



Decision and Reasons for Decision

Citation: *P4F8XC and Metro North Hospital and Health Service* [2018] QICmr 41 (8 October 2018)

Application Number: 313557

Applicant: P4F8XC

Respondent: Metro North Hospital and Health Service

Decision Date: 8 October 2018

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – an agency may refuse access to a document of an agency in the same way and to the same extent the agency could refuse access to the document under section 47 of the *Right to Information Act 2009* (Qld) were the document to be the subject of an access application under that Act – section 67(1) of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – REFUSAL OF ACCESS – HEALTHCARE INFORMATION – applicant sought access to a report about him by a mental health service – whether report comprises the applicant’s healthcare information – whether disclosure of the report might be prejudicial to the physical or mental health or wellbeing of the applicant – whether disclosure of the report is contrary to the applicant’s best interests’ under section 47(3)(d) and section 51 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant was referred to the Community Forensic Outreach Service (**CFOS**) for assessment of his mental health.¹ The applicant applied to the Metro North Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (**IP Act**) for access to the Mental Health Assessment Report (**Report**)² completed by CFOS following the assessment.

¹ The applicant was interviewed on 21 July 2017.

² Dated 7 August 2017.

2. The Health Service decided to refuse access to the Report³ on the ground its disclosure might be prejudicial to the mental health and wellbeing of the applicant under section 51 of the RTI Act.
3. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision.
4. Having considered the submissions made by the applicant and the Health Service, I am satisfied that the Report comprises the applicant's relevant healthcare information and that the prejudice to the applicant's physical or mental health or wellbeing from its disclosure is of real and tangible concern.
5. I affirm the decision of the Health Service. I find that access to the Report may be refused under section 67(1) of the IP Act and sections 47(3)(d) and 51 of the RTI Act.⁵

Background

6. Significant procedural steps taken during the external review are set out in the Appendix to this decision

Reviewable decision

7. The decision under review is the Health Service's decision dated 11 October 2017 refusing access to the Report.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons, including footnotes and Appendix.

Information in issue

9. The information in issue in this external review is the 18 page Report prepared by CFOS dated 7 August 2017 (**Information in Issue**).

Issue for determination

10. The sole issue for determination in this review is whether access to the Report may be refused under section 47(3)(d) of the RTI Act on the ground that its disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant under section 51 of the RTI Act.

Relevant law

11. Under the IP Act an applicant has a right to be given access to documents of an agency to the extent those documents contain the individual's personal information. However, this right is subject to other provisions of the IP and RTI Act, including the grounds on

³ Under section 47(3)(d) of the *Right to Information Act 2009* (Qld) (**RTI Act**), in conjunction with section 67(1) of the IP Act.

⁴ By undated application, received 23 October 2017

⁵ Copies of this decision are provided to the applicant in both English and in the applicant's first language, as were OIC's letters to the applicant dated 13 February 2018 and 16 July 2018, and the Health Service's Summary document dated 6 July 2018. The applicant provided submissions in his first language to OIC on 2 March 2018 and 30 July 2018. OIC obtained translations of these into English, and provided copies of the English translations to the applicant on 6 March 2018 and 6 August 2018 respectively.

which an agency may refuse access to documents.⁶ An agency may refuse access to a document under the RTI Act if:⁷

- the decision to refuse access is made by an appropriately qualified healthcare professional appointed by the agency
- the information comprises the applicant's relevant healthcare information; and
- disclosing the information might be prejudicial to the physical or mental health or wellbeing of the applicant.

12. A *healthcare professional* is 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, including, relevantly:⁸

- a doctor, including a psychiatrist; or
- a psychologist.

13. *Appropriately qualified* means having the qualifications and experience appropriate to assess relevant healthcare information in a document.⁹

14. *Relevant healthcare information* is healthcare information given by a healthcare professional.¹⁰

15. Section 92 of the IP Act provides that, despite an agency refusing access to the healthcare information, the agency may direct that access to the information is to be given instead to an appropriately qualified healthcare professional nominated by the applicant and approved by the agency. The nominated and approved healthcare professional may decide whether or not to disclose all or part of the information to the applicant, as well as the way in which to disclose the information to the applicant.

