Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***O74 and Metro South Hospital and Health Service*** **[2026] QICmr 53 (31 March 2026)**
Application Number:	**318531**
Applicant:	**O74**
Respondent:	**Metro South Hospital and Health Service**
Decision Date:	**31 March 2026**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - HEALTHCARE INFORMATION - medical records - prejudicial to the physical or mental health or wellbeing of the applicant - contrary to the applicant's best interests - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(d) and 51 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - hospital unit visitor logs - information not relating to applicant - section 88 of the *Information Privacy Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied to Metro South Hospital and Health Service (**MSHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)[1] for access to a copy of his medical records from the Princess Alexandra Hospital including '*visitors book entries, attendance, diagnoses, reasons for diagnoses and dates of transfer to other hospitals'*.[2]

2. MSHHS decided[3] to refuse access to the medical records on the basis that disclosure of the applicant's healthcare information might be prejudicial to his physical or mental health or wellbeing.[4] The decision was made by a registered psychiatrist at the hospital appointed to make the healthcare decision for MSHHS under section 50(5) of the IP Act (**Healthcare Decision-Maker**).

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[1] On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the *Right to Information Act 2009* (Qld) (**RTI Act**) and IP Act. As the application was made before this change, the RTI Act and IP Act as in force prior to 1 July 2025 remain applicable in accordance with transitional provisions in the RTI Act and IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts as in force prior to 1 July 2025.
[2] Access application dated 24 January 2025.
[3] Decision dated 5 March 2025. This is the *reviewable decision* in this external review.
[4] Section 47(3)(d) of the *Right to Information Act 2009* (Qld) (**RTI Act**), in conjunction with section 51 of the RTI Act and section 67 of the *Information Privacy Act 2009* (Qld).

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of MSHHS's decision, on the basis that the full refusal of his medical records without reasons, was '*prejudicial to his physical and mental health as well as in contravention of his rights to privacy under the Human Rights Act 2019'*.[5]

4. On external review, MSHHS agreed to release some digital health records to the applicant[6] including pathology results, medication notes and progress notes, and visitor log entries pertaining to him personally, subject to the redaction of information about other individuals.[7] MSHHS maintained its position that the remaining medical records[8] were contrary to the public interest to release as their disclosure might prejudice the physical or mental health or wellbeing of the applicant under section 51 of the RTI Act. The applicant was asked to consider settlement of the review on the basis of the released records, however, he did not agree to resolution on this basis.[9]

5. The issues for determination in this matter are whether:

    a. access to the remaining medical records[10] may be refused under section 47(3)(d) of the RTI Act on the basis that disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant under section 51 of the RTI Act; and
    b. the applicant is entitled to access any further information in the visitor logs under the IP Act.

6. For the reasons set out below, I have decided to vary MSHHS's decision by finding that access to the remaining medical records may be refused under section 67(1) of the IP Act and section 47(3)(d) of the RTI Act on the basis that disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant under section 51 of the RTI Act. I am also satisfied that the remaining information in the visitor logs can be deleted under section 88 of the IP Act as it is not relevant to the terms of the applicant's IP Act application.

7. In making this decision, I have considered evidence, submissions, legislation and other material as set out in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information,[11] and section 58(1) of the HR Act.[12]

Relevant law

8. 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 other provisions of the IP Act and the RTI Act, including the grounds on which an agency may refuse access to documents.

[5] On 26 March 2025.
[6] 395 pages were released on 14 November 2025.
[7] MSHHS submitted that access to information in the visitor logs may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
[8] 556 pages.
[9] Confirmed in the applicant's submissions dated 8 December 2025.
[10] 556 pages comprising digital hospital health records, Consumer Integrated Mental Health Application (**CIMHA**) records and a discharge summary.
[11] Section 21 of the HR Act.
[12] OIC's approach to the HR Act set out in this paragraph has been endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].
[13] Section 40 of the IP Act.

