



## Decision and Reasons for Decision

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Citation:	<i>P88 and Gold Coast Hospital and Health Service</i> [2024] QICmr 57 (30 October 2024)
Application Number:	317300
Applicant:	P88
Respondent:	Gold Coast Hospital and Health Service
Decision Date:	30 October 2024
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - where the applicant seeks access to documents about her healthcare - personal information and privacy of third parties - 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> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - applicant submits agency has failed to locate all records - whether agency has taken all reasonable steps to locate documents relevant to access application - whether access to further documents may be refused - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DELETION OF IRRELEVANT INFORMATION - whether document will disclose to the applicant information which is not relevant - whether information may be deleted - section 88(2) of the <i>Information Privacy Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> under the *Information Privacy Act 2009* (Qld) (**IP Act**) to the Gold Coast Hospital and Health Service (**GCHHS**) to access documents regarding her healthcare.
2. GCHHS granted access to 174 pages, and five photographs in response to this application.<sup>2</sup>

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<sup>1</sup> Applicant email dated 24 March 2023.

<sup>2</sup> Decision dated 3 May 2023.

3. The applicant applied to the Information Commissioner for review of the decision.<sup>3</sup>
4. Throughout the course of the external review a further four audio recordings and 272 pages (**Additional Documents**) were located and released to the applicant, subject to the refusal and deletion of certain information. Following the release of the Additional Documents, the applicant advised that she does not agree to resolve the review and remains concerned about further information she considers is missing.<sup>4</sup>
5. For the reasons set out below, I vary the decision under review and find that:
  - access to certain information in the Additional Documents may be refused on the ground that its disclosure would, on balance, be contrary to the public interest
  - any further internal Patient Liaison records are nonexistent or unlocatable, and therefore access to these documents may be refused; and
  - certain information is not relevant to the access application.

## Background

6. Significant procedural steps relating to this review are set out in the Appendix. The evidence, submissions,<sup>5</sup> legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>6</sup> particularly the right to seek and receive information.<sup>7</sup> 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**).<sup>8</sup> 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 of Bell J on the interaction between equivalent Victorian legislation,<sup>9</sup> that '*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*'.<sup>10</sup>

## Reviewable decision

8. The decision under review is GCHHS's decision dated 3 May 2023.

## Information in issue

9. The remaining refused or deleted information appears on parts of 212 pages of the Additional Documents, comprised of Patient Liaison records (**Information in Issue**). The Information in Issue can be described as:

<sup>3</sup> Application dated 10 May 2023.

<sup>4</sup> Applicant emails dated 20 September 2024, 23 September 2024, 24 September 2024, 10 October 2024 and 21 October 2024.

<sup>5</sup> On 13 September 2024, the applicant advised in a telephone conversation that in respect to the refused or deleted information, she does not agree to resolve the review. On 10 October 2024 and 21 October 2024, the applicant indicated that some information may be missing from the Additional Documents.

<sup>6</sup> Relevant provisions of which commenced on 1 January 2020.

<sup>7</sup> Section 21(2) of the HR Act.

<sup>8</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>9</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>10</sup> *XYZ* at [573]. This approach, in the context of the IP Act and RTI Act, was endorsed by McGill J in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious* [of the right to seek and receive information] *and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

Category 1: Direct email addresses and mobile phone numbers of public sector employees<sup>11</sup>

Category 2: The name of a private individual;<sup>12</sup> and

Category 3: Names of public sector employees who administratively converted emails to PDF files.<sup>13</sup>

## Issues for determination

10. The applicant initially sought external review regarding the sufficiency of GCHHS's searches. Many of the issues raised by the applicant at the outset of this review have been resolved informally over the course of the review, and as such, are not dealt with in these reasons for decision.
11. Throughout the course of the review, the Information Commissioner directed that GCHHS undertake further searches to identify responsive documents. As a result of these further searches, GCHHS located and released the Additional Documents to the applicant,<sup>14</sup> subject to the redaction of the Information in Issue. Following the release of the Additional Documents, the applicant maintains concerned about missing information.<sup>15</sup>
12. As such, the remaining issues for determination are:
  - whether access to Category 1 and 2 information may be refused under the IP Act on the basis that disclosure would, on balance, be contrary to the public interest<sup>16</sup>
  - whether access to any further internal Patient Liaison documents may be refused on the basis that they do not exist or are unlocatable;<sup>17</sup> and
  - whether the Category 3 information is irrelevant to the application.<sup>18</sup>

