



Decision and Reasons for Decision

Citation:	<i>BFU12E and Metro North Hospital and Health Service</i> [2015] QICmr 21 (31 August 2015)
Application Number:	312201
Applicant:	BFU12E
Respondent:	Metro North Hospital and Health Service
Decision Date:	27 August 2015
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to workplace grievance involving the applicant - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Metro North Hospital and Health Service (**Health Service**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information about a workplace grievance involving the applicant. In her access application, the applicant specifically requested documents 'submitted against' her by another named individual.
2. The Health Service located 573 pages and decided to:
 - release 227 pages; and
 - refuse access in part to 102 pages and in full to 244 pages primarily on the basis that these pages contained exempt information.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision. On external review, the Health Service provided the applicant with access to a small amount of additional information to which access was refused in its decision.
4. On external review the applicant also raised some concern that the Health Service had not identified the specific documents sought by her. However, OIC established that this information was part of the refused documents, rather than documents that had not been located by the Health Service.

5. The Health Service's decision on the remaining issue is varied. Access to the information sought by the applicant on external review may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.

Background

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

Reviewable decision

7. The decision under review is the Health Service's decision dated 10 September 2014.
8. In the reasons for its decision the Health Service indicates that access was refused to 244 pages in full and 102 pages in part on the basis that these pages contained exempt information. However, in the schedule to the Health Service's decision it appears that the Health Service also intended to refuse access to some information on the basis that it was outside the scope of the access application and to some information on the basis that its disclosure would, on balance, be contrary to the public interest.¹

Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching my decision is disclosed in these reasons (including footnotes and appendix).

Information in issue

10. In this external review the applicant is seeking access to documents of the following description (**Information in Issue**):²
 - information identifying other individuals who were the subject of allegations
 - information provided to the Health Service by other individuals in the course of the investigation including transcripts of interview and correspondence; and
 - information about the action taken against other individuals as a result of the allegations and in dealing with the relevant investigation including correspondence sent to the subject officers.

Issue for determination

11. A number of issues were raised during the external review many of which have been addressed by OIC informally through correspondence with the applicant's solicitors.³
12. The applicant's solicitors initially made submissions to OIC indicating that they considered the Health Service had not located all of the documents relevant to their

¹ OIC wrote to the Health Service on 21 May 2015 to explain OIC's preliminary view that there was insufficient reasons in the Health Service's decision to support the claim that the documents to which access was refused comprised exempt information. However OIC considered that the Health Service may still refuse access to the information in issue in this review on the basis that disclosure would, on balance be contrary to the public interest. The Health Service accepted this preliminary view on 27 May 2015.

² The applicant's solicitors indicated that this is the information the applicant is seeking during a telephone discussion on 13 August 2015 and this was confirmed by OIC by email on 17 August 2015.

³ OIC letters to the applicant dated 17 June 2015 and 28 July 2015.

client's access application.⁴ However, having carefully considered the applicant's submissions and the information to which access was refused, I am satisfied that the Health Service has located the documents that the applicant is seeking. The applicant has not received these documents as access has been refused to them and they comprise the Information in Issue.⁵

13. During this review the applicant's solicitors requested additional documents from the Health Service relating to a separate workplace matter involving the applicant.⁶ OIC provided the applicant's solicitors with a preliminary view that this information as well as some information that was initially refused to the applicant by the Health Service was outside the scope of the access application or irrelevant to the terms of the access application.⁷ The applicant's solicitors did not contest the out of scope issue further in this external review.
14. In a discussion with OIC on 13 August 2015 the applicant's solicitors advised that the applicant continues to seek information held by the Health Service that was either given by or relating to another named individual with whom the applicant has had a workplace grievance. The type of information that the applicant is seeking is described at paragraph 10 above and is the same information to which the Health Service has refused access. Therefore, the outstanding issue for my determination is whether access can be refused to the Information in Issue under the provisions of the RTI Act.

