose.³³ Where information satisfies the criteria for any of the categories of exempt information set out in schedule 3 of the RTI Act, Parliament has determined that the disclosure of this information is contrary to the public interest, and access may therefore be refused.³⁴ Relevantly, information is exempt under schedule 3, section 10(1)(i) if its disclosure could reasonably be expected³⁵ to prejudice a system or procedure for the protection of persons.
18. To determine whether information is exempt under schedule 3, section 10(1)(i) of the RTI Act, I must consider³⁶ whether:
- a) there exists an identifiable system or procedure
 - b) it is a system or procedure for the protection of persons; and
 - c) disclosure of the information in issue could reasonably be expected to prejudice that system or procedure.
19. Relevantly, information is not exempt under schedule 3, section 10(1)(i) of the RTI Act if it consists of any of the types of specific information referred to in schedule 3, section 10(2) of the RTI Act.

²⁸ 27 pages in external review 315884 and 13 pages in external review 315885.

²⁹ And consequently, is comprised of exempt information under schedule 3, section 10(1)(i) of the RTI Act.

³⁰ As per section 47(3)(b) of the RTI Act.

³¹ 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.

³² Sections 47(3)(a) and 48 of the RTI Act.

³³ 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.

³⁴ Section 48(2) of the RTI Act.

³⁵ The term 'could reasonably be expected to' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

³⁶ As outlined in *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at [27]-[36] and *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010).

Findings

EA Information: prejudice a system or procedure for the protection of persons

Requirement a) – is there an identifiable system or procedure?

20. While I am limited in the amount of detail I can provide³⁷, I am satisfied that the EA Information comprises information gathered under a system established by the *Mental Health Act 2016* (Qld) (**MH Act**). The MH Act establishes a process for applying for mandatory mental health assessments, or Examination Authorities, in Queensland.³⁸
21. I am satisfied the first requirement is met as there is an identifiable system or procedure, namely, the Examination Authority procedure under the MH Act.

Requirement b) – is the system or procedure for the protection of persons, property or environment?

22. I am satisfied that the process of applying for and implementing an Examination Authority under the MH Act³⁹ is an identifiable system that exists for the protection of persons who may be suffering mental illness, and the community more broadly.

Requirement c) – could disclosure of the information in issue reasonably be expected to prejudice that system or procedure?

23. The Information Commissioner has previously found that granting an individual access to information provided in the context of a mental health assessment, could reasonably be expected to prejudice the system by impeding the flow of information to relevant agencies or the willingness of parties to engage with those agencies.⁴⁰ The Examination Authority process operates by relying on the information provided by third parties to initiate an assessment process under the MH Act. Individuals involved in this type of process provide information on the understanding that it is confidential and will only be used for the limited purpose of ensuring the proper administration of the MH Act and the appropriate care and treatment of the subject individual.⁴¹ I consider that ensuring the confidentiality and careful handling of the information provided by third parties is essential to the effectiveness of the Examination Authority process.
24. Disclosing information that identifies, either directly or indirectly, an individual who has requested an Examination Authority could reasonably be expected to impact on the likelihood that individuals seeking to utilise this system will raise concerns in the future. Particularly, given the highly sensitive and personal nature of mental health concerns, it is reasonable to expect some level of apprehension from individuals who provide information to mental health authorities.⁴² I also consider that the quality of the

³⁷ Under section 121(3) of the IP Act, the Information Commissioner must not disclose information claimed to be exempt information or contrary to the public interest information.

³⁸ As also identified in *D77 and Gold Coast Hospital and Health Service* [2020] QICmr 28 (22 May 2020) (**D77**) at [15].

³⁹ See section 3(1)(a) and chapter 12, part 8 of the MH Act. This system requires an application of a specific form to the Mental Health Review Tribunal. In practice, such an application may be made following concerns raised by a member of the public to a doctor or mental health practitioner.

⁴⁰ See, for example: *D77; VA6Q6J and Sunshine Coast Hospital and Health Service* [2015] QICmr 18 (14 August 2015) (**VA6Q6J**); *E9IH9N and Metro South Hospital and Health Service* [2016] QICmr 18 (27 May 2016) and *B7TG4G and Gold Coast Hospital and Health Service* [2015] QICmr 11 (1 May 2015) (**B7TG4G**). Some of these decisions were made with respect to the similar provisions of the now repealed *Mental Health Act 2000* (Qld) and what was previously known as a Justices Examination Order, which also served to allow the assessment of individuals suspected of having a mental illness.