## Contrary to the public interest

### Relevant law

13. An individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information, subject to the other provisions of the IP Act.<sup>19</sup> Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.<sup>20</sup>

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<sup>11</sup> Appearing on the following pages of the Additional Documents: 8, 11-25, 27-42, 45-49, 51-57, 59-81, 84-93, 95-112, 115-120, 123-129, 131-151, 155-156, 159-160, 163-172, 175-178, 185-186, 189-190, 192-194, 196-197, 204-205, 207-208, 212-221, 223-224, 227, 232-233, 237, 241, 244, 249, 253-254, 258-259 and 262-268.

<sup>12</sup> Appearing on the following pages of the Additional Documents: 239, 242, 245, 250 and 256.

<sup>13</sup> Appearing on the following pages of the Additional Documents: 8, 11, 12, 16, 21, 27, 32, 37, 45, 50, 57, 64, 71, 76, 81, 84, 92, 101, 110-111, 115, 123, 130, 137, 145, 155-156, 159, 163, 166, 169, 175, 179, 181, 183, 185, 189, 192, 196, 197, 199-200, 202, 204, 207, 210, 211-212, 217, 223, 227-228, 231-232, 235-237, 239, 241, 243, 247, 252, 253, 258-259 and 262.

<sup>14</sup> On 17 April 2024, the applicant confirmed that she had received the first release of Additional Documents. The Australia Post Tracking information reflects that the parcel containing the second release of Additional Documents was collected on 13 August 2024. The applicant confirmed in her email dated 9 October 2024 that she received the third release of Additional Documents on 4 October 2024.

<sup>15</sup> Applicant emails dated 20 September 2024, 23 September 2024, 24 September 2024, 10 October 2024 and 21 October 2024.

<sup>16</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

<sup>17</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and section 52(1) of the RTI Act.

<sup>18</sup> Section 88(2) of the IP Act.

<sup>19</sup> Section 40(1)(a) of the IP Act.

<sup>20</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act. 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.

14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:<sup>21</sup>
  - identify and disregard any irrelevant factors
  - identify any factors favouring disclosure
  - identify any factors favouring nondisclosure; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.
15. Schedule 4 of the RTI Act sets out a non-exhaustive list of factors that may be relevant in determining where the balance of the public interest lies in a particular case.
16. It is Parliament's intention that the IP Act be administered with a pro-disclosure bias<sup>22</sup> and the grounds for refusing access to information are to be interpreted narrowly.<sup>23</sup>

## ***Findings***

### **Category 1 – Direct email addresses and mobile phone numbers of public sector employees**

#### ***Irrelevant factors***

17. No irrelevant factors arise in the circumstances, and I have not taken any into account.

#### ***Factors favouring disclosure***

18. The RTI Act recognises the public interest in the disclosure of information which will enhance the Government's accountability, inform the community about the Government's operations and reveal reasons for a government decision and any background or contextual information that informed a decision.<sup>24</sup> I recognise that the disclosure of the Information in Issue would advance the Government's transparency and provide the applicant with a complete record of the internal documents held by the Patient Liaison unit.
19. However, the substance of the documents has been released to the applicant, including information that demonstrates the steps taken in responding to the applicant's concerns and the identity and position of the sender or recipient of the emails. As this largely discharges the public interest regarding the Government's accountability and transparency, I do not consider the release of the Information in Issue would further this public interest in any meaningful way. Accordingly, I afford these factors low weight.
20. Given concerns raised by the applicant throughout the external review,<sup>25</sup> I have also considered whether disclosure of the Information in Issue could reasonably be expected to:
  - allow or assist inquiry into possible deficiencies in agency conduct<sup>26</sup>

<sup>21</sup> Section 49(3) of the RTI Act.