16. Under section 118(1)(b) of the IP Act, the Information Commissioner has the power to decide any matter in relation to an access application that could have been decided by an agency. Accordingly, I have the power, as an authorised delegate of the Information Commissioner, to make the same decision that an appropriately qualified healthcare professional appointed by the Health Service could have made under section 47(3)(d) and section 51 of the RTI Act.

Submissions of the applicant

17. The applicant submitted¹¹ that he requires the Report in order to obtain appropriate treatment for his illness. The applicant provided OIC with a copy of a letter from his general practitioner, who I will refer to as Dr C.¹² In his letter, Dr C, states that the range of different conflicting diagnoses the applicant had received made management of the applicant's mental conditions very hard. The applicant considers that some or all of the diagnoses are not correct and/or are affected by a misunderstanding of his situation and use of language.¹³ The applicant also provided OIC with reports by Dr A and Dr B¹⁴, and

⁶ 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, were the document to be the subject of an access application under the RTI Act.

⁷ Section 50(5)(b) of the IP Act and sections 47(3)(d) and 51 of the RTI Act.

⁸ Schedule 5 of the IP Act.

⁹ Schedule 5 of the IP Act.

¹⁰ Schedule 5 of the IP Act.

¹¹ Undated external review application received by OIC on 23 October 2017.

¹² Dated 21 October 2017 and provided to OIC with the applicant's external review application on 23 October 2017.

¹³ Queensland Advocacy Incorporated letter to OIC on behalf of the applicant dated 2 March 2018.

¹⁴ From Consultant Psychiatrist, Dr A, dated 20 April 2016 and Clinical Psychologist, Dr B, dated 4 September 2017, provided to OIC with the applicant's submission on 2 March 2018.

a further letter from Dr C,¹⁵ all of which support the view that the applicant uses graphic terms in expressing himself in English which are consistent with the dramatic speech style of the applicant's first language. Dr C noted that the involuntary treatment order to which the applicant had been subject, had been revoked.¹⁶

18. The applicant submitted that he voluntarily agreed to the assessment on 21 July 2017 and that the assessors confirmed to him that he would be provided with a copy of the Report. In support, he provided OIC with a recording he made of the assessment interview on 21 July 2017. He submitted that he has been given access to information about other psychiatric assessments he has undergone and considers that doctors refusing him the Report is perpetuating a denial of information to which he is entitled.¹⁷ He contends that his whistleblowing led to loss of his job and later difficulties in his personal life, and refusing him the Report is done with the intention of discrediting him.¹⁸
19. The applicant contended¹⁹ he has been treated with racism, as the translation of the Summary provided by OIC incorrectly states that the applicant is of a nationality different from the applicant's actual nationality; and the copy of the '*Haig Report*' document the applicant provided to OIC is described in the translation as '*Hague Report*', when he has no association with that city, which is known for its war crimes tribunal.²⁰ He also submitted that the translation of the Summary incorrectly states he was subject to an involuntary treatment order in 2014; he stated he was subject to such orders in 2015 and 2017, and both were withdrawn.

Submissions of the Health Service

20. The Health Service provided OIC with the decision of Dr McMahon, A/Director Mental Health/Consultation Liaison,²¹ refusing access to the Report under section 51 of the RTI Act, and correspondence in support of the view that releasing the Report to the applicant would place him at risk of deterioration in his mental state, in the context of his existing mental illness.²² In the decision and supporting correspondence the A/Director Mental Health/Consultation Liaison, a psychiatrist, made observations about the risks to the applicant's mental health should the Report be disclosed. I cannot enunciate those observations in this decision as to do so could result in the type of harm foreshadowed by Dr McMahon.
21. Additionally, in support of its position that disclosure of the report would be prejudicial to the applicant's mental health, the Health Service provided OIC with a letter²³ and an email²⁴ from Dr Anderson, Forensic Psychiatrist, Queensland Forensic Mental Health Service. In his correspondence Dr Anderson noted that, "*regard had been given to cultural factors in [the applicant's] presentation and treatment, and that a comprehensive assessment and opinion had been done by Queensland Health transcultural Mental Health Service.*" Also, Dr Anderson opined that the two medical reports which the applicant provided to OIC²⁵ reinforced the view that disclosing the Report to the applicant

¹⁵ Letter from Dr C to OIC dated 30 July 2018, provided to OIC by the applicant on 30 July 2018.