9. Access may be refused to an applicant's relevant healthcare information if disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant.[14] This ground of refusal of access operates in conjunction with section 51 of the RTI Act which provides as follows:

> ***51 Contrary to applicant's best interests—healthcare information***
>
> *(1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.*
>
> *(2) Despite schedule 3, section 12(2) and schedule 4, part 2, item 7, the Parliament considers it would, on balance, be contrary to the public interest to give access to a document to the extent it comprises relevant healthcare information of the applicant if the disclosure of the information might be prejudicial to the physical or mental health or wellbeing of the applicant.*
>
> *Note—*
>
> *Only a principal officer, Minister or appointed healthcare professional may decide whether disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant—see sections 30(5) and 31(2).*
>
> *(3) However, despite an agency or Minister being able, under section 47(3)(d), to refuse access to all or part of a document, the agency or the Minister may decide to give access.*
>
> *Notes—*
>
> *1 Only a principal officer, Minister or appointed healthcare professional may decide to give access under subsection (3)—see sections 30(5) and 31(2).*
> *2 Also, relevant healthcare information to which access is refused may ultimately be disclosed to the applicant by the applicant's nominated healthcare professional under section 77.*

10. '*Relevant healthcare information*' means '*healthcare information given by a healthcare professional*'.[15] A '*healthcare professional*' means a person who carries on, and is entitled to carry on, an occupation involving the provision of care for a person's physical or mental health or wellbeing.[16]

11. The Information Commissioner[17] has the power to decide any matter in relation to an access application that could have been decided by an agency.[18]

Submissions

12. The applicant submitted he sought access to the remaining medical records for:[19]

> *… the purpose of understanding his treatment regime, seeking legal advice and potentially enforcing his legal rights in relation to his medical treatment. Withholding this information perpetuates feelings of powerlessness and distrust, and undermines principles of transparency and accountability, which are essential components of any healthcare system.*

[14] Section 47(3)(d) of the RTI Act. Under section 67(1) of the IP Act, an agency may refuse access to a document in the same way and to the same extent the agency could refuse access under section 47 of the RTI Act, had the document been the subject of an access application under the RTI Act.
[15] Schedule 5 of the IP Act.
[16] Schedule 5 of the IP Act provides examples and includes *a psychiatrist*.
[17] Or her delegate under section 139 of the IP Act.
[18] Section 118(1)(b) of the IP Act. As such, I have the power to make a decision on the relevant healthcare information, under section 47(3)(d) of the RTI Act.
[19] Applicant's submission's dated 8 December 2025.

> *Further, we note that the refusal of access is having negative implications on his health and wellbeing.*
>
> [The applicant] *is willing to resolve the matter on the basis that a qualified practitioner is willing to receive the documents on his behalf to make a decision as to when, and to what extent, disclosure, is in his best interests.*
>
> …[the applicant does not] *consider the limitations of these rights* [under section 15, 21 and 37(1) of the HR Act) *as proportionate, justified or reasonable in the circumstances for the reasons set out above, particularly in circumstances where the RTI Act should be administered with a pro disclosure bias.*

13. On 12 May 2025, the Healthcare Decision-Maker provided submissions to OIC which outlined the way he considered the clinical evidence and the applicant's particular circumstances met the requirements of section 47(3)(d) and 51 of the RTI Act (**Clinical Submission**). The Clinical Submission referred to a review of the applicant undertaken in March 2025 to demonstrate the potential impact of disclosure of the remaining medical records to the applicant's health and wellbeing. On 17 and 27 March 2026, MSHHS confirmed that its position on disclosure of the remaining medical records remained as set out in the Clinical Submission.

14. The Clinical Submission also explained why the Healthcare Decision-Maker did not consider a direction under section 92 of the IP Act, to release the remaining medical records to the applicant through a nominated healthcare professional, was appropriate to be made in relation to the applicant's health records.

15. On external review, in response to OIC's preliminary view, the applicant submitted:[20]

> *We acknowledge the preliminary view that disclosure might be prejudicial to the Applicant's physical or mental health or wellbeing under section 47(3)(d) of the RTI Act.*
>
> *However, the statutory threshold requires more than a speculative or theoretical risk. The term "might be prejudicial" requires the decision-maker to be satisfied that there is a real and substantial possibility of prejudice arising from disclosure, assessed objectively on the evidence.*
>
> *The applicant submits that:*
>
> - *As the Applicant has not been provided with the Clinical Submissions dated 12 May 2025 prepared by* [the Healthcare Decision Maker]*, the Applicant is not privy to the contents of those submissions. While they are described as "detailed", the Applicant is unable to ascertain whether they rely upon generalised assertions of risk, as opposed to identifying a specific, immediate and evidence-based causal link between disclosure and demonstrable harm;*
> - *The fact that information may cause emotional distress or discomfort does not, without more detailed reasoning, establish prejudice within the meaning of section 47(3)(d);*
> - *The test must be applied narrowly, consistent with the pro-disclosure bias in section 44(4) of the RTI Act.*
>
> *The applicant respectfully submits that a blanket refusal of 176 pages of his own medical records indicates*[21] *that the exemption has been applied broadly rather than narrowly.*