<sup>22</sup> Section 64 of the IP Act. Though I note the Information Commissioner does not have any discretion to direct access be given to documents that are established to be exempt or contrary to the public interest, in accordance with section 118(2) of the IP Act.

<sup>23</sup> Section 67(2) of the IP Act and section 47(2) of the RTI Act.

<sup>24</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>25</sup> Applicant emails dated 11 January 2024 and 23 January 2024 and telephone conversations on 25 July 2023, 19 September 2023, 16 October 2023, 17 October 2023, 3 November 2023, 19 December 2023, 9 January 2024, 14 February 2024, 21 March 2024 and 5 September 2024.

<sup>26</sup> Schedule 4, part 2, item 5 of the RTI Act.

- reveal or substantiate that an agency or official has engaged in misconduct;<sup>27</sup> and
  - advance the fair treatment of individuals in accordance with the law in their dealings with agencies.<sup>28</sup>
21. The Category 1 Information in Issue is of a confined nature—that is, the direct email addresses and mobile numbers of public sector employees. Noting the information already released to the applicant (particularly the contents of the emails and the author's signature block), I do not consider that the refused information can assist inquiry into or reveal or substantiate any matters relating to possible deficiencies in agency conduct or advance the fair treatment of individuals in their dealings with agencies. For this reason, in the circumstances of this case, these factors favouring disclosure are not enlivened.
22. For the sake of completeness, I also note the public interest in allowing an individual access to their own personal information.<sup>29</sup> However, the applicant has been given access to any of her own personal information appearing within these records, and the Information in Issue does not comprise information that is about or identifies the applicant.<sup>30</sup> As such, this factor also does not arise.

### ***Factors favouring nondisclosure***

23. The Category 1 Information in Issue has been created in the context of GCHHS's Patient Liaison unit responding to concerns raised by the applicant about her healthcare. GCHHS has an established process and procedure for the receipt, assessment and handling of healthcare complaints. The public disclosure of the direct contact details of Patient Liaison employees could reasonably be expected to result in members of the public attempting to circumvent the established processes or procedures for complaint management (that is not to say it is the applicant's intention to do so). Such disclosure could in turn, reasonably prejudice the efficient management function of the Patient Liaison unit.
24. I consider there is a strong public interest in protecting the ability for the Patient Liaison unit to manage complaint processes effectively. With respect to the release of the direct contact details of public sector employees, I afford moderate weight to protecting the management functions from prejudice.<sup>31</sup>
25. Further, the disclosure of an individual's personal information to another person can reasonably be expected to cause a public interest harm<sup>32</sup> and a factor favouring nondisclosure will arise where the release of this information could prejudice the protection of an individual's right to privacy.<sup>33</sup> While the concept of privacy is not defined in the IP Act or the RTI Act, it may be viewed as the right of an individual to keep their personal sphere free from the interference of others.<sup>34</sup>

<sup>27</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>29</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>30</sup> Section 12 of the IP Act defines personal information 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 be reasonably ascertained, from the information or opinion.'

<sup>31</sup> Schedule 4, part 3, item 19 of the RTI Act.

<sup>32</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>33</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>34</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at [1.56]. The report is available at <[https://www.alrc.gov.au/wp-content/uploads/2019/08/108\\_vol1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf)>.

26. The Category 1 Information in Issue includes the direct contact details of GCHHS public sector employees, being their personal information. In ordinary circumstances, low weight is afforded to protecting a public sector employees' personal information and privacy in the context of their routine employment. However, I consider the context of this information—that is, that these emails addresses appear in the context of managing the applicant's complaint—mean these factors are deserving of some weight. Regarding the direct email addresses of public sector employees, I therefore afford these privacy and personal information factors favouring nondisclosure moderate weight.
27. I acknowledge that public sector employees are provided with mobile telephone numbers to perform work associated with their employment. However, a mobile telephone number allows an individual to be contacted directly and potentially outside of working hours.<sup>35</sup> For this reason, while I note that the information is employment related, I consider that the privacy interests attaching to mobile telephone numbers should be afforded moderate weight.