¹⁶ Dr C's letter to OIC dated 30 July 2018. The applicant also provided OIC with the decision of the Mental Health Tribunal dated 8 January 2018 revoking his treatment authority.

¹⁷ Queensland Advocacy Incorporated letter to OIC dated 2 March 2018.

¹⁸ Applicant's submission dated 1 March 2018.

¹⁹ Provided to the applicant as an enclosure to OIC's letter dated 16 July 2018.

²⁰ In his letter to OIC dated 30 July 2018, Dr C states the applicant had provided him with the Summary and he found many translation problems with the translation of the Summary in the applicant's language, noting for example that the reference in the English version to '*Haig Report*' had been incorrectly translated as '*Haag Report*' in the translation into the applicant's language.

²¹ Dated 5 September 2017.

²² Email dated 22 January 2018.

²³ Dated 23 April 2018

²⁴ Dated 10 October 2017

²⁵ From Consultant Psychiatrist, Dr A, and Clinical Psychologist, Dr B, dated 4 September 2017.

would be prejudicial to the applicant's wellbeing. However, Dr Anderson did offer to prepare a summary of the Report (**Summary**) for the applicant.

22. OIC provided a copy of the Summary²⁶ to the applicant.²⁷ The Summary contains information about the reasons for the applicant's assessment on 21 July 2017, his background, psychiatric history, presentation at interview and the doctors' opinion and recommendations based on their assessment. Parts of the Summary refer to and summarise a subsequent report by CFOS (**Later Report**),²⁸ prepared following the applicant's further interview with CFOS²⁹ during his hospital admission in November 2017. The Summary states that the authors of the Later Report discussed the recommendations listed in the Later Report with the applicant's treating psychiatrist.³⁰
23. The Health Service also submitted that, having refused access to the Report under section 47(3)(d) of the RTI Act, it considered that providing the applicant with access to the Report by directing that it be given to an appropriately qualified healthcare professional nominated by the applicant in accordance with section 92 of the IP Act would have the same adverse impact on the applicant's mental health as releasing a copy of the Report to the applicant directly.³¹

Findings

Was the decision to refuse access made by an appropriately qualified healthcare professional appointed by the agency?

24. Yes. Dr McMahon is a psychiatrist holding a delegation under section 30(5)(b) of the RTI Act and section 50(5)(b) of the IP Act to make healthcare decisions as set out in sections 30(6)(a)-(c) of the RTI and 50(6)(a)-(e) of the IP Act.³² On this basis, I am satisfied that the decision refusing access to the Report was made by an appropriately qualified healthcare professional appointed by the Health Service.

Does the Report comprise the applicant's relevant healthcare information?

25. Yes. Under the IP Act, *relevant healthcare information* is healthcare information given by a healthcare professional.³³ The Report contains information about the applicant's mental state and was prepared by a psychiatrist and a psychologist. Accordingly, I am satisfied that this element is established.

Might disclosing the Report prejudice the applicant's physical or mental health or wellbeing?

26. Yes.
27. In this context, the prejudice must be real and tangible as opposed to a fanciful, remote or far-fetched possibility.³⁴

²⁶ Dated 6 July 2018.

²⁷ Enclosed with OIC's letter to the applicant dated 16 July 2018.

²⁸ Report dated 22 December 2017.

²⁹ The Health Service's letter to OIC dated 9 July 2018 states this interview took place on 15 November 2017.

³⁰ On 15 November 2017.

³¹ Letter dated 31 January 2018.

³² Health Service decision dated 11 October 2017.

³³ As noted above at paragraph [12], the definition of *healthcare professional* in schedule 5 of the IP Act includes psychiatrists and psychologists.

³⁴ 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 section 44(3) of the repealed *Freedom of Information Act 1992* (FOI Act). Section 51(2) of the RTI Act is

28. I have carefully examined the submissions provided by the applicant (including the letters and reports of Drs A, B and C) and the Health Service, and the Summary and the Report. I acknowledge the applicant's concern that the Summary contains inaccurate information.³⁵ The Summary, in English, refers to a 'Haig Report'. I am aware of The Haig Report to which the Summary refers. It is known as a website, "*which attacks a host of Queensland judges, policemen, prosecutors, priests and government officials*".³⁶ The translated version of the Summary refers to "*Haškog izvješća*" and "*Haškim Izvješćem*" which translate to 'The Hague Report'. This would appear to be nothing more than an inadvertent slip on the part of the translator. I have not read the English version of the Summary as referring to the Netherlands city named '*The Hague*' or the war crimes tribunal based in that city. In relation to the other matter in the Summary which the applicant submitted is inaccurate, I consider that, even if inaccurate, it was not a significant or determinative factor in the conclusions reached by the Report authors, nor in the A/Director Mental Health/Consultation Liaison's view about the risk to the applicant of disclosing the Report. On this basis, I am satisfied that, in assessing whether disclosing the Report might result in the anticipated prejudice to the applicant, I may take both the Report and the A/Director Mental Health/Consultation Liaison's view into consideration, along with other relevant evidence.
29. I have carefully reviewed the applicant's recording of the assessment interview on 21 July 2017. While the recorded conversation refers to a report being written, and to the interviewer's intention to talk with the applicant's doctor after the assessment, I cannot identify an undertaking to provide the applicant with a copy of the Report. In any event, even if such an undertaking had been given, I consider that I must give greater weight to the opinion expressed by Drs McMahon and Anderson in relation to the prejudice of disclosure to the mental health of the applicant.
30. I have reviewed the opinions of Dr A and Dr B. Both Dr A and Dr B examined the applicant in the applicant's language. Dr A, a Consultant Psychiatrist, reported at length on the applicant's mental state and circumstances. I note that while Drs A and B differ in diagnosis from that of the Health Service's treating psychiatrist and psychologist, they nonetheless conclude that the applicant has mental illness.
31. I acknowledge the applicant's assertions that language difficulties may have led to him being misunderstood by the Health Service. However, I note that CFOS had regard to cultural factors including linguistic style in the applicant's presentation and treatment and still concluded that disclosure of the report would prejudice the applicant's mental health or wellbeing.³⁷
32. Based on the considerations above, I am satisfied that there is sufficient evidence before OIC supporting the view that disclosing the Report might prejudice the applicant's physical or mental health or wellbeing, and I am satisfied that the risk to the applicant is real and tangible.
33. I turn now to whether I should exercise the discretion contained in section 92 of the IP Act. CFOS discussed with the applicant's psychiatrist the recommendations from the

the equivalent provision to section 44(3) of the repealed FOI Act. As this section also contains the phrase "might be prejudicial", this interpretation remains relevant.

³⁵ I note that it is open to the applicant to apply under the IP Act for amendment of inaccurate personal information. By letter dated 6 August 2018 OIC provided the applicant with OIC's information sheet about making an amendment application under the IP Act.

³⁶ "Republishing Slurs Could Be Expensive", Media Watch, 11 July 2018 at 1:52pm <<http://www.abc.net.au/mediawatch/episodes/republishing-slurs-could-be-expensive/9980802>>

³⁷ Letter to OIC dated 23 April 2018 from the Forensic Psychiatrist, Queensland Forensic Mental Health Service.

Later Report.³⁸ The applicant's general practitioner, Dr C, has a copy of the Summary,³⁹ which contains CFOS's opinion on the nature of the applicant's mental illness and CFOS's treatment recommendations. I consider it reasonable to expect that the applicant's psychiatrist and general practitioner, should they consider it appropriate, are able to confer about the information in the Summary and the Later Report.

34. In the circumstances noted above, I have formed the view that the Health Service has considered the applicant's treatment needs carefully. The Health Service provided the applicant with the Summary after considering the reports of Dr A and Dr B. I am not aware of any view on the part of the Health Service that disclosing further information to the applicant's doctors would be therapeutic for the applicant. Accordingly, I decline to exercise the discretion contained in section 92 of the IP Act.

DECISION

35. I am satisfied that the Report comprises the applicant's relevant healthcare information and that its disclosure would, on balance, be contrary to the public interest because it might be prejudicial to the physical or mental health or wellbeing of the applicant.
36. I therefore affirm the decision of the Health Service and find that access to the Report may be refused under section 67(1) of the IP Act and sections 47(3)(d) and 51 of the RTI Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 8 October 2018

³⁸ The fifth page of the Summary notes this discussion took place on 15 November 2017.

³⁹ Letter from Dr C to OIC dated 30 July 2018.

APPENDIX

Significant procedural steps

Date	Event
23 October 2017	The applicant applied to OIC for external review of the Health Service's decision.
25 October 2017	OIC notified the applicant and the Health Service that it had received the application for external review and asked the Health Service to provide relevant procedural documents by 1 November 2017.
26 October 2017	The Health Service provided OIC with relevant procedural documents.
31 October 2017	OIC notified the applicant and the Health Service that the external review application had been accepted. OIC asked the Health Service to provide a copy of the documents considered in its decision, together with a submission setting out the delegated healthcare professional's reasons for deciding that access should be refused under section 47(3)(d) of the RTI Act by 14 November 2017.
10 November 2017	OIC received the Report and submission from the Health Service.
3 January 2018	OIC asked the Health Service to provide a copy of the decision of the Health Service's delegated health professional outlining the reasons for refusing access to the Report.
9 January 2018	The Health Service provided the requested decision.
11 January 2018	The applicant asked OIC to arrange translation services for OIC's correspondence with the applicant.
19 January 2018	OIC asked the Health Service to provide clarification of the delegated health professional's decision refusing access to the Report. The Health Service provided OIC with a copy of processing notes made by its RTI Unit. OIC asked the Health Service to provide a submission indicating whether the delegated health professional was agreeable to releasing the Report to a health professional nominated by the applicant.
22 January 2018	The Health Service provided correspondence from the delegated health professional further detailing the reasons for refusing access to the Report.
25 January 2018	OIC asked the Health Service to provide confirmation that the Health Service's delegated health professional had made a healthcare decision to refuse the applicant access to the Report and that the Health Service had not directed that access to the Report be given to a health professional nominated by the applicant.
30 January 2018	OIC informed the applicant that translation services would be provided for correspondence with him.
31 January 2018	OIC received the requested confirmation from the Health Service.

Date	Event
13 February 2018	OIC conveyed to the applicant its preliminary view that access to the Report maybe refused under section 47(3)(d) of the RTI Act. OIC invited the applicant to provide submissions supporting his case if he did not accept the preliminary view.
2 March 2018	The applicant provided OIC with his submission and supporting documents including the medical reports of Doctor A and Doctor B.
14 March 2018	The applicant provided OIC with a recording of his assessment interview on 21 July 2017.
10 April 2018	OIC provided the Health Service with the medical reports of Doctor A and Doctor B and requested its further submission.
2 May 2018	The Health Service provided OIC with the requested further submission and offered to provide the Summary to the applicant.
1 June 2018	OIC asked the Health Service to provide OIC with the Summary by 15 June 2018.
13 June 2018	The Health Service sought and OIC granted an extension of time until 6 July 2018 for the Health Service to provide the Summary to OIC.
18 June 2018	OIC received further submissions from the applicant.
9 July 2018	OIC received the Summary and correspondence by the Report authors from the Health Service.
16 July 2018	OIC provided the Summary to the applicant and conveyed its reiterated view that access to the Report may be refused. OIC invited the applicant to provide submissions supporting his case if he did not accept the reiterated view.
30 July 2018	OIC received submissions and supporting documents from the applicant.