16. The applicant also made submissions to have his medical records released to a nominated healthcare professional:[22]

[20] Submissions to OIC dated 26 February 2026. The applicant raised similar submissions on 8 December 2025.
[21] MSHHS refused access to all of the applicant's CIMHA.
[22] Submissions to OIC dated 26 February 2026.

We note the Clinical Submission's position that release via a nominated healthcare professional under section 92 of the IP Act is not appropriate.

However, no detailed reasoning has been provided explaining why mediated disclosure would not adequately mitigate any identified risk.

Section 92 exists precisely to balance:

- *The individual's right of access to their personal information; and*
- *Any concern that direct disclosure may adversely affect wellbeing.*

The applicant has proposed that the records be released to his nominated healthcare professional, …, who is clinically positioned to determine:

- *The appropriate timing of disclosure;*
- *The appropriate manner of communication;*
- *Any need for staged or supported access.*

The failure to utilise this mechanism indicates that the risk assessment may not have been undertaken in a proportionate or appropriately balanced manner.

Findings

17. The Information Commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be contrary to the public interest information.[23] In making my findings in this review, I have had regard to evidence and submissions available to me. However, due to the operation of section 121 of the IP Act, I am constrained in how much detail I can provide in relation to the content of the Clinical Submission as it refers directly to the applicant's health records, including risk assessments and clinical opinions. Similarly, I am unable to describe the particular nature of the remaining medical records beyond what I have set out below.

Remaining medical records

18. The remaining medical records comprise digital hospital health records, CIMHA records and a discharge summary. I am satisfied that those records comprise '*relevant healthcare information'* given by a healthcare professional.

19. As noted above, the Healthcare Decision-Maker, a registered psychiatrist at the hospital where the applicant was treated, was appointed under section 50(5)(b) of the IP Act to make the healthcare decision. An appointed *healthcare professional* is required to be *appropriately qualified* meaning that they have *the qualifications and experience appropriate to assess relevant healthcare information in a document*.[24] I am therefore, satisfied that the Healthcare Decision-Maker has qualifications and experience that are directly relevant to assessing whether disclosure of the remaining medical records might cause prejudice to the applicant's physical or mental health or wellbeing.

20. If disclosure of the remaining medical records '*might'* be prejudicial to the applicant's physical or mental health or wellbeing, I must refuse access.[25] The relevant test is whether the prejudice contemplated to the applicant's physical or mental health or wellbeing must be a real and tangible possibility, as opposed to a fanciful, remote or far-

[23] Section 121(3) of the IP Act
[24] In accordance with the definition of those terms in schedule 5 of the IP Act.
[25] Noting that the grounds on which access may be refused are to be interpreted narrowly, section 67(2)(a) of the IP Act.

fetched possibility.[26] Having examined the Clinical Submission alongside the remaining medical records, I am satisfied that MSHHS has demonstrated, having regard to the particular circumstances of the applicant, that there is a real and tangible possibility of prejudice to the applicant's mental health or wellbeing if the remaining medical records were disclosed. In making this finding, I have had regard to the fact that the Clinical Submission referred to a review of the applicant undertaken in March 2025 to explain the potential impact of disclosure of the remaining medical records to the applicant's health and wellbeing, and referred directly to the applicant's health records, including risk assessments and clinical opinions.[27] For these reasons, I am satisfied the release of the remaining medical records might prejudice the applicant's physical or mental health or wellbeing.

21. I acknowledge the applicant is seeking access to this information to understand '*his treatment regime, seeking legal advice and potentially enforcing his legal rights in relation to his medical treatment*'. However, in the circumstances of this case, having regard to the Clinical Submission and nature of remaining medical records, I find there is real and tangible risk that disclosure might prejudice the applicant's mental health or wellbeing and am therefore satisfied that access to the remaining medical records may be refused under section 47(3)(d) of the RTI Act.[28]

Access through a nominated healthcare professional

22. The applicant also submitted that MSHHS failed to consider the '*less restrictive alternatives'* to disclosure, i.e. release through a nominated healthcare professional.