***Balancing Category 1 – Direct email addresses and mobile phone numbers of public sector employees***

28. In reaching my decision regarding the Category 1 Information in Issue, I have taken no irrelevant information into account, and given no weight to the factors relating to the release of an applicant's own personal information, allowing inquiry into or revealing any possible deficiencies in agency conduct, or advancing the fair treatment of individuals in their dealings with agencies.
29. In the circumstances of this case, I afford low weight to the public interest factors that seek to advance the Government's accountability and transparency regarding the Government's operations or reveal reasons for a decision.
30. On the other hand, the public interest in protecting the management functions of the Patient Liaison unit from prejudice is afforded moderate weight, as is safeguarding the privacy and personal information of public sector employees with respect to the mobile numbers and direct email addresses of public sector employees.
31. I am satisfied that the applicable factors favouring disclosure have largely been discharged by the information released by GCHHS, whereas the nondisclosure factors carry moderate weight. I consider the nondisclosure factors are determinative, and therefore, disclosure of the Category 1 Information in Issue would, on balance, be contrary to the public interest.

**Category 2: The name of private individual**

***Irrelevant factors***

32. No irrelevant factors arise in the circumstances, and I have not taken any into account.

***Factors favouring disclosure***

33. The Category 2 information is the name of a private individual, appearing within an email authored by the applicant and sent to GCHHS. For the same reasons discussed above regarding the Category 1 information, and noting the very limited nature of the

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<sup>35</sup> *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) (*Kiepe*) at [18]-[21].

Category 2 information, I afford very low weight to the factors favouring disclosure which seek to promote GCHHS's accountability and transparency.<sup>36</sup>

34. Given the Category 2 information appears within the applicant's own email (the substance of which has been released), I also find that disclosure of the Category 2 Information in Issue would not assist inquiry into or reveal information about any possible deficiencies in agency conduct, advance the fair treatment of individuals in their dealings with agencies or enable the applicant access to her personal information.<sup>37</sup> As such, these factors are not enlivened in this case.

### ***Factors favouring nondisclosure***

35. The Category 2 information comprises the personal information<sup>38</sup> of an individual other than the applicant. The context in which it arises is sensitive and relates to a complaint made by the applicant to GCHHS. This enlivens two factors favouring nondisclosure, where disclosure could reasonably be expected to prejudice an individual's right to privacy and cause a public interest harm by disclosing personal information of other individuals.<sup>39</sup>
36. I acknowledge that the information appears within the applicant's own email and is therefore known to the applicant. Even so, disclosure of information that identifies and is about another individual is recognised as resulting in a reasonable expectation of public interest harm.<sup>40</sup>
37. Privacy is not defined in the IP Act,<sup>41</sup> but is generally considered to be the right of one individual to preserve their personal sphere from interference from others.<sup>42</sup> The Category 2 information identifies another individual in the context of the applicant's complaint, which I consider to be inherently sensitive and falling within that person's private sphere.
38. As the Category 2 information is known to the applicant, the weight to be afforded to these factors is reduced. However, I consider the specific circumstances to be sufficiently sensitive that this fact does not entirely negate the public interest in nondisclosure. As such, I consider that there is moderate public interest in protecting their personal information and privacy from disclosure.

### ***Balancing Category 2 – The name of private individual***

39. I have taken no irrelevant information into account with respect to the Category 2 Information in Issue and do not consider the following factors favouring disclosure are enlivened:
  - release of the applicant's own personal information
  - allowing inquiry into possible deficiencies in agency conduct; or
  - advancing the fair treatment of individuals in their dealings with agencies.
40. In the circumstances described above, low weight is afforded to the factors favouring disclosure which seek to promote GCHHS's accountability and transparency.

<sup>36</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>37</sup> Schedule 4, part 2, items 5, 6, 7 and 10 of the RTI Act.

<sup>38</sup> Defined in section 12 of the IP Act.

<sup>39</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>40</sup> *Kelson v Queensland Police Service & Anor* [2019] QCATA 67 at [90]-[93] per Daubney J.

<sup>41</sup> Nor the RTI Act.

<sup>42</sup> *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22].