Relevant law

15. Under the RTI Act, a person has a right to be given access to documents of an agency.⁸ However, this right is subject to limitations, including grounds for refusal of access.⁹ Access may be refused to documents where disclosure would, on balance, be contrary to the public interest.¹⁰
16. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁴ On 30 March 2015 the applicant's solicitors wrote to OIC contending that there had been an insufficiency of search by the Health Service. However, OIC has since explained to the applicant by letter dated 28 July 2015 that the type of information the applicant sought and believed had not been located by the Health Service was the same type of information to which access had been refused.

⁵ By letter dated 17 June 2015 OIC explained to the applicant's solicitors that the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants. 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. However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. See *Ainsworth and the Criminal Justice Commission and Others* (1999) 5 QAR 284 at [46]

⁶ By letter dated 29 June 2015 the applicant's solicitors asked OIC whether it would be possible to obtain documents relating a separate workplace complaint made by the applicant. The timeframe for these documents predated the timeframe of the access application.

⁷ OIC conveyed this preliminary view to the applicant on 17 June 2015. OIC again confirmed this view by letter dated 28 July 2015 and noted that as the applicant's solicitors had not contested this issue, the out of scope and irrelevant documents would not be considered further on external review.

⁸ Section 23(1)(a) of the RTI Act.

⁹ Section 47 of the RTI Act sets out the grounds on which access may be refused to documents.

¹⁰ Section 47(3)(b) of the RTI Act.

17. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹¹ and also explains the steps that a decision-maker must take in deciding the public interest¹² as follows:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to the public interest.

Findings

18. No irrelevant factors arise in the circumstances of this case. I will now consider the factors favouring disclosure and nondisclosure of this information.

Accountability and transparency

19. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;¹³ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.¹⁴
20. The Health Service must be transparent and accountable in how it deals with allegations about workplace misconduct and disciplinary investigations. I consider that disclosing the information in issue would provide the applicant with a more comprehensive understanding of how the Health Service handled the investigation and the reasoning behind its decision. This would advance these factors to some degree and I consider that these factors are relevant. It is now necessary for me to determine the weight to be afforded to them in the circumstances of this external review.
21. The applicant contends that she was not afforded any opportunity throughout the investigation process to respond to any allegations or accusations made against her and is still not aware of any counter allegations. The applicant also contends that she has only been partially provided with information about how the Health Service handled the investigation.¹⁵
22. While I have carefully considered the applicant's submissions, I do not accept them. The requirement for the Health Service to be accountable and transparent in dealing with allegations relating to workplace conduct does not oblige the Health Service to provide the applicant with access to its entire investigation file nor reveal all of the information it gathered in dealing with the investigation.
23. Importantly, the information which the Health Service has already provided to the applicant, either directly during the investigation process or as a result of this application, reveals that:

¹¹ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

¹² Section 49(3) of the RTI Act.

¹³ Schedule 4, part 2, item 1 of the RTI Act.

¹⁴ Schedule 4, part 2, item 11 of the RTI Act.

¹⁵ Applicant submissions dated 29 June 2015.

- the allegations against the applicant were conveyed to her and she was afforded the opportunity to respond to them at the relevant time
- the outcome of the investigation into allegations both against the applicant and made by the applicant was also conveyed to her; and
- information about the Health Service's handling of the investigation has been provided.¹⁶

24. I am satisfied that the information that has already been provided to the applicant by the Health Service significantly advances the public interest factors relevant to the accountability and transparency of the Health Service and its investigation processes. I consider that disclosing the Information in Issue would only marginally promote these factors. Accordingly, I have attributed a low weight to each of these factors favouring disclosure.

Personal information of the applicant

25. I acknowledge that much of the Information in Issue relates to the applicant and comprises her personal information.¹⁷ This gives rise to a factor favouring disclosure.¹⁸
26. The applicant has submitted that the Information in Issue relates to her employment and comprises allegations made against her and as a result she should have access to this information.¹⁹
27. I acknowledge the importance of providing individuals with access to their personal information held by public authorities and I attribute significant weight to this factor to the extent the information comprises the applicant's personal information.

Personal information and privacy of other individuals

28. However, the information is also the personal information of other individuals. It comprises their identifying information, feelings and opinions in the course of a workplace grievance investigation. I am unable to separate it from the applicant's personal information because of the way it appears in the documents. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing the information could reasonably be expected to prