



Decision and Reasons for Decision

Citation:	<i>V29 and Metro North Hospital and Health Service [2020] QICmr 10 (21 February 2020)</i>
Application Number:	314603
Applicant:	V29
Respondent:	Metro North Hospital and Health Service
Decision Date:	21 February 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PREJUDICE TO SYSTEM OR PROCEDURE - information regarding the applicant's referral to the Queensland Fixated Threat Assessment Centre - prejudice effectiveness of a system or procedure for the protection of persons or property - whether information is exempt under schedule 3, section 10(1)(i) of the <i>Right to Information Act 2009</i> (Qld) - whether access to information may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and section 47(3)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Metro North Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access:

*all my IP including emails about me or my matters by your staff associated with forensic medical duties including QFTAC reports and emails or watchhouse forensic medical officers emails. I was put on the Qld fixated threat list and report would be made by [X] or [Y] and some emailing possibly with QPS and officer [Z] about me. Seeking the report, all associated records, meeting notes, emails please.*²
2. The Health Service located 18 pages in response and decided³ to refuse access to all 18 pages on the basis that they comprised exempt information.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision.⁴ During the review, the Health Service agreed to release some information within the 18 pages. The applicant remains dissatisfied with the level of information released to them.

¹ Access application dated 27 March 2019.

² The applicant identified the types of documents sought as comprising 'Emails, texts, intelligence report, psych assessment etc' and nominated a date range of 2011 to 27 March 2019.

³ Decision dated 8 May 2019.

⁴ External review application dated 8 May 2019.

4. For the reasons set out below, I affirm the Health Service's decision to refuse access to the remaining information in the 18 pages on the ground that it is exempt information.

Background

5. As a consequence of information released to the applicant by another agency,⁵ the applicant is aware that they were referred to the Queensland Fixated Threat Assessment Centre (**QFTAC**).⁶ This, and some of the actions taken by QFTAC as a result of the referral, were confirmed in the information the Health Service disclosed to the applicant during this review.
6. The significant procedural steps taken during the external review process are set out in the Appendix.
7. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix). I have also had regard to the *Human Rights Act 2019* (Qld),⁷ particularly the right to seek and receive information.⁸ 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 the *Right to Information Act 2009* (Qld) (**RTI Act**).⁹ 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 legislation¹⁰: '*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.*'¹¹
8. I have carefully reviewed numerous submissions provided to OIC by the applicant¹² and taken into account the parts of those submissions which are relevant to the issues for determination. The applicant also seeks to raise concerns beyond the jurisdiction of the Information Commissioner and which fall outside the scope of this review.¹³ In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issue for determination in this review.

Decision under review

9. The decision under review is the Health Service decision dated 8 May 2019.

⁵ Including information released to the applicant in respect of a separate access application to that agency.

⁶ QFTAC is a joint initiative between the Queensland Police Service and the Queensland Forensic Mental Health Service that identifies fixated individuals through irregular communications with public office holders. QFTAC seeks to mitigate the risk posed by fixated individuals by linking them with mental health interventions and addressing other identified risk factors. See the Police Communications Centre Mental Health Liaison Service Evaluation Report (May 2016) at page 12: <https://www.qmhc.qld.gov.au/sites/default/files/evaluation_report_police_communications_centre_mental_health_liaison_service.pdf> (accessed 21 February 2020).

⁷ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

⁸ Section 21 of the HR Act.

⁹ *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 [11].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ *XYZ* at [573].

¹² Submissions dated 19 August 2019, 27 August 2019, 28 August 2019, 11 September 2019, 17 September 2019, 4 October 2019, 6 October 2019, 4 November 2019, 24 January 2020, 25 January 2020 and 29 January 2020. I also note that the applicant has corresponded with OIC on multiple occasions (sometimes several times a week) in relation to their various external review applications and included OIC as a recipient to their widely circulated correspondence concerning other matters. All such correspondence is examined by OIC to determine its relevance to particular reviews.

¹³ For example, certain submissions raise concerns relating to concurrent reviews involving the applicant. The applicant's submissions also refer to other legal and complaints processes that the applicant is currently involved in.

Information in issue

10. The information which the Health Service did not disclose to the applicant (**information in issue**) comprises three full pages and parts of 15 pages. I am limited in the extent to which I can describe the information in issue,¹⁴ however, it appears in the Health Service's progress notes relating to the applicant's QFTAC referral.

Issue for determination

11. The issue for determination is whether the information in issue comprises exempt information to which access may be refused.¹⁵

Relevant law

12. Under the IP Act, an individual has the right to be given access to documents of an agency to the extent they contain a person's personal information.¹⁶ However, this right is subject to limitations, including grounds for refusing access.¹⁷ One such ground for refusing access is where information is exempt.¹⁸
13. Relevantly, information will be exempt where its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.¹⁹ For this exemption to apply, the Information Commissioner has previously found that the following three elements must be satisfied:²⁰
 - (a) there exists an identifiable system or procedure
 - (b) it is a system or procedure for the protection of persons, property or the environment; and
 - (c) disclosure could reasonably be expected to prejudice that system or procedure.
14. An exception to the exemption applies where refused information comprises the types of information specified in schedule 3, section 10(2) of the RTI Act.²¹

Findings

15. I am satisfied that the evaluation of concerns by QFTAC comprises an identifiable system. This system includes the assessment of referred individuals, as well as intelligence gathering exercises in order to anticipate and mitigate the risks posed by fixated behaviour. The applicant contends that this exemption is intended to be limited to a '*secret system*',²² however, the wording of the exemption does not support this contention. I consider the QFTAC system is designed to ensure the safety and security of the subject individuals, the broader community and, in some instances, publicly/private-owned property. As a result, I find that requirements (a) and (b) above are met.

