



Decision and Reasons for Decision

Citation:	<i>B7TG4G and Gold Coast Hospital and Health Service</i> [2015] QICmr 11 (1 May 2015)
Application Number:	312122
Applicant:	B7TG4G
Respondent:	Gold Coast Hospital and Health Service
Decision Date:	1 May 2015
Catchwords:	<p>ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to justices examination orders - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information provided by other individuals in relation to the applicant's medical treatment - 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)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to Gold Coast Hospital and Health Service (**GCHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documentation referring to entries into his home and possible assessments at the Gold Coast Hospital from 2004 to present.
2. GCHHS located 474 pages relevant to the access application and granted full access to all of the information with the exception of 29 part pages and 3 full pages. GCHHS refused access to this information on the basis that it comprised exempt information as its disclosure would found an action for breach of confidence.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of GCHHS' decision to refuse access to the requested information.

4. Some additional information was released to the applicant on external review with GCHHS' agreement. The remaining information in issue comprises 23 part pages and 2 full pages. It relates to justices examination orders (**JEO**) about the applicant and information provided by other individuals to GCHHS for the purpose of the applicant's treatment and assessment. For the reasons set out below, GCHHS' decision in relation to the remaining information is varied and access is refused on the basis that:
 - the information is exempt information as its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment; and
 - its disclosure would, on balance, be contrary to the public interest.

Background

5. Significant procedural steps relating to the external review are set out in the appendix.

Reviewable decision

6. The decision under review is GCHHS' decision dated 16 July 2014.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching this decision is disclosed in these reasons (including footnotes and appendix)
8. The applicant provided submissions to OIC supporting his case. Whilst I have carefully considered all of the applicant's submissions, not all matters raised are relevant to the issues for determination. I have summarised and addressed the applicant's submissions below to the extent they are relevant to the issues for determination.

Exempt information

9. The relevant information appears in 10 part pages and comprises information relating to JEOs made under the *Mental Health Act 2000* (Qld) (**MH Act**) concerning the applicant (**JEO Information**).¹ The JEO Information identifies the JEO applicant/s and the information supplied in support of the JEO applications.²

Relevant law

10. Under the IP Act, an individual has a right to access documents of an agency to the extent the documents contain the individual's personal information.³ However, this right of access is subject to certain limitations, including the grounds for refusal of access set out in the *Right to Information Act 2009* (Qld) (**RTI Act**).⁴
11. An agency may refuse access to documents to the extent they comprise exempt information.⁵ Schedule 3 of the RTI Act sets out information which Parliament

¹ Pages 246, 247, 250, 286, 292, 293, 295, 301, 302 and 337.

² Section 121 of the IP Act prevents me from revealing information that is claimed to be exempt information or contrary to the public interest information and I am unable to describe the JEO Information in more detail.

³ Section 40 of the IP Act.

⁴ Section 47 of the RTI Act. 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 the agency could refuse access to a document under section 47 of the RTI Act if the application had been made under the RTI Act.

⁵ Under section 47(3)(a) and section 48 of the RTI Act.

considers is exempt information on the basis that disclosure would, on balance, be contrary to the public interest.⁶

12. Information is exempt if its disclosure could reasonably be expected to⁷ prejudice a system or procedure for the protection of persons, property or the environment.⁸ This exemption will apply if each of the following requirements are met:⁹
- (a) there exists an identifiable system or procedure
 - (b) it is a system or procedure for the protection of persons, property or environment; and
 - (c) disclosing the information in issue could reasonably be expected to prejudice that system or procedure.

Findings

Is there an identifiable system or procedure?

13. Yes.
14. The objective of a JEO is to allow a person in the community to request a non-urgent, involuntary mental health assessment for a person they believe may be experiencing mental health problems.¹⁰
15. Chapter 2, part 3, division 2 of the MH Act relevantly provides:
- a person may apply to a Magistrate or Justice of the Peace for a JEO for another person¹¹
 - the Magistrate or Justice of the Peace may issue a JEO if he/she reasonably believes that the relevant person has a mental illness and should be examined¹²
 - once a JEO has been issued and sent to the administrator of an authorised mental health service, a doctor or authorised mental health practitioner may conduct the examination¹³
 - the JEO authorises a doctor or authorised mental health practitioner to examine the person to decide whether a recommendation for assessment for the person should be made;¹⁴ and
 - if a recommendation for assessment for the person is not made after the person's examination under the JEO, the examining doctor or authorised mental health practitioner must give notice to the director.¹⁵
16. In view of the above, I am satisfied that the JEO procedure prescribed by the MH Act is a system or procedure for the purpose of schedule 3 section 10(1)(i) of the RTI Act.

