



Decision and Reasons for Decision

Citation:	<i>D77 and Gold Coast Hospital and Health Service [2020] QICmr 28 (22 May 2020)</i>
Application Number:	315052
Applicant:	D77
Respondent:	Gold Coast Hospital and Health Service
Decision Date:	22 May 2020
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to Examination Authority - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment – documents relating to processes under <i>Mental Health Act 2016 (Qld)</i> - whether information exempt under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(a) and 48, and schedule 3, section 10(1)(i) of the <i>Right to Information Act 2009 (Qld)</i></p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information provided by other individuals regarding the applicant - personal information and privacy - whether information would, on balance, be contrary to the public interest to disclose under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i></p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Gold Coast Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to his medical records.
2. The Health Service decided² to refuse access to some of the requested information on the basis that it comprised exempt information,³ the disclosure of which would found an action for breach of confidence;⁴ prejudice a system or procedure for the protection of

¹ On 24 October 2019.

² On 27 November 2019.

³ Section 67(1) of the IP Act and sections 47(3)(a) and 48 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

⁴ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 8 of the RTI Act.

persons, property or the environment;⁵ or information that would be, on balance, contrary to the public interest to disclose.⁶

3. The applicant then applied⁷ to the Information Commissioner for an external review.
4. On external review, I considered that there was insufficient evidence before me to establish that disclosure of some of the information in issue may found an action for breach of confidence. However, I was satisfied that the information refused by the Health Service on this basis may still be refused on the basis that its disclosure would be, on balance, contrary to the public interest. The Health Service did not object to this view.⁸
5. For the reasons set out below, while I agree with the Health Service's decision to refuse access to the information in issue, I have varied the basis on which access is refused. I am satisfied that access to the information in issue can be refused on the grounds that it comprises exempt information disclosure of which would reasonably be expected to prejudice a system for the protection of persons, property or the environment⁹ or would, on balance, be contrary to the public interest to disclose.¹⁰

Evidence considered

6. Significant procedural steps relating to the external review are set out in the Appendix.
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).
8. I have also had regard to the *Human Rights Act 2019* (Qld),¹¹ particularly the right to seek and receive information.¹² 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 RTI Act.¹³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁴ '*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.*'¹⁵

Reviewable decision

9. The decision under review is the Health Service's decision dated 27 November 2019.

Information in issue

10. The Information in Issue consists of:
 - 55 part pages; and
 - 3 full pages.

⁵ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 10(1)(i) of the RTI Act.

⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁷ On 4 December 2019.

⁸ By email on 20 April 2020.

⁹ 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.

¹⁰ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

¹¹ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

¹² Section 21 of the HR Act.

¹³ *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].

¹⁴ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁵ *XYZ* at [573].

11. The Information in Issue can be generally categorised as follows:

Category	Description
Examination Authority Information ¹⁶	Exempt information related to an Examination Authority refused on the basis its disclosure would prejudice a system or procedure for the protection of persons, property or the environment. ¹⁷
Third Party Information ¹⁸	Personal information ¹⁹ of individuals other than the applicant, including names, email addresses, telephone numbers, and opinions. In some segments this information is intertwined with the personal information of the applicant.

Issues for determination

12. The issues for determination are whether access to the information in issue may be refused on the basis that it comprises:

- exempt information disclosure of which would prejudice a system or procedure for the protection of persons, property or the environment;²⁰ or
- personal information of individuals other than the applicant and disclosure would, on balance, be contrary to the public interest.²¹

Examination Authority Information

Relevant law

13. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²² That right is subject to certain limitations set out in the IP Act and RTI Act, with the relevant provisions in this matter, examined below.

14. Where information satisfies the criteria for any of the categories of exempt information set out in Schedule 3 of the RTI Act, Parliament has determined that the disclosure of this information is contrary to the public interest, and access may therefore be refused.²³ Relevantly, information is exempt if its disclosure could reasonably be expected to²⁴ prejudice a system or procedure for the protection of persons, property or the environment.²⁵ This exemption will apply if each of the following requirements are met:²⁶

¹⁶ 3 full pages and 16 part pages.

¹⁷ 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.

¹⁸ 39 part pages.

¹⁹ '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'.

²⁰ 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.

²¹ Under section 67(1) of the IP Act and sections 47(3)(b) and 49, schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

²² Section 40 of the IP Act.