23. Section 92 of the IP Act grants a discretion to an appointed healthcare professional (in this case, the Healthcare Decision Maker) to make a direction giving access to the documents instead to an appropriately qualified healthcare professional nominated by the applicant and approved by the agency, despite a decision to refuse access under section 47(3)(d) of the RTI Act.

24. The exercise of the discretion to give a direction under section 92(2) of the IP Act is a type of *'healthcare decision'*.[29] However, if a decision maker refuses to exercise the discretion under section 92(2) of the IP Act, the IP Act does not afford an individual a right of review. Rather, only the decision to refuse access to information under section 47(3)(d) of the RTI Act is a *reviewable decision* under schedule 5 of the IP Act.[30]

25. In view of the above, I am satisfied the decision by the Healthcare Decision Maker not to make a direction under section 92(2) of the RTI Act is not a reviewable decision. Accordingly, I make no findings on whether the Healthcare Decision Maker was entitled to refuse to exercise the discretion under section 92 of the IP Act.

Visitor Logs

26. MSHHS located 21 pages of visitor logs from the hospital unit where the applicant resided. During the review, the visitor logs were released to the applicant in part, to the

[26] This meaning of the term *'might be prejudicial'* was adopted by the Commonwealth Administrative Appeals Tribunal for the purposes of a similar provision in the *Freedom of Information Act 1982* (Cth) in *Re K and Director-General of Social Security* (1984) 6 ALD 354 at 356-7 and endorsed by the Information Commissioner in *S and Medical Board of Queensland* (1994) 2 QAR 249 when considering an equivalent provision to section 51 of the RTI Act in the repealed *Freedom of Information Act 1992* (Qld).
[27] On 17 and 27 March 2026, MSHHS confirmed that its position had not changed.
[28] In conjunction with section 51 of the RTI Act and 67(1) of the IP Act.
[29] As defined in section 50(6)(d) of the IP Act. Section 92(2) of the IP Act provides that only a '*principal officer, Minister or appointed healthcare professional may give this direction'*.
[30] See OIC guideline, '*What if an agency decides I can only access my records through a healthcare professional?*' (accessed 31 March 2026) <https://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment/what-to-do-if-an-agency-decides-access-can-only-be-given-through-a-healthcare-professional>.

extent they contained his personal information, i.e. certain entries[31] were about him and therefore, fell within the scope of his IP Act application.

27. The applicant submitted that he was visited by police officers, and the names and station details of these police officers should be released for accountability and transparency.[32] MSHHS submitted that the remaining information in the visitor logs would, on balance be contrary to the public interest to disclose as it related to other individuals[33] and also confirmed that the remaining visitor log entries did not contain details of police officers visiting the applicant.[34]

28. I am satisfied that the redacted information in the visitor logs relates to individuals other than the applicant. Generally, there is a public interest favouring nondisclosure of the personal information of other individuals. However, given the particular nature of the visitor logs, I consider the correct and preferable decision to be made under the IP Act is that the information about the other individuals does not fall within the scope of the IP Act application as it is not about the applicant. Rather, it is about other individuals and is accordingly, not relevant to the terms of the applicant's IP Act application. Accordingly, I find the redacted sections of the visitor logs fall outside the terms of the IP Act application and can be deleted under section 88 of the IP Act.[35]

DECISION

29. For the reasons set out above, I vary MSHHS's decision[36] and find that:

    a. access may be refused to the remaining medical records under section 67(1) of the IP Act and sections 47(3)(d) and 51 of the RTI Act; and
    b. the remaining entries in the visitor logs are irrelevant to the terms of the IP Act application and may be deleted under section 88 of the IP Act.

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

[redacted]

Katie Shepherd
Assistant Information Commissioner

Date: 31 March 2026

[31] On 8 pages.
[32] Applicant's submissions dated 8 December 2025 and 26 February 2026.
[33] Submission to OIC dated 14 November 2025.
[34] MSHHS's submission dated 27 March 2026.
[35] While not a ground for refusing access, section 88 of the IP Act provides a mechanism to allow deletion of information from documents where it is not relevant to the terms of the application.
[36] Under section 123(1)(b) of the IP Act.