¹⁴ Section 121 of the IP Act.

¹⁵ Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

¹⁶ Section 40 of the IP Act.

¹⁷ 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. Section 47(2) of the RTI Act states that it is Parliament's intention that the grounds on which access may be refused are to be interpreted narrowly.

¹⁸ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 to the RTI Act identifies the types of exempt information.

¹⁹ Schedule 3, section 10(1)(i) of the RTI Act.

²⁰ *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at [9] applying *Ferrier and Queensland Police Service* (1996) 3 QAR 350.

²¹ The listed exceptions generally relate to information about law enforcement investigations.

²² Submissions dated 4 November 2019.

16. In determining whether requirement (c) above is met, I have considered whether disclosing the information in issue (that is, this particular information) to this particular applicant could reasonably be expected to prejudice the QFTAC system.²³
17. The QFTAC system is intended to detect and assess vulnerable individuals in need of mental health intervention and support. I am satisfied that, in this case, revealing to the applicant the specifics of the evaluation methods undertaken by QFTAC and the Health Service to assess the applicant's behaviour could reasonably be expected to allow the applicant to use that information to modify their behaviour in such a way that would impact upon the effectiveness of the QFTAC system. As the applicant has also widely circulated information concerning their QFTAC referral,²⁴ I consider that any broader dissemination of the information in issue, which includes QFTAC's evaluation methods and processes, may possibly enable others to modify their behaviour in a way that could also reasonably be expected to impact upon the effectiveness of the QFTAC system.
18. In these circumstances, I am satisfied that disclosing the information in issue to the applicant could reasonably be expected to prejudice the QFTAC system. Therefore, I am satisfied that requirement (c) above is met.
19. The applicant submits that QFTAC was used unlawfully, the conduct of certain officers was corrupt and that those officers committed crimes against the applicant.²⁵ In view of these submissions, I have considered whether any of the relevant exceptions to the exemption²⁶ may apply. Having considered the information in issue, I am satisfied that none of the exceptions to the exemption apply.
20. Accordingly, I find that the information in issue comprises exempt information, as its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons and access may be refused on that basis.²⁷
21. The applicant submits that their inclusion on '*the QFTAC terrorism list*' is highly discrediting and harmful and, as they do not have a mental illness, they wish to see the grounds upon which they were assessed as being '*delusional and psychotic*'.²⁸
22. I acknowledge the applicant's concerns about how the referral has impacted them and their desire to have a better understanding of how this assessment was made. Such arguments raise public interest arguments in favour of the disclosure of the information in issue. However, under the IP Act, there is no scope for me to take into account public interest arguments where the requirements of an exemption have been established. This is because Parliament has decided that it would be contrary to the public interest to disclose this information²⁹.

²³ Consistent with the findings of Justice Daubney in *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 at [66].

²⁴ To avoid identifying the applicant, I am unable to provide further details about this circulation of information by the applicant. However, a number of the submissions made by the applicant in this external review have been copied to a number of agencies outside of this Office and the Health Service.

²⁵ Submissions dated 4 October 2019.

²⁶ Schedule 3, section 10(2)(a) of the RTI Act sets out the types of information which will not be exempt under schedule 3, section 10(1) of the RTI Act. Generally, these exceptions relate to information concerning law enforcement investigations.

²⁷ Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the RTI Act.

²⁸ External review application.

²⁹ Section 48(2) of the RTI Act. The Information Commissioner does not have the power to direct that access be given to exempt information: section 118(2) of the IP Act.

DECISION

23. I affirm the decision of the Health Service and find that access to the information in issue may be refused on the ground that it is exempt information.³⁰
24. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 21 February 2020

³⁰ Section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
8 May 2019	OIC received the application for external review.
29 May 2019	OIC notified the applicant and the Health Service that the application for external review had been accepted. OIC requested information from the Health Service.
31 May 2019	OIC received the requested information from the Health Service.
19 August 2019	OIC received written submissions from the applicant.
4 October 2019	OIC conveyed a preliminary view to the applicant that access to the information in issue may be refused and received written submissions from the applicant contesting the view.
4 November 2019	OIC asked the Health Service to consider whether it would agree to disclose any of the information in issue to the applicant. OIC received further submissions from the applicant.
13 December 2019	The Health Service advised OIC that it would agree to release some information to the applicant.
18 December 2019	OIC notified the applicant that the Health Service had agreed to release some information and asked the applicant to confirm if they wished to continue with the review.
23 January 2020	The Health Service confirmed that it has released information to the applicant, however, the applicant contested the form in which the information had been released.
24 January 2020	OIC asked the applicant to notify whether they wished to contest the preliminary view and received written submissions from the applicant, which indicated they contested the view.
25 and 29 January 2020	OIC received further written submissions from the applicant.