⁶ See also section 48 of the RTI Act.

⁷ 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 paragraph 31.

⁸ Schedule 3, section 10(1)(i) of the RTI Act.

⁹ *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at paragraphs 27-36.

¹⁰ See http://www.health.qld.gov.au/mha2000/documents/ieo_brochure.pdf.

¹¹ Section 27 of the MH Act.

¹² Section 28 of the MH Act.

¹³ Section 29 and 30 of the MH Act.

¹⁴ Section 30 of the MH Act.

¹⁵ Section 32 of the MH Act.

Is the system or procedure for the protection of persons, property or environment?

17. Yes.
18. The Information Commissioner has previously decided that the JEO procedure is an identifiable procedure for the protection of persons.¹⁶
19. In *74KDLG and Department of Health*,¹⁷ the Right to Information Commissioner relevantly explained that the JEO process is an important mechanism by which persons in need of appropriate mental health care may be removed from the community for the purposes of assessment and treatment, thereby minimising the potential for harm to themselves and others.
20. I am satisfied that the procedure for making a JEO application is a procedure for the protection of persons.

Could disclosing the JEO Information reasonably be expected to prejudice that system or procedure?

21. Yes.
22. The Information Commissioner has previously explained that people applying for a JEO 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.¹⁸ I agree with that view and consider that confidentiality is integral to the JEO process. In my view, members of the community would be hesitant to use the JEO process if their identity and information they or others supplied in support of a JEO application were open to disclosure. Alternatively, JEO applicants may feel sufficiently inhibited so as to avoid supplying information that might lead to their identification. This, in turn, would have the adverse consequence of reducing the quality of information upon which JEO assessments and decisions are based.
23. As noted above, the JEO Information in this review identifies the JEO applicant/s and the information supplied in support of the JEO applications. I am satisfied that disclosing the JEO Information in this review could reasonably be expected to prejudice the JEO procedure prescribed in the MH Act.
24. The applicant provided detailed submissions and supporting information to OIC.¹⁹ In summary, the applicant:
 - is concerned about the content of the information in issue and the way he has been treated by health professionals and police
 - believes GCHHS' records contain false information about him and wants to know the names of the people who have falsified information about him

¹⁶ See for example *74KDLG and Department of Health* (Unreported, Queensland Information Commissioner, 25 February 2011) at paragraph 15; *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at paragraph 16; *VHL and Department of Health* (Unreported, Queensland Information Commissioner, 20 February 2009) at paragraph 49; *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)* (1996) 3 QAR 393 at paragraphs 13 – 15 and *QPF and Department of Health* (Unreported, Queensland Information Commissioner, 29 June 2009) at paragraph 26.

¹⁷ (Unreported, Queensland Information Commissioner, 25 February 2011) at paragraph 17. Refer also to *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)* (1996) 3 QAR 393 which considered section 42(1)(h) of the repealed *Freedom of Information Act 1992* which is the equivalent of schedule 3, section 10(1)(i) of the RTI Act.

¹⁸ *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at paragraph 17.

¹⁹ The applicant's submissions were provided in his external review application dated 24 July 2014, letter to OIC received on 10 March 2015 and phone calls with OIC staff on 20 August 2014, 22 September 2014, 1 October 2014, 1 December 2014, 10 February 2015 and 24 February 2015.

- states that he has never seen some of the medical staff who are listed as treating him in the information that has been released; and
- states that his house has been raided on several occasions and he believes this was done without appropriate justification or paperwork and that there is no evidence he has done anything wrong or unlawful.

25. I have carefully considered the applicant's submissions. These submissions explain the reasons for the applicant's request and provide background information about his interactions with GCHHS. I understand that the JEO process and his treatment have caused the applicant great distress. However, the applicant's submissions do not relate to the application of this exemption and I am unable to take them into account in relation to the JEO Information in the circumstances.²⁰

Conclusion

26. For these reasons, I am satisfied that the JEO Information meets each of the requirements of schedule 3, section 10(1)(i) of the RTI Act. As a result, I find that access to the JEO Information can be refused.

