



Decision and Reasons for Decision

Citation:	<i>T50 and Sunshine Coast Hospital and Health Service [2023] QICmr 4 (31 January 2023)</i>
Application Number:	316708
Applicant:	T50
Respondent:	Sunshine Coast Hospital and Health Service
Decision Date:	31 January 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST INFORMATION - medical records - accountability, transparency, fair treatment and administration of justice - personal information, privacy and ability to obtain information - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Sunshine Coast Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access information relating to certain meetings she had with various Health Service staff, during her attendance at the Sunshine Coast University Hospital (**Hospital**) in January and February 2022.¹
2. The Health Service located 28 pages of medical records relevant to the application and decided² to refuse access to one full page³ and portions of information on a further three pages.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision.⁵
4. During the external review, the Health Service agreed to disclose a small amount of the refused information to the applicant. However, the applicant continues to seek access to the remaining refused information, which appears on three pages.

¹ The access application dated 7 February 2022 was received by the Health Service on 9 February 2022.

² Decision dated 19 April 2022.

³ Numbered page 16.

⁴ Numbered pages 1, 2 and 4.

⁵ The external review application, which is dated 12 May 2022 and was received by OIC on 17 May 2022, seeks review of the refusal of access to information on pages 1, 2, 4 and 16 of the located documents.

5. For the reasons set out below, I affirm the Health Service's decision and find that access may be refused to the information remaining in issue in this review, on the basis its disclosure would, on balance, be contrary to the public interest.⁶

Reviewable decision

6. The decision under review is the Health Service's decision dated 19 April 2022.

Evidence considered

7. 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). The significant procedural steps taken during the external review are set out in the Appendix.
8. The applicant provided a number of submissions to OIC in support of her case.⁷ In her submissions, the applicant provided some sensitive, personal information about her health. The applicant also raised concerns in her submissions which are beyond the jurisdiction of the Information Commissioner and fall outside the scope of this review.⁸ I have carefully reviewed the applicant's submissions and, in reaching this decision, I have only taken into account the parts of those submissions which are relevant to the issue for determination.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁹ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.¹⁰ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹¹

Information and issue for determination

10. As noted in paragraph 4, following the disclosure of a small amount of information, the remaining refused information appears on three pages—namely, one full page (page 16) and parts of two pages (pages 2 and 4) (**Information in Issue**). While I am unable to describe the content of the Information in Issue in any detail,¹² I can confirm that it appears in the applicant's medical records and broadly comprises information which

⁶ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

⁷ As set out in the Appendix.

⁸ For example, the applicant disagrees with the medical diagnosis and treatment she received in January 2022 and she also raised concerns about the manner in which she was treated by police and the Hospital.

⁹ Section 21 of the HR Act. I have also given specific consideration to the right of protection from involuntary treatment (section 17(c) of the HR Act); the right to freedom of movement (section 19 of the HR Act); the right to privacy and reputation (section 25 of the HR Act); and the right to liberty and security of person (section 29 of the HR Act), which the applicant submitted were relevant (submissions dated 16 August 2022, which were received by OIC on 18 August 2022).

¹⁰ *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].

¹¹ I note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

¹² Section 121(3) of the IP Act which relevantly requires the Information Commissioner not to disclose information that is exempt or claimed to be contrary to the public interest information in a decision or reasons for a decision.

the Health Service obtained from individuals who are not part of the Health Service's clinical team providing patient care.

11. The issue for determination in this review is whether access to the Information in Issue may be refused on the ground that disclosure would, on balance, be contrary to the public interest.

Relevant law

12. 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.¹³ However, this right is subject to limitations, including the grounds for refusal of access.¹⁴
13. One refusal ground is where disclosing information would, on balance, be contrary to the public interest.¹⁵ 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.¹⁶
14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁷
 - 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.

Findings

15. I have not taken any irrelevant factors into account in reaching my decision.

Factors favouring disclosure

16. Some of the Information in Issue relates to the applicant and comprises her personal information. This gives rise to a factor favouring disclosure,¹⁸ to which I attribute high weight. However, this information about the applicant is intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (giving rise to factors favouring nondisclosure discussed below).
17. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:

¹³ Section 40 of the IP Act. '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

¹⁴ The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

¹⁵ Sections 47(3)(b) and 49 of the RTI Act.

¹⁶ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

¹⁷ Section 49(3) of the RTI Act.

¹⁸ Schedule 4, part 2, item 7 of the RTI Act.