⁴¹ *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at [17]; see also *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)* (1996) 3 QAR 393 at [21]. As above, these decisions were made with respect to the similar provisions of the now repealed *Mental Health Act 2000* (Qld).

⁴² *D77* at [18].

information provided by individuals may be impacted if they are not able to provide full and frank information to mental health services without concern as to the negative consequences resulting from the subject of their concern receiving the information, particularly where that person may be a family member, friend or close associate.⁴³

25. The EA Information identifies third parties and the information supplied by those third parties in support of the application for an Examination Authority. I am satisfied that the disclosure of this information could reasonably be expected to prejudice the effectiveness of the system for obtaining an Examination Authority established by the MH Act for the protection of individuals and the community.

Exceptions

26. In evaluating whether the EA Information is subject to the exemption outlined above, I have considered the exceptions outlined in schedule 3, section 10(2) of the RTI Act, in line with *Commissioner of the Police Service v Shelton & Anor.*⁴⁴ Her Honour Chief Justice Holmes held that:⁴⁵

...an agency cannot reach the view necessary...in relation to information which may be exempt under sch 3 s 10 without a consideration of the documents the subject of the application to ascertain whether they fall within s 10(2).

27. I have closely reviewed the EA Information and the applicant's submissions to determine this question of fact and am satisfied that the information does not consist of any of the types of specific information referred to in schedule 3, section 10(2) of the RTI Act.

Applicant's submissions

28. The applicant has made the following relevant submissions in support of disclosure of the EA Information:⁴⁶
- The decision made by healthcare practitioners at MSHHS for her to be assessed was not impartial, objective or transparent.
 - The applicant believes there is a high probability MSHHS misdiagnosed her.
 - Any information provided to MSHHS by certain individuals with whom she has a 'toxic' relationship may have been '*false, misleading, fabricated, defamatory and unsubstantiated*', and any decision made by MSHHS in relation to the applicant based on any such information would be in violation of section 10(2)(j) of the MH Act⁴⁷ and could constitute malpractice.
 - The applicant was not given the opportunity to substantiate the veracity of the information provided to MSHHS about her by third parties which caused an Examination Authority to be made in relation to the applicant.
 - It is in the public interest to disclose that the Mental Health Review Tribunal and MSHHS '*have failed miserably in their interpretation of The Mental Health Act 2016, in particular, Section 10, paragraph (2)...*'.
 - Release of the Examination Authority will show the applicant some of the reasons why she was hospitalised.

⁴³ D77 at [18].

⁴⁴ [2020] QCA 96 (*Shelton*).

⁴⁵ *Shelton* at [47] per Holmes C.J.

⁴⁶ Submissions dated 9 May 2021.

⁴⁷ Section 10(2)(j) of the MH Act provides that a person must not be considered to have a mental illness merely because the person is or has been involved in a family conflict.

29. Having considered the applicant's submissions, while I accept the applicant holds concerns about the accuracy of information provided to MSHHS for the purposes of an Examination Authority, and the conduct of MSHHS in acting on this information, I do not consider the applicant's submissions have any impact on the reasonable expectation that disclosure could prejudice a system or procedure as outlined in 'Requirement c)' above. The prejudice described above relates to the system as a whole and not to an individual case.⁴⁸ I am satisfied that the applicant's contentions regarding the accuracy of the information in the Examination Authority do not negate the prejudice to the system or procedure I have explained above that is reasonably expected to result from disclosure of the EA Information.
30. While the applicant's reasons for seeking the EA Information are understandable and raise public interest considerations, I cannot take these submissions into account for the purposes of the EA Information. There is no scope for me to consider public interest arguments once I am satisfied that the information qualifies as exempt information.⁴⁹ While I acknowledge that the applicant is significantly concerned by the circumstances and events relating to the Examination Authority, I do not have the power to direct that access be given to this information⁵⁰ where I am satisfied that it comprises exempt information.

Conclusion – EA Information

31. I am satisfied that the EA Information comprises exempt information as it meets each of the requirements of schedule 3, section 10(1)(i) of the RTI Act and the exceptions referred to in schedule 3, section 10(2) of the RTI Act do not apply.