²³ Section 48(2) of the RTI Act.

²⁴ The term 'could reasonably be expected to' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

²⁵ 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.

²⁶ *Ferrier and Department of Police* (1996) 3 QAR 350 at [27]-[36].

- 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

Requirement A – Identifiable System

15. Firstly, having closely considered the Examination Authority Information, I am satisfied that it comprises information gathered under a system established by the *Mental Health Act 2016* (Qld) (**MH Act**)²⁷ for the assessment of an individual who may have a mental illness.

Requirement B – For the protection of Persons

16. In line with previous decisions of the Information Commissioner, I am satisfied that the process of applying for and implementing an Examination Authority under the MH Act is an identifiable system that exists for the protection of persons who may be suffering mental illness, and the community more broadly.²⁸

Requirement C – Disclosure could reasonably be expected to cause prejudice

17. The Information Commissioner has previously found that granting an individual access to information provided in the context of a mental health assessment, could reasonably be expected to prejudice the system by impeding the flow of information to relevant agencies or the willingness of parties to engage with those agencies.²⁹ The Examination Authority process operates by relying on the information provided by third parties to initiate an assessment process under the MH Act. The Information Commissioner has previously explained that individuals involved in this type of process provide information on the understanding that it is confidential and will only be used for the limited purpose of ensuring the proper administration of the MH Act and the appropriate care and treatment of the subject individual.³⁰ I agree with that view and consider that ensuring the confidentiality and careful handling of the information provided by third parties is essential to the effectiveness of the Examination Authority process.
18. Disclosing information that identifies, either directly or indirectly, an individual who has requested an Examination Authority could reasonably be expected to impact on the likelihood that individuals seeking to utilise this system will raise concerns in the future. Particularly, given the highly sensitive and personal nature of mental health concerns, it is reasonable to expect some level of apprehension from individuals who provide

²⁷ The MH Act establishes a process for applying for mandatory mental health assessments, or Examination Authorities, in Queensland.

²⁸ See section 3(1)(a) and Chapter 12, Part 8 of the MH Act. This system requires an application of a specific form to the Mental Health Review Tribunal. In practice, such an application may be made following concerns raised by a member of the public to a doctor or mental health practitioner.

²⁹ See, for example: *VA6Q6J and Sunshine Coast Hospital and Health Service* [2015] QICmr 18 (14 August 2015); *E9IH9N and Metro South Hospital and Health Service* [2016] QICmr 18 (27 May 2016) (**E9IH9N**) and *B7TG4G and Gold Coast Hospital and Health Service* [2015] QICmr 11 (1 May 2015) (**B7TG4G**). These decisions were made with respect to the similar provisions of the now repealed *Mental Health Act 2000* (Qld) and what was previously known as a Justices Examination Order, which also served to allow the assessment of individuals suspected of having a mental illness.

³⁰ *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) (**SQD**) at [17]; see also *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)* (1996) 3 QAR 393 at [21]. As above, these decisions were made with respect to the similar provisions of the now repealed *Mental Health Act 2000* (Qld).

information to mental health authorities. I also consider that the quality of the information provided by individuals may be impacted if they are not able to provide full and frank information to mental health services without concern as to the negative consequences resulting from the subject of their concern receiving the information.

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

Exceptions

20. In evaluating whether the Examination Authority Information is subject to the exemption outlined above, I have considered the exceptions outlined in schedule 3, section 10(2) of the RTI Act, in line with *Commissioner of the Police Service v Shelton & Anor.*³¹ Her Honour Chief Justice Holmes held that:³²

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

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

Applicant submissions

22. The applicant has made submissions in support of disclosure of the Examination Authority Information. In summary, the applicant contends that:
- he sought this information to assist him in an appeal to the Workcover Regulator
 - the information provided in the Examination Authority application was false; and
 - he wants to know the names of the people who caused himself and his family great distress (by making the Examination Authority application).³³
23. I have carefully considered the applicant's submissions. I do not consider the applicant's submissions have any impact on requirement (c) – prejudice to a system or procedure. The prejudice I have described above relates to the system as a whole and not to an individual case. I am satisfied that the applicant's contentions regarding the accuracy of the information in the Examination Authority application do not negate the prejudice to the system I have explained above that is reasonably expected to result from disclosure of the Examination Authority Information.
24. While the applicant's reasons for seeking the Examination Authority Information are understandable and raise public interest considerations, I cannot take these submissions into account. There is no scope for me to consider public interest arguments once I am satisfied that the information qualifies as exempt information. This is because Parliament has decided that it would always be contrary to the public interest to disclose this type of information.³⁴ While I acknowledge that the applicant is greatly distressed by the circumstances and events relating to the Examination Authority, I do not have the power

³¹ [2020] QCA 96 (*Shelton*).