41. Weighing against these factors is the public interest in protecting an individual's personal information and privacy, which is afforded moderate weight. Overall, the factors favouring nondisclosure carry higher weight, and for this reason disclosure of the Category 2 Information in Issue would, on balance, be contrary to the public interest and access may be refused.

### Nonexistent or unlocatable information

42. During the external review, the applicant submitted to OIC that she considers the Additional Documents to be incomplete.<sup>43</sup>

### Relevant Law

43. The Information Commissioner's external review functions include investigating whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.<sup>44</sup> However, access may be refused in circumstances where a document is nonexistent or unlocatable.<sup>45</sup>
44. To be satisfied that a document is nonexistent or unlocatable, an agency must rely on their particular knowledge and experience and have regard to a number of key factors which include:<sup>46</sup>
- the administrative arrangements of government
  - the agency's structure
  - the agency's functions and responsibilities<sup>47</sup>
  - the agency's practices and procedures (including but not exclusive to its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
45. When proper consideration is given to the relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist or are unlocatable, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
46. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>48</sup> However, where an external review involves

<sup>43</sup> Applicant emails dated 20 September 2024, 23 September 2024, 24 September 2024, 10 October 2024 and 21 October 2024.

<sup>44</sup> Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require further searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 (*Webb*) at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

<sup>45</sup> Sections 47(3)(e) and 52(1) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act.

<sup>46</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38].

<sup>47</sup> Particularly the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

<sup>48</sup> Section 100(1) of the IP Act.



the issue of missing documents, once the agency has met this onus, a practical onus shifts to the applicant to establish reasonable grounds to believe that the agency has not located all relevant documents. Suspicion and mere assertion will not satisfy this onus.<sup>49</sup> In assessing an agency's searches, the relevant question is whether the agency has taken all *reasonable* steps to identify and locate responsive documents, as opposed to all *possible* steps.<sup>50</sup>

## Analysis

### Searches

47. Following OIC's request that GCHHS conduct additional searches to locate Patient Liaison records, GCHHS located 272 pages and 4 audio recordings. As set out above, this information has been released to the applicant, subject to the redaction or deletion of the Information in Issue outlined at paragraph 9.
48. Regarding the further searches conducted on external review, GCHHS provided submissions and supporting evidence of the following:<sup>51</sup>
  - searches were conducted of the Consumer Feedback Service (Patient Liaison) database where all case file documents for complaints or enquiries are stored
  - the employees who conducted searches are within the Consumer Feedback Service, and were overseen by the unit's Acting Manager
  - telephone conversations with the applicant were internally recorded in a triage and assessment form
  - the search terms used include the applicant's name, patient identification number and the applicant's former name; and
  - documents dated between 2014-2023 involving the applicant were identified within the database and provided to the applicant in the course of the review.
49. The applicant submits that *there may be more information... that has... not been included*<sup>52</sup> and maintains that GCHHS has not located all emails sent to and from her.<sup>53</sup>

### Email correspondence with applicant

50. In a telephone conversation between the applicant and OIC on 19 December 2023, the sufficiency of search issues were narrowed to internal records of the Patient Liaison unit. The confinement of the search parameters was confirmed in OIC's subsequent letters to the applicant on 21 December 2023 and 25 September 2024.
51. OIC requested<sup>54</sup> that GCHHS complete searches of the Patient Liaison unit to identify responsive documents – that is file notes of the applicant's calls, and other internal records about her contact with this unit, and evidence of the searches set out at paragraph 48 was provided. Subsequent to these further searches outlined above, the applicant identified that only *part* of an appointment list was included in the Additional Documents and she sought the entire appointment list.<sup>55</sup> In response to this issue, OIC

<sup>49</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

<sup>50</sup> *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) (**S55**) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

<sup>51</sup> GCHHS submissions dated 6 February 2024 and 8 May 2024.

<sup>52</sup> Applicant email dated 20 September 2024.

<sup>53</sup> Applicant emails dated 23 September 2024, 24 September 2024, 10 October 2024 and 21 October 2024.

<sup>54</sup> Letter to agency dated 21 December 2023.

<sup>55</sup> Applicant submission dated 24 September 2024.

requested that GCHHS locate and release the entire appointment list to the applicant.<sup>56</sup> Once the appointment list was received by the applicant,<sup>57</sup> the applicant did not raise any further concerns about this document.