- enhance the government's accountability¹⁹
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;²⁰ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²¹
18. The applicant argued²² that disclosure of the Information in Issue will inform her of all the factors that 'led to the decision to utilize' the *Mental Health Act 2016 (Qld) (MH Act)* in her care. The applicant also submitted that certain medical treatment was forced upon her²³ and she considered the Information in Issue will 'further inform' her about whether the MH Act was applied appropriately.²⁴
19. There is a strong public interest in hospitals, and their staff, being accountable for their treatment of patients and for the decisions they make as part of that treatment. While I accept that disclosing the Information in Issue would provide the applicant with some further background information that was available to her treating doctors, the Health Service has disclosed most of the information in the applicant's medical records which concern her attendance at the Hospital in January and February 2022. I consider this disclosed information has substantially advanced the disclosure factors relating to accountability and transparency,²⁵ by enabling scrutiny of the Health Service's treatment actions and providing background information which informed those actions. Taking into account the limited nature of the Information in Issue, I do not consider its disclosure would further advance these factors in any significant way and accordingly, I afford them only low weight.
20. Given the applicant raised general concerns about the medical treatment she received in January and February 2022, I have also considered whether disclosing the Information in Issue could reasonably be expected to allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of the Health Service or its officers.²⁶ While I acknowledge the applicant disagrees with the medical diagnosis she received at the Hospital in early 2022, I am satisfied that there is nothing within the Information in Issue itself which gives rise to an expectation that its disclosure would reveal, or substantiate, any conduct deficiencies. Accordingly, I find that these factors do not apply.
21. The applicant also submitted that access to the Information in Issue would alert her to any incorrect or misleading information.²⁷ A factor favouring disclosure arises where disclosing information could reasonably be expected to reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.²⁸ As I have noted above, the Information in Issue broadly comprises information which was obtained from other individuals. Information of this nature is shaped by an individual's observations, perceptions, concerns and opinions. This inherent subjectivity does mean that the information is necessarily incorrect or misleading.²⁹ Having reviewed the Information in Issue, there is nothing before me to suggest that this information is

¹⁹ Schedule 4, part 2, item 1 of the RTI Act.

²⁰ Schedule 4, part 2, item 3 of the RTI Act.

²¹ Schedule 4, part 2, item 11 of the RTI Act.

²² Submissions dated 16 August 2022.

²³ Submissions dated 21 November 2022, which were received by OIC on 28 November 2022.

²⁴ Submissions dated 16 August 2022.

²⁵ Substantially advancing the disclosure factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²⁶ Schedule 4, part 2, items 5 and 6 of the RTI Act.

²⁷ Submissions dated 16 August 2022.

²⁸ Schedule 4, part 2, item 12 of the RTI Act.

²⁹ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. On this basis, I find that this factor does not apply to favour disclosure of the Information in Issue.

22. Public interest factors favouring disclosure also arise where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals in accordance with the law in their dealings with agencies³⁰
 - contribute to the administration of justice generally, including procedural fairness;³¹ and
 - contribute to the administration of justice for a person.³²
23. The applicant asserted³³ that '*[t]he release of [her] personal information will ensure that there is procedural fairness by having access to all of the material within [her] medical records*'. As I have noted above, most of the requested medical records have been disclosed to the applicant. I also note that, although the applicant has raised general fairness arguments,³⁴ she has confirmed that, based on information she already possesses, her previous treatment authority has been revoked.³⁵ Taking the particular nature of the Information in Issue into account, I am not satisfied that that there is a reasonable expectation its disclosure would, in any meaningful way, advance the applicant's fair treatment or contribute to the general administration of justice, including procedural fairness. On this basis, while these factors may apply,³⁶ I afford them only low weight due to the nature of the Information in Issue.
24. In determining whether the disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant, I must consider whether:³⁷
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.
25. The applicant submitted³⁸ that disclosure of information would allow her to '*get independent legal advice on any actions against the Queensland Health Services including compensatory or criminal*'. There is no evidence before me to indicate that disclosure of this particular Information in Issue is required to enable the applicant to pursue a legal remedy or evaluate whether a remedy (legal or otherwise) is available or worth pursuing. I also note that, if the applicant does commence any legal action, it is reasonable to expect that relevant court disclosure processes will be available to her. Taking into account the information which has been disclosed by the Health Service and the limited nature of the Information in Issue, I do not consider this factor applies to favour disclosure.

³⁰ Schedule 4, part 2, item 10 of the RTI Act.

³¹ Schedule 4, part 2, item 16 of the RTI Act.

³² Schedule 4, part 2, item 17 of the RTI Act.

³³ Submissions dated 16 August 2022.

³⁴ Submissions dated 16 August 2022.

³⁵ Submissions dated 21 November 2022.

³⁶ Schedule 4, part 2, items 10 and 16 of the RTI Act.

³⁷ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

³⁸ Submissions dated 16 August 2022.