³² *Shelton* at [47] per Holmes CJ.

³³ By email on 4 December 2019, 10 February 2020, 11 February 2020 and 5 March 2020.

³⁴ Section 48(2) of the RTI Act.

to direct that access be given to this information³⁵ where I am satisfied that it comprises exempt information.

Conclusion

25. Having regard to all the matters outlined above, I am satisfied that the Examination Authority Information comprises exempt information as it meets each of the requirements of schedule 3, section 10(1)(i) of the RTI Act and does not consist of any information specified in schedule 3, section 10(2) of the RTI Act.³⁶ Accordingly, I find that access to the Examination Authority Information may be refused.³⁷

Contrary to the public interest information

Relevant law

26. Access to information may also be refused if its disclosure would, on balance, be contrary to the public interest.³⁸ The term '*public interest*' is not defined in the legislation, but is widely accepted to refer to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens.³⁹ A public interest consideration is generally common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.⁴⁰
27. In deciding where the balance of the public interest lies, a decision-maker is required to take specific steps⁴¹ and consider relevant factors for and against disclosure.⁴² I have set out below my assessment of, and findings in relation to, the public interest factors which I consider are relevant in this case.⁴³

Findings

Factors favouring disclosure

28. The Third Party Information is mostly intertwined with the applicant's own personal information. It records the observations and opinions of third parties in relation to the applicant and is provided for the purpose of assisting in the applicant's medical assessment, care and treatment. This gives rise to a factor in favour of disclosure of the applicant's own personal information.⁴⁴ I consider that given the context in which it appears, that is the applicant's own medical records, this particular factor in favour of disclosure is deserving of significant weight.
29. However, I also note that the segments of the applicant's personal information are intertwined with the personal information of other individuals. Having carefully considered these segments, I am satisfied that they are intertwined with the personal information of others to such an extent that they cannot be disclosed without also disclosing the personal information of others. Given this position, the mechanism in section 90 of the IP Act, which enables the deletion of contrary to public interest

³⁵ Section 118(2) of the IP Act.

³⁶ *Shelton* at [47] per Holmes CJ.

³⁷ Section 67(1) of the IP Act.

³⁸ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

³⁹ Chris Wheeler, '*The Public Interest: We Know It's Important, But Do We Know What It Means*' (2006) 48 AIAL Forum 12, 14.

⁴⁰ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁴¹ Section 49(3) of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

⁴² Including the non-exhaustive list of factors in schedule 4 of the RTI Act.

⁴³ No irrelevant factors arise in the circumstances of this case. I have however, taken into account the pro-disclosure bias in section 64 of the IP Act.

⁴⁴ Schedule 4, part 2, item 7 of the RTI Act.

information, including the personal information of other individuals, cannot be used to afford the applicant access to his own personal information. Rather, the factor favouring disclosure of an applicant's personal information, and the harm factor and privacy factor favouring nondisclosure considered below, all apply to the segments of the applicant's personal information, and these factors must be considered, along with other relevant factors, in the balancing process regarding those segments.