52. OIC also conveyed a preliminary view<sup>58</sup> to the applicant that GCHHS had taken all reasonable steps to locate Patient Liaison records. The applicant was provided an opportunity to make a submission to OIC if she did not accept this preliminary view.<sup>59</sup>
53. In response, the applicant submitted that email correspondence to or from her was not located and requested an extension of time to conduct searches of her own email account for any missing emails between herself and GCHHS provide evidence to support her submission.<sup>60</sup> However, I did not grant the extension of time to provide these submissions because:<sup>61</sup>
  - the applicant's sufficiency of search concerns were narrowed on 19 December 2023 and any email correspondence to and from the applicant was excluded from further consideration in the review; and
  - I do not consider it an appropriate use of public resources to direct any further searches for emails the applicant already has.

## Findings

54. I have considered the searches conducted by the Patient Liaison unit, in light of the factors identified at paragraph 44. I note the information provided by GCHHS regarding the Patient Liaison unit's structure (including relevant staff who have knowledge of the types of communications raised by the applicant), recordkeeping practices and systems, the time period that the applicant contends communications occurred,<sup>62</sup> and the likely form of documents for such communications (that is, emails comprising communications and forwarding attachments, and internal file notes).
55. In these circumstances, given the evidence of searches conducted and the documents located, I am satisfied that relevant, appropriate staff of GCHHS undertook comprehensive and appropriately targeted searches of the Patient Liaison unit document management system for responsive information. I am satisfied that the located documents comprise the requested type of information—that is, internal documents of the Patient Liaison unit regarding the applicant—indicating that the correct locations were searched. I am unable to identify any information in the Additional Documents which suggests that more documents comprising or recording information of this kind should exist but has not been located by GCHHS. While I have considered the submissions provided by the applicant, these are mere assertions<sup>63</sup> which do not give rise to any further lines of enquiries or searches that could reasonably be requested.<sup>64</sup>
56. Accordingly, I am satisfied that:
  - GCHHS has taken all reasonable steps to identify internal Patient Liaison unit records relating to the applicant; and

<sup>56</sup> Email to agency dated 24 September 2024.

<sup>57</sup> On 4 October 2024.

<sup>58</sup> Letter dated 25 September 2024.

<sup>59</sup> And the applicant's responses have been taken into account when making this decision.

<sup>60</sup> Applicant emails dated 10 October 2024 and 21 October 2024.

<sup>61</sup> Email to applicant dated 11 October 2024.

<sup>62</sup> Telephone conversation with the applicant on 23 January 2024 identified communications between 2018 to 2023.

<sup>63</sup> Applicant emails dated 20 September 2024, 23 September 2024, 24 September 2024, 10 October 2024 and 21 October 2024

<sup>64</sup> S55 at [23] and Webb at [6].

- access to any further internal Patient Liaison documents may be refused on the basis that they are nonexistent or unlocatable.<sup>65</sup>

## Irrelevant information

### ***Category 3: Names of public sector employees who administratively converted emails to PDF files***

#### **Relevant Law**

57. The IP Act permits an agency to delete information that the agency reasonably considers is not relevant to the access application before giving access to a copy of a document.<sup>66</sup> This is not a ground for refusal of access, but a mechanism which allows irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the application.<sup>67</sup>

#### **Findings**

58. At the top of each email within the Patient Liaison records the name of the person who converted the emails to PDF format appears. The conversion of these documents occurred after the date of the access application. Further, the access application sought information relating to the applicant's healthcare, which this information has no bearing on. For these reasons, this information clearly falls outside the scope of the application and I am satisfied that this information may be deleted under section 88 of the IP Act on the basis that it is irrelevant to the application.

## **DECISION**

59. I vary GCHHS's decision and find that:

- access to Category 1 and 2 Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest<sup>68</sup>
- any further internal Patient Liaison records are nonexistent or unlocatable, and therefore access to it may be refused;<sup>69</sup> and
- the Category 3 Information in Issue is not relevant to the access application.<sup>70</sup>

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

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**Jane Williams**  
**Assistant Information Commissioner**

**Date: 30 October 2024**

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<sup>65</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act

<sup>66</sup> Section 88(2) of the IP Act.