Third Party Information – Public interest balancing test

32. The Third Party Information comprises information in 27 part pages. In assessing whether disclosure of this information would, on balance, be contrary to the public interest, a decision maker must:⁵¹
- 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.
33. 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,⁵² together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias⁵³ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.⁵⁴

⁴⁸ D77 at [23].

⁴⁹ Section 48(2) of the RTI Act. As mentioned in paragraph [17] of these reasons, schedule 3 of the RTI Act sets out the types of information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.

⁵⁰ Section 118(2) of the IP Act.

⁵¹ Section 49(3) of the RTI Act.

⁵² 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.

⁵³ Section 64 of the IP Act.

⁵⁴ Section 67(2)(a) of the IP Act and section 47(2)(a) of the RTI Act.

Irrelevant factors

34. 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

35. The Third Party Information comprises the applicant's personal information.⁵⁵ 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, such as their own medical records, held by a government agency.⁵⁶ In considering this factor, I note MSHHS have provided the applicant with 570 pages in full and 40 pages in part. Generally, the weight attributed to this factor in the context of an individual's own medical records is significant. 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 Third Party Information.
36. I am also satisfied that the applicant's personal information is inextricably intertwined with the personal information of others such that it cannot be separated and disclosed. I consider that this raises factors in favour of nondisclosure⁵⁷ in relation to safeguarding the personal information and privacy of other individuals, discussed below at paragraphs [51] to [54].

Accountability and transparency

37. I have considered whether disclosing the Third Party Information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;⁵⁸ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁹
38. I accept that disclosing parts of the Third Party Information would provide the applicant with a more comprehensive understanding of information that may have been considered by doctors when making decisions about her healthcare. However, the applicant has been granted access to a vast majority of documents in the medical records. I am satisfied the information already released largely satisfied the public interest factors identified above. Given the relatively small number of pages which make up the Third Party Information, I do not consider its disclosure would further advance these public interest factors to any significant degree.⁶⁰ I also note that the Third Party Information reveals little about the actions taken by MSHHS staff. Accordingly, I afford the above factors only low weight.

⁵⁵ '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'*.

⁵⁶ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁷ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

⁵⁸ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁶⁰ As also found in *B7TG4G* at [34].

Whether disclosure would reveal information that is incorrect or misleading

39. The applicant submits that access to the Third Party Information will enable her to identify ‘*erroneous, malicious, false, fabricated, misleading, defamatory and unsubstantiated information*’, and provide her with an opportunity to verify the veracity of this information.⁶¹ The applicant submits some of the Third Party Information should be released because it records potentially incorrect information about her.
40. The applicant refers to numerous instances in the medical records released to her where she says information recorded by MSHHS is incorrect, and that this indicates ‘*a great potential for the Redacted information to also reveal seriously incorrect documentation, particularly where the Redacted information has been provided by [specific individuals]*’.⁶²
41. 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.⁶³ I have reviewed the Third Party Information and am satisfied there is nothing on its face to indicate it is inaccurate or misleading.⁶⁴ Some of the Third Party Information is, by its very nature, the particular opinions and versions of events expressed by individuals other than the applicant. This inherent subjectivity does not mean that the Third Party Information is necessarily incorrect or misleading,⁶⁵ however, I acknowledge that its disclosure may allow further enquiry into the veracity of information provided to the health service by third parties. On this basis, I have attributed low weight to this factor favouring disclosure.

Contribute to administration of justice generally or for a person

42. I have considered whether the disclosure of the Third Party Information could reasonably be expected to contribute to the administration of justice, procedural fairness and/or advance the applicant’s fair treatment.⁶⁶
43. I accept that disclosure of the Third Party Information may permit the applicant to better understand the decisions made in relation to her mental health care.⁶⁷ 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.⁶⁸
44. To establish this pro-disclosure consideration, an applicant must, at the least, demonstrate that they have suffered some kind of wrong in respect of which a remedy is, or may be, available under the law, that there is a reasonable basis for seeking to pursue any such remedy and that 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.⁶⁹

⁶¹ Submissions dated 9 May 2021.

⁶² Submissions dated 9 May 2021.

⁶³ Schedule 4, part 2, item 12 of the RTI Act.

⁶⁴ The IP Act prohibits me from releasing information that is claimed to be contrary to public interest in a decision on an external review; section 121(3) of the IP Act.

⁶⁵ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20] and this view is confirmed in more recent decisions such as *H89 and Metro North Hospital and Health Service* [2020] QICmr 18 (27 March 2020) at [22].