30. I acknowledge that disclosure of the Third Party Information would enhance the accountability and transparency of the Health Service. This gives rise to a number of factors favouring disclosure.⁴⁵ However, I consider that the weight of these factors is reduced by the volume and nature of the information that has already been released to the applicant by the Health Service. I also note that the Third Party Information provides minimal, if any, information about the Health Service's actions and decision-making processes and is limited to the information that is about or provided by third parties. On that basis, I consider that these factors each carry low weight in favour of disclosure of the Third Party Information to the applicant.
31. The applicant also submitted that the Examination Authority was taken out based on false information. If the Third Party Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant, this will give rise to a further factor favouring disclosure.⁴⁶ I have carefully considered the applicant's submissions, and I acknowledge that his views differ from those of other individuals involved in obtaining the Examination Authority. Having considered the Third Party Information, it is clear that the recorded information is the opinions, observations and views of other individuals. While the applicant may dispute the accuracy of this information, there is no objective evidence before me to suggest that this information was in fact incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. While I am prevented from revealing the Third Party Information,⁴⁷ I have considered the application of this particular nondisclosure factor, and I am not satisfied that it applies in the circumstances.
32. The applicant has submitted he requires the refused information, including the Third Party Information, to assist with his appeal to the Workcover Regulator. He advised that '*WorkCover Queensland based their whole assessment on these records*' which he says was verbally advised to him by a review officer.⁴⁸ The applicant has not provided any evidence to OIC during the external review to support his assertion that the Third Party Information will assist him in his appeal, including, for example, copies of the correspondence from WorkCover Queensland to him regarding their decision and their reasons. However, given his submission, I have considered whether disclosing the Third Party Information could reasonably be expected to contribute to the administration of justice for a person⁴⁹— for example, by allowing a person to access information that may assist them in legal proceedings. In determining whether this public interest factor in favour of disclosure applies, I must consider whether:⁵⁰
 - 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.

⁴⁵ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 12 of the RTI Act.

⁴⁷ Section 121(3) of the IP Act.

⁴⁸ Email received on 10 February 2020.

⁴⁹ Schedule 4, part 2, item 17 of the RTI Act.

⁵⁰ *Willford and Brisbane City Council* (1996) 3 QAR 368 at [17]. See also *1OS3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

33. I have carefully considered all material before me, including the applicant's submissions and the Third Party Information itself. The applicant's submissions arguably suggest he has suffered a legal loss in relation to his Workcover claim, although he has not provided any material to support this assertion. In order for this disclosure factor to apply, the Third Party information itself must comprise some information that would be reasonably expected to contribute to a legal remedy for the applicant, or assist the applicant in pursuing any remedy or evaluating whether a remedy is available or worth pursuing. Given the specific nature of the Third Party Information I am not satisfied it has any bearing on his Workcover claim, nor would provide any assistance in an appeal to the Workers' Compensation Regulator. Accordingly, and in the absence of supporting evidence from the applicant, I afford this factor only minor weight in the circumstances.
34. The applicant also submitted that he held safety concerns and a belief that private individuals have taken certain action to silence him. The applicant has raised corruption in the context of the conduct of these private individuals. The RTI Act recognises that the public interest will favour disclosure of information that would allow inquiry into the conduct of an agency or official,⁵¹ advance the fair treatment of individuals in their dealings with agencies,⁵² reveal an agency or official has engaged in misconduct⁵³ and reveal measures relating to public health and safety.⁵⁴ However, these provisions are aimed at protecting individuals from corrupt or unfair treatment by the *government*. I consider that these factors do not apply in the circumstances of this case.
35. I have carefully considered all other factors listed in schedule 4, part 2 of the RTI Act, and have not identified any public interest considerations telling in favour of disclosure of the Third Party Information,⁵⁵ beyond those identified above.

Factors favouring nondisclosure

36. As part of the public interest balancing test,⁵⁶ I have also evaluated the factors favouring nondisclosure that arise in the circumstances. The Third Party Information largely contains the personal information of other individuals, both solely and intertwined with the personal information of the applicant. The Third Party Information is sensitive in nature, provided in the context of health concerns about the applicant. This gives rise to two factors favouring nondisclosure relating to protecting the personal information⁵⁷ and safeguarding the right to privacy of those individuals.⁵⁸ I am satisfied that if the Third Party Information were disclosed, the public interest harm and prejudice that would arise would be significant. I afford significant weight to each of these nondisclosure factors.
37. I have also considered whether disclosure of the Third Party Information could reasonably be expected to prejudice the health service's ability to obtain confidential information relevant to the treatment of its patients.⁵⁹ I am satisfied that people who provide information to healthcare professionals, particularly in the mental health context,

⁵¹ Schedule 4, part 2, item 5 of the RTI Act.

⁵² Schedule 4, part 2, item 10 of the RTI Act.

⁵³ Schedule 4, part 2, item 6 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 14 of the RTI Act.