<sup>67</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made the context of the equivalent to section 88 of the IP Act, section 27(3) of the repealed *Freedom of Information Act 1992* (Qld). Refer also to *Kiepe* at [11].

<sup>68</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

<sup>69</sup> Under section 47(3)(e) and section 52(1) of the RTI Act.

<sup>70</sup> Section 88(2) of the IP Act.

## APPENDIX

### Significant procedural steps

Date	Event
10 May 2023	OIC received application for external review.
11 May 2023	OIC requested relevant procedural documents from GCHHS.
15 May 2023	OIC received the procedural documents from GCHHS.
15 June 2023	OIC notified the applicant and GCHHS that the external review application had been accepted. OIC asked GCHHS to provide a copy of the information in issue and records of the searches conducted.
18 July 2023	OIC clarified the terms of the application with GCHHS.
20 July 2023	OIC received search information from GCHHS along with the 174 pages of medical records considered in GCHHS's decision.
25 July 2023	OIC discussed the review in a telephone call with the applicant.
28 July 2023	OIC requested a submission and search records from GCHHS.
1 August 2023	OIC received a submission from GCHHS.
19 September 2023	OIC discussed the review in a telephone call with the applicant.
28 September 2023	OIC conveyed a preliminary view to the applicant.
13 October 2023	OIC received a submission from the applicant.
16 October 2023	OIC discussed the review in a telephone call with the applicant. The applicant requested an extension of time to respond to the preliminary view. OIC received emails from the applicant including a request for an extension of time to respond to the preliminary view.
17 October 2023	OIC discussed the review in a telephone call with the applicant, including the request for an extension of time to respond to the preliminary view.
3 November 2023	OIC conveyed a preliminary view to the applicant, granted the applicant's request for an extension of time to respond to the preliminary view and updated GCHHS. OIC discussed the review in a telephone call with the applicant.
14 November 2023	The applicant requested an extension of time to respond to the preliminary view.
15 November 2023	OIC discussed the review in a telephone call with the applicant and granted the extension of time to respond to the preliminary view. OIC received an email from the applicant.
1 December 2023	The applicant requested an extension of time to respond to the preliminary view.

Date	Event
5 December 2023	The applicant requested an extension of time to respond to the preliminary view. OIC granted the extension of time to respond to the preliminary view.
19 December 2023	OIC discussed the review in a telephone call with the applicant. The applicant requested an extension of time to respond to the preliminary view. OIC granted the extension of time to respond to the preliminary view.
21 December 2023	OIC wrote to the applicant regarding the issues remaining in the review, including the extended time for a response to the preliminary view. OIC discussed the review in a telephone call with GCHHS. OIC requested a submission and search information from GCHHS.
9 January 2024	OIC discussed the review in a telephone call with the applicant.
11 January 2024	OIC received a submission from the applicant.
23 January 2024	OIC discussed the review in a telephone call with GCHHS. OIC discussed the review in a telephone call with the applicant. OIC wrote to the applicant regarding the issues remaining in the review. OIC requested a submission from GCHHS. OIC received a submission from the applicant.
25 January 2024	OIC wrote to the applicant regarding the issues remaining in the review.
6 February 2024	OIC received the first set of Additional Documents and a submission from GCHHS.
7 February 2024	OIC discussed the review in a telephone call with GCHHS. OIC shared GCHHS's submission with the applicant.
14 February 2024	OIC discussed the review in a telephone call with the applicant and wrote to the applicant regarding the issues remaining in the review.
29 February 2024	OIC wrote to the applicant regarding the issues remaining in the review. OIC received a submission from the applicant. OIC discussed the review in a telephone call with GCHHS.
5 March 2024	OIC wrote to the applicant regarding the issues remaining in the review.
7 March 2024	OIC conveyed a preliminary view to GCHHS. OIC conveyed a preliminary view to the applicant.
11 March 2024	OIC discussed the review in a telephone call with GCHHS. OIC discussed the review in a telephone call with the applicant.
19 March 2024	OIC received GCHHS's agreement to the preliminary view.