26. The applicant also submitted³⁹ that disclosing the Information in Issue could reasonably be expected to:
- reveal environmental or health risks or measures relating to public health and safety, by allowing her to '*ensure that the measures by which Queensland Health Services make a decision to enact provisions under the [MH Act] are not jeopardising public health and safety by subjecting individuals to involuntary treatment unnecessarily*'⁴⁰; and
 - contribute to the enforcement of the criminal law.⁴¹
27. As noted above the Information in Issue is limited and broadly records information health care providers obtained from other individuals to assist in the applicant's medical treatment. Given this, I find these factors do not apply to favour disclosure of that information.
28. Taking into account the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.⁴²

Factors favouring nondisclosure

29. The RTI Act recognises that there is a public interest harm⁴³ in disclosing an individual's personal information to someone else and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁴⁴ The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁴⁵
30. Having carefully reviewed the Information in Issue, I am satisfied that most of it comprises the personal information of individuals other than the applicant, which appears in a sensitive context. As noted above, some of this information is intertwined with a small amount of the applicant's personal information. Given the sensitive and (in some cases) highly personal nature of this information, I am satisfied that its disclosure would be a significant intrusion into the privacy of these other individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to these factors which favour nondisclosure of this information.
31. The applicant submitted⁴⁶ that she believes she is aware '*of the individual who provided*' the Information in Issue and that it relates to a conversation which occurred while she was present. I am unable to describe the Information in Issue in any detail in

³⁹ Submissions dated 16 August 2022.

⁴⁰ Giving rise to the factor in schedule 4, part 2, item 14 of the RTI Act.

⁴¹ Schedule 4, part 2, item 18 of the RTI Act.

⁴² Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Information in Issue could, for example, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); or contribute to the maintenance of peace and order (schedule 4, part 2, item 15 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

⁴³ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁵ Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

⁴⁶ Submissions dated 16 August 2022.

this decision⁴⁷ and cannot address the applicant's speculation about the contents of that information. While I accept that, as a result of processes and interactions which occurred subsequent to the applicant's Hospital attendance in early 2022, she may know some of the Information in Issue, I do not consider this reduces the weight of these nondisclosure factors, particularly given the sensitive nature and context of this information and that there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.

32. A public interest factor favouring nondisclosure will also arise where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information.⁴⁸
33. The applicant submitted that the information is not confidential, as she believed that the Information in Issue relates to a conversation that occurred when she was present.⁴⁹ As noted above, I am unable to address the applicant's speculation about the contents of the Information in Issue. This information was obtained from other individuals, by health care workers, to assist in the treatment of the applicant. Based on the nature of the information in Issue and the context in which it appears, I am satisfied it was communicated in confidence and on the expectation that it would remain confidential. Healthcare workers often rely on information being provided by individuals to assist in the diagnosis and treatment of health conditions. I consider it is reasonable to expect that individuals may be discouraged from providing information to healthcare workers if they are aware that it might be disclosed to the patient under the IP Act. This could significantly prejudice the ability of healthcare workers to care for patients. On this basis, I consider these nondisclosure considerations are also deserving of significant weight.

Balancing the relevant public interest factors

34. I have taken into account the pro-disclosure bias of the IP Act.⁵⁰ For the reasons set out above, I am satisfied that the nondisclosure factors relating to the protection of privacy and personal information of other individuals and the ability of agencies to obtain confidential information are deserving of significant weight.
35. On the other hand, I have afforded high weight to the factor favouring disclosure of the applicant's personal information within the Information in Issue, however, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. In addition, and for the reasons outlined above, I have identified additional disclosure factors which favour disclosure of the Information in Issue (such as those relating to accountability and transparency, fair treatment and the administration of justice). However, taking into account the nature of the Information in Issue, I have afforded these factors only low weight.
36. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on this basis.⁵¹

⁴⁷ Under section 121(3) of the IP Act.

⁴⁸ Schedule 4, part 3, item 16 of the RTI Act. Schedule 4, part 4, section 8(1) of the RTI Act also recognises that disclosure of information could reasonably be expected to cause a public interest harm if the information consists of information of a confidential information that was communicated in confidence and disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.

⁴⁹ Submissions dated 16 August 2022.

⁵⁰ Section 64 of the IP Act.

⁵¹ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

DECISION

37. For the reasons set out below, I affirm the Health Service's decision and find that access to the Information in Issue may be refused, as its disclosure would, on balance, be contrary to the public interest.⁵²
38. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

T Lake
Acting Assistant Information Commissioner

Date: 31 January 2023

⁵² Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
17 May 2022	OIC received the external review application.
17 June 2022	OIC notified the applicant and the Health Service that the application for external review had been accepted and requested information from the Health Service.
21 June 2022	OIC received the requested information from the Health Service.
27 July 2022	The Health Service agreed to the release of 5 words to the applicant (which appeared on pages 1 and 4).
2 August 2022	OIC confirmed the 5 words which the Health Service had agreed to disclose and conveyed a preliminary view to the applicant in respect of the remaining refused information. OIC invited the applicant to provide a submission if she did not accept the preliminary view.
18 August 2022	OIC received the applicant's submissions dated 16 August 2022.
15 November 2022	OIC conveyed a further preliminary view to applicant and invited the applicant to provide submissions if she did not accept the preliminary view.
28 November 2022	OIC received the applicant's further submissions dated 21 November 2022.
6 December 2022	OIC reiterated the preliminary view to the applicant and indicated a formal decision would be required to finalise the review. OIC invited the applicant to provide any further information that she wished to be considered by 20 December 2022.