⁵⁵ Having carefully considered all factors favouring disclosure listed in schedule 4, part 2 of the RTI Act, I can identify no other relevant public interest considerations telling in favour of disclosure. Taking into consideration the nature of the information remaining in issue in the Third Party Information I cannot see how its disclosure could, for example, ensure effective oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); advance the fair treatment of the applicant in future dealings with agencies (schedule 4, part 2, item 10 of the RTI Act) or contribute to the maintenance of peace and order (schedule 4, part 2, item 15).

⁵⁶ Section 49(3) of the RTI Act.

⁵⁷ Schedule 4, part 4, section 6 of the RTI Act.

⁵⁸ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁹ Schedule 4, part 3, item 16 of the RTI Act.

do so with an expectation of confidentiality. Even in circumstances where the applicant disputes the veracity of the information provided, as in this matter, disclosure could reasonably be expected to discourage other individuals from coming forward with confidential information in similar circumstances in the future. Consequently, I consider that a public interest harm is also reasonably expected to result from disclosure of the Third Party Information⁶⁰ in addition to the prejudice to the agency's ability to obtain confidential information. Given the importance of healthcare professionals obtaining information from the community in order to make informed assessments and provide appropriate care to individuals, I afford each of these nondisclosure factors high weight.

38. I have also considered the prejudice reasonably expected to result from disclosure of the Third Party Information, to the effectiveness of the public mental health system and Examination Authority process.⁶¹ This process continues the framework provided by the previous Justices Examination Order (**JEO**) process,⁶² to manage mental health issues in the community, and to provide a clear system by which individuals with concerns about the mental health of another person can raise those concerns with the appropriate health authorities. I consider that disclosure of the Third Party Information could reasonably be expected to deter individuals from openly communicating with authorities as part of this process. As an Examination Authority is part of a system protecting the community and public safety, I am satisfied this factor applies to the Third Party Information and afford it high weight in the circumstances.⁶³

Balancing the factors

39. In determining the balance of the public interest in this case, I acknowledge the pro-disclosure bias contained in section 58 of the IP Act. I have also attributed significant weight in favour of the public interest in the applicant accessing his own medical record. I have also attributed some minor weight in the public interest factors relevant to the Health Service being accountable and transparent and the applicant accessing information that may potentially assist him evaluate whether he has a legal remedy available to him.
40. On the other hand, I have attributed substantial and high weight to the factors favouring nondisclosure that seek to protect the personal information and privacy of third parties. I have also attributed high weight to the nondisclosure and public interest harm factors relating to the Health Service's ability to obtain confidential information, and prejudice to public safety, if the Third Party Information is disclosed.
41. On balance, the significant weight I have attributed to the factors favouring nondisclosure, including the identified public interest harm factors, outweigh the weight attributed to the factors in favour of disclosure. Accordingly, I am satisfied that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁶⁴

DECISION

42. For the reasons set out above, I vary the Health Service's decision dated 27 November 2019 and find that:

⁶⁰ Schedule 4, part 4, section 8(1) of the RTI Act; see *B7TG4G* at [35]-[37].

⁶¹ Schedule 4, part 3, item 7 of the RTI Act.

⁶² See *SQD*; *E9IH9N*; and *B7TG4G* which dealt with the previous JEO system.

⁶³ Schedule 4, part 3, item 7 of the RTI Act.

⁶⁴ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

- access to the Examination Authority Information may be refused as disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment;⁶⁵ and
 - access to the Third Party Information may be refused on the basis that disclosure would, on balance, be contrary to the public interest.⁶⁶
43. 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: 22 May 2020

⁶⁵ 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.

⁶⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
24 October 2019	The Health Service received the access application.
27 November 2019	The Health Service issued its decision on the access application.
4 December 2019	OIC received the external review application.
6 December 2019	OIC requested procedural documents from the Health Service.
11 December 2019	OIC received the procedural documents from the Health Service.
23 December 2019	OIC requested the information in issue from the Health Service.
30 December 2019	OIC received the information in issue from the Health Service.
10 February 2020	OIC received an emailed submission from the applicant.
11 February 2020	OIC received three emailed submissions from the applicant.
4 March 2020	OIC issued a preliminary view to the applicant and invited him to make submissions.
5 March 2020	OIC received an emailed submission from the applicant.
20 April 2020	OIC conveyed a preliminary view to the Health Service.
27 April 2020	OIC received an emailed submission from the applicant.