Date	Event
21 March 2024	OIC requested that GCHHS release the Additional Documents to the applicant. OIC advised the applicant that GCHHS will release the Additional Documents. OIC discussed the review in a telephone call with the applicant.
27 March 2024	OIC received a copy of the released Additional Documents from GCHHS and confirmation of the tracking information for delivery.
2 April 2024	OIC provided the tracking information to the applicant.
5 April 2024	OIC discussed the review in a telephone call with the applicant. The applicant requested an extension of time to respond to the preliminary view.
15 April 2024	OIC discussed the review in a telephone call with GCHHS.
17 April 2024	The applicant requested an extension of time to respond to the preliminary view. OIC granted an extension of time for the applicant to respond to the preliminary view.
29 April 2024	The applicant requested an extension of time to respond to the preliminary view.
1 May 2024	OIC requested search information from GCHHS.
2 May 2024	OIC discussed the review in a telephone call with GCHHS.
3 May 2024	OIC granted an extension of time for the applicant to respond to the preliminary view.
7 May 2024	OIC discussed the review in a telephone call with GCHHS.
8 May 2024	OIC received further Additional Documents and a submission from GCHHS. The applicant requested an extension of time to respond to the preliminary view.
9 May 2024	OIC discussed the review in a telephone call with GCHHS. OIC granted an extension of time for the applicant to respond to the preliminary view.
29 May 2024	OIC received a submission from the applicant.
17 June 2024	OIC provided an update on the review to the applicant.
25 June 2024	OIC conveyed a preliminary view to GCHHS.
28 June 2024	OIC received GCHHS's agreement to the preliminary view.
12 July 2024	OIC provided an update on the review to the applicant.
25 July 2024	OIC discussed the review in a telephone call with GCHHS.
26 July 2024	OIC received the released Additional Documents from GCHHS.
1 August 2024	OIC requested that GCHHS release the further Additional Document to the applicant. OIC conveyed a preliminary view to the applicant.

Date	Event
6 August 2024	OIC received confirmation of the tracking information for the delivery from GCHHS.
7 August 2024	OIC requested a copy of the released Additional Documents from GCHHS. OIC received a copy of the released Additional Documents from GCHHS.
9 August 2024	OIC provided the tracking information to the applicant.
5 September 2024	OIC discussed the review in a telephone call with the applicant. OIC wrote to the applicant regarding the review.
9 September 2024	The applicant requested an extension of time to respond to the preliminary view. OIC granted the applicant an extension of time to respond to the preliminary view.
12 September 2024	The applicant requested an extension of time to respond to the preliminary view.
13 September 2024	OIC discussed the review in a telephone call with the applicant. OIC wrote to the applicant regarding the review and granted an extension of time to respond to the preliminary view.
20 September 2024	The applicant requested an extension of time to respond to the preliminary view. OIC declined the applicant's request for an extension of time. OIC received a submission from the applicant.
23 September 2024	OIC received a submission from the applicant, including a request for an extension of time to respond to the preliminary view.
24 September 2024	OIC received a submission from the applicant. OIC discussed the review in a telephone call with GCHHS and requested further searches be conducted by GCHHS.
25 September 2024	OIC conveyed a preliminary view to the applicant.
30 September 2024	OIC received confirmation of the tracking information for the delivery from GCHHS. OIC requested a copy of the Appointment List from GCHHS. OIC received a copy of the Appointment List from GCHHS.
2 October 2024	OIC provided the tracking information to the applicant.
8 October 2024	OIC discussed the review in a telephone call with GCHHS. OIC wrote to the applicant regarding the review.
9 October 2024	OIC received a submission from the applicant. OIC wrote to the applicant about the review.
10 October 2024	OIC received a submission from the applicant, including a request for an extension of time to respond to the preliminary view.
11 October 2024	OIC declined the applicant's request for an extension of time to respond to the preliminary view.

Date	Event
21 October 2024	OIC received a submission from the applicant, including a request for an extension of time to respond to the preliminary view.
23 October 2024	OIC declined the applicant's request for an extension of time to respond to the preliminary view.