⁶⁶ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

⁶⁷ Giving rise to the disclosure factor at schedule 4, part 2, item 11 of the RTI Act.

⁶⁸ *Willsford and Brisbane City Council* (1996) 3 QAR 368 (*Willsford*) at [16].

⁶⁹ *Willsford* at [17].

45. The applicant submits that certain statements in her medical records are ‘*erroneous, malicious, false, fabricated, misleading, defamatory and unsubstantiated*’,⁷⁰ that healthcare practitioners at MSHHS misdiagnosed her mental health status, didn’t check the accuracy of information provided to them before subjecting the applicant to an Involuntary Treatment Order, and violated the applicant’s human rights and the MH Act. However, the applicant does not specify the particular legal remedy she seeks to pursue. For this reason, I am not satisfied that the first limb of the test⁷¹ is satisfied. Further, I do not consider access to the Third Party Information is necessary to enable the applicant to pursue any course of action she may have against MSHHS.
46. The applicant also submits that the above matters warrant ‘... *a thorough investigation by other government departments if not an inquiry*’. To the extent the applicant seeks to make a complaint about medical professionals, OIC has informed the applicant that OHO is the statutory body empowered to assess and investigate complaints regarding healthcare providers.⁷² 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.⁷³ I do not consider access to the Third Party Information is required for the applicant to pursue this course of action.
47. Taking into account the information which has already been released to the applicant and the nature of the Third Party Information, I consider the public interest factors favouring disclosure have been sufficiently discharged and the disclosure of the Third Party Information is unlikely to advance these public interest factors in any significant way. Accordingly, I afford low weight to the above factors favouring disclosure.

Reveal misconduct, improper conduct or deficiencies in conduct

48. 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;⁷⁴ or
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁷⁵
49. Aside from the applicant’s assertions,⁷⁶ there is no other evidence before me to suggest possible misconduct, improper conduct or deficiencies in the conduct of MSHHS. The applicant has submitted that:⁷⁷
- The decision made by healthcare practitioners at MSHHS for her to be assessed was not impartial, objective or transparent.
 - The applicant believes there is a high probability MSHHS misdiagnosed her mental health status.
 - Any information provided to MSHHS by certain individuals with whom she has a ‘toxic’ relationship may have been ‘*false, misleading, fabricated, defamatory and unsubstantiated*’, and any decision made by MSHHS in relation to the applicant

⁷⁰ Submissions dated 9 May 2021.

⁷¹ As set out in *Willsford*.

⁷² Letter to the applicant dated 17 March 2021.

⁷³ Section 228 of the *Health Ombudsman Act 2013* (Qld).

⁷⁴ Schedule 4, part 2, item 5 of the RTI Act.

⁷⁵ Schedule 4, part 2, item 6 of the RTI Act.

⁷⁶ External review application dated 11 February 2021 and submissions dated 9 May 2021.

⁷⁷ Submissions dated 9 May 2021.

based on any such information would be in violation of section 10(2)(j) of the MH Act⁷⁸ and could constitute malpractice.

50. I have considered these submissions alongside the Third Party Information and the other released information. Aside from the applicant's contentions, there is no evidence to indicate that the above concerns are substantiated. Accordingly, I do not consider that these factors favouring disclosure apply.

Factors favouring nondisclosure

Personal information and privacy

51. The Third Party Information comprises the intertwined personal information of the applicant and other individuals. This gives rise to two factors favouring nondisclosure relating to protecting the personal information⁷⁹ and safeguarding the right to privacy of those individuals.⁸⁰
52. The Third Party Information comprises:
- the opinions, thoughts, feelings and concerns of individuals other than the applicant;
 - contact details of persons other than the applicant; and
 - other personal information about individuals other than the applicant.
53. While the Third Party Information appears within the applicant's medical records, it also comprises the personal information of third parties who are readily identifiable. I am satisfied that disclosure of the Third Party Information would disclose personal information of the third parties and prejudice their privacy.⁸¹ Given the nature of the Third Party Information, I afford significant weight to each of these nondisclosure factors.
54. The applicant submits that she is aware of the some of the content of the Third Party Information. 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 is known to the applicant.⁸² However, I do not consider that, in the circumstances of this case, the personal information or privacy factors are in any way reduced for the Third Party Information.