Contrary to the public interest information

27. The relevant information appears in 13 part pages and 2 full pages and comprises information provided by other individuals to GCHHS for the purpose of the applicant's assessment and treatment (**Healthcare Information**).²¹

Relevant law

28. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.²² The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest²³ and explains the steps that a decision-maker must take²⁴ in deciding the public interest as follows:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information would, on balance, be contrary to the public interest.

Findings

29. No irrelevant factors arise in the circumstances of this case and I have not taken any into account. I will now address the relevant factors favouring disclosure and nondisclosure of the Healthcare Information.

²⁰ Schedule 3 of the RTI Act sets out the types of information the disclosure of which Parliament has decided would, on balance, be contrary to the public interest: section 48(2) of the RTI Act. If the information meets the requirements of one of the exemptions in schedule 3 of the RTI Act, access can be refused and there is no scope for a decision-maker to take into account any public interest considerations or an applicant's reasons for seeking access to the information, no matter how compelling they may be.

²¹ Pages 2, 5, 7, 170, 171, 172, 225, 227, 237, 238, 251, 254, 265, 269 and 274.

²² 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.

²³ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

²⁴ Section 49(3) of the RTI Act.

Personal information and privacy

30. The Healthcare Information was provided by other individuals to GCHHS for the purpose of the applicant's assessment and treatment. As it is about the applicant and his health, I am satisfied that it comprises his personal information.²⁵ This is a factor favouring disclosure of the Healthcare Information.²⁶ I acknowledge the importance of providing individuals with access to their personal information held by public authorities and I attribute significant weight to this factor.
31. However, the RTI Act also recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;²⁷ and
 - disclosing information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.²⁸
32. The Healthcare Information is also the personal information of other individuals. It comprises their identifying information, contact details, feelings and opinions about the applicant's health which were provided to GCHHS. I am unable to separate it from the applicant's personal information. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the IP Act. In this context, I am satisfied the Healthcare Information is personal and sensitive in nature. I consider its disclosure under the IP Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of these public interest factors favouring nondisclosure significant weight.

Accountability and transparency

33. I have considered whether disclosing the Healthcare Information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;²⁹ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁰
34. I am satisfied that disclosing the Healthcare Information would provide the applicant with a more detailed understanding of the reasons for certain actions taken by GCHHS. I also consider it could assist the applicant understand the process that GCHHS staff undertook in deciding on a course of treatment. However, the applicant has been given full access to the remainder of his medical record which comprises approximately 450 pages. In my view, this information which has been disclosed to the applicant provides him with a comprehensive understanding of the actions taken by GCHHS in treating him and furthers these public interest factors significantly. Having carefully considered the nature of the Healthcare Information and the fact that it comprises only

²⁵ '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'.

²⁶ Schedule 4, part 2, item 7 of the RTI Act.

²⁷ Schedule 4, part 3, item 3 of the RTI Act.

²⁸ Schedule 4, part 4, item 6(1) of the RTI Act.

²⁹ Schedule 4, part 2, item 1 of the RTI Act.

³⁰ Schedule 4, part 2, item 11 of the RTI Act.

a relatively small amount of information, I consider its disclosure to the applicant would promote these factors only marginally and I afford them limited weight.

Prejudice future supply of confidential information

35. The RTI Act recognises:

- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information;³¹ and
- disclosing information could reasonably be expected to cause a public interest harm if the information consists of information of a confidential nature that was communicated in confidence and disclosing it could reasonably be expected to prejudice the future supply of information of this type.³²

36. Healthcare agencies such as GCHHS frequently rely on information provided by or sought from third parties to inform patient care and treatment. It is reasonable to expect that third parties may be deterred from providing this type of information in the future if they are aware that it would be disclosed to the patient under the IP Act. This, in turn, could prejudice the ability of healthcare providers to effectively treat patients as they may not have all relevant information about the patient before them.

37. In its decision, GCHHS explained that information of this nature is treated as confidential by healthcare providers. I have carefully considered the nature of the Healthcare Information and the context in which it appears. I am satisfied the Healthcare Information was provided by other individuals specifically for the purpose of the applicant's treatment and in circumstances where they would reasonably expect that the information would be treated confidentially. As a result, I afford significant weight to both of these factors favouring nondisclosure.

Other factors favouring disclosure

38. I have carefully considered the applicant's submissions which are summarised at paragraph 24 above. I am unable to consider or comment on the appropriateness of the decisions made by GCHHS about the applicant's treatment or investigate the applicant's concerns about his dealings with GCHHS or police. This is beyond OIC's jurisdiction and unrelated to the question of whether access to the Healthcare Information can be granted under the IP Act. Given the issues the applicant raises in his submissions, I have considered whether the following public interest factors favouring disclosure apply to the Healthcare Information:

- disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official³³
- disclosure could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;³⁴ and
- disclosure could reasonably be expected to reveal that the information was incorrect³⁵ or misleading.³⁶

³¹ Schedule 4, part 3, item 16 of the RTI Act.

³² Schedule 4, part 4, item 8(1) of the RTI Act.

³³ Schedule 4, part 2, item 5 of the RTI Act.

³⁴ Schedule 4, part 2, item 6 of the RTI Act.

³⁵ Schedule 4, part 2, item 12(a) of the RTI Act.

³⁶ Schedule 4, part 2, item 12(c) of the RTI Act.

39. While I acknowledge the applicant's concerns, there is no evidence available to me to support the application of these public interest factors and they do not apply in the circumstances of this review.

Balancing the public interest

40. I consider there is a strong public interest in the applicant accessing his personal information in these circumstances and afford significant weight to this factor favouring disclosure. However, the Healthcare Information also comprises the personal information of other individuals and its disclosure would be a significant intrusion into the privacy of these individuals as it is personal and sensitive in nature. Both of these factors favouring nondisclosure carry significant weight.
41. I afford limited weight to the factors relating to accountability and transparency because the Healthcare Information is only a small amount of information and the information which has been disclosed to the applicant furthers these public interest factors significantly.
42. I am satisfied the Healthcare Information was provided by other individuals specifically for the purpose of the applicant's treatment and in circumstances where they would reasonably expect that the information would be treated confidentially. Disclosing this type of information under the IP Act could prejudice the future supply of this information to healthcare providers and I afford the two nondisclosure factors significant weight.
43. As the factors favouring nondisclosure of the Healthcare Information outweigh the factors favoring its disclosure, I find that access to the Healthcare Information can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

DECISION

44. For the reasons set out above, I vary GCHHS' decision and find that:
- access to the JEO Information can be refused as it comprises exempt information because its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment;³⁷ and
 - access to the Healthcare Information can be refused because its disclosure would, on balance, be contrary to the public interest.³⁸
45. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Tara Mainwaring
A/Assistant Information Commissioner

Date: 1 May 2015

³⁷ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 10(1)(i) of the RTI Act.

³⁸ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
9 April 2014	GCHHS received the access application.
16 July 2014	GCHHS issued its decision on the access application.
28 July 2014	OIC received the application for external review of GCHHS' decision. OIC notified GCHHS the external review application had been received and requested relevant procedural documents.
4 August 2014	OIC received the requested procedural documents from GCHHS.
14 August 2014	OIC notified the applicant and GCHHS that it had accepted the external review application. OIC requested that GCHHS provide a copy of the located documents.
20 August 2014	The applicant spoke with an OIC staff member and provided submissions supporting his case.
4 September 2014	OIC received the requested information from GCHHS.
22 September 2014	The applicant spoke with an OIC staff member and provided submissions supporting his case.
1 October 2014	The applicant spoke with an OIC staff member and provided submissions supporting his case.
3 October 2014	OIC wrote to the applicant confirming the issues for consideration on external review.
8 October 2014	OIC conveyed its preliminary view to GCHHS by telephone.
9 October 2014	OIC confirmed the preliminary view in writing and invited GCHHS to provide submissions supporting its case if it did not accept the preliminary view.
24 October 2014	OIC received GCHHS' submissions. GCHHS agreed to release additional information to the applicant.
1 December 2014	The applicant spoke with an OIC staff member and provided submissions supporting his case.
23 January 2015	OIC asked GCHHS to release the additional information to the applicant.
30 January 2015	OIC conveyed its preliminary to the applicant and invited him to provide submissions supporting his case by 18 February 2014 if he did not accept the preliminary view.
10 February 2014	The applicant spoke with an OIC staff member and provided submissions supporting his case.
24 February 2015	The applicant spoke with an OIC staff member and provided submissions supporting his case. The applicant notified OIC that he did not accept the preliminary view and requested an extension of time until 10 March 2015 to provide submissions. OIC agreed to the requested extension.
10 March 2014	OIC received the applicant's submissions.