Ability to obtain confidential information

55. A further factor favouring nondisclosure arises where disclosure of the Third Party Information could reasonably be expected to prejudice an agency's ability to obtain confidential information.⁸³ I am satisfied that people who provide information to healthcare professionals in this context do so with an expectation of confidentiality. Previous decisions of the Information Commissioner have found that disclosure of this

⁷⁸ Section 10(2)(j) of the MH Act provides that a person must not be considered to have a mental illness merely because the person is or has been involved in a family conflict.

⁷⁹ Schedule 4, part 4, section 6(1) of the RTI Act.

⁸⁰ Schedule 4, part 3, item 3 of the RTI Act.

⁸¹ Paraphrasing the Australian Law Reform Commission's definition of the concept of privacy in 'For your information: Australian Privacy Law and Practice', *Australian Law Reform Commission Report No. 108 (Volume 1)*, released 30 May 2008.

⁸² 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). It was also on this basis that MSHHS agreed to disclose some limited further information to the applicant on 14 June 2021.

⁸³ Schedule 4, part 3, item 16 and schedule 4, part 4, section 8(1) of the RTI Act.

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.⁸⁴

56. I acknowledge that the applicant has concerns that the Third Party Information may 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 healthcare providers in the future, and this could be particularly detrimental to patient care in the mental health context.⁸⁵
57. I have considered the Third Party Information and the specific context in which it appears and am satisfied it was provided in circumstances where the individual would reasonably expect that the information would be treated confidentially. Disclosure of this type of information could reasonably be expected to prejudice the supply of full and frank information to healthcare professionals. As such, I afford this factor significant weight.

Balancing the public interest factors

58. In determining the balance of public interest in this case, I have firstly applied the pro-disclosure bias contained in section 64 of the IP Act. I have attributed moderate weight in favour of the public interest in the applicant accessing her own personal information. I have also attributed some, albeit low, weight to the public interest factors relevant to the accountability and transparency of MSHHS, and the applicant accessing information that may reveal inaccurate or misleading information or potentially assist her to evaluate or pursue a legal remedy. I have turned my mind to the other public interest factors favouring disclosure set out in schedule 4 of the RTI Act and I consider that no further factors apply in this case.
59. On the other hand, in considering the factors favouring nondisclosure of the Third Party Information, I have attributed significant weight to the factors favouring nondisclosure that seek to protect the personal information and privacy of third parties as well as the nondisclosure factor seeking to protect MSHHS's ability to obtain confidential information particularly in the context of mental health care.
60. 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 Third Party Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁸⁶

DECISION

61. I affirm⁸⁷ MSHHS's decisions to refuse access to the information in issue, and I find that access can be refused to:
- the EA Information under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act; and
 - the Third Party Information under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁸⁴ *B7TG4G* at [35]-[37]; *VA6Q6J* at [39]-[40].

⁸⁵ *B7TG4G* at [36]; *VA6Q6J* at [39].

⁸⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁸⁷ As a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 12 October 2021

APPENDIX**Significant procedural steps**

Date	Event
11 February 2021	OIC received two external review applications from the applicant.
16 February 2021	OIC contacted the applicant and acknowledged receipt of the external review applications. OIC requested procedural documents from MSHHS.
17 February 2021	MSHHS provided procedural documents.
3 March 2021	OIC advised the applicant and MSHHS that the external review applications had been accepted. OIC requested MSHHS provide the information in issue.
4 March 2021	MSHHS provided the information in issue to OIC.
17 March 2021	OIC provided a preliminary view to the applicant.
18 March 2021	Applicant provided authority for an agent to act on her behalf.
23 March 2021	OIC contacted the applicant's agent to confirm the authority to act had been received and granted.
6 April 2021	Agent requested an extension of time for the applicant to provide submissions. OIC granted extension of time.
9 May and 11 May 2021	Submissions received from the applicant.
25 May 2021	OIC provided marked-up information in issue to MSHHS with the view some additional information was suitable for release to the applicant.
1 June 2021	MSHHS advised it agreed with OIC that some additional information was suitable for release to the applicant.
8 June 2021	OIC requested MSHHS provide the additional information agreed for release to the applicant. OIC provided update to the applicant's agent regarding the additional information which would be released and reiterated the preliminary view on the remaining information in issue.
14 June 2021	MSHHS provided the applicant with the additional information.
22 June 2021	Applicant's agent advised that the applicant requested to have the external reviews finalised by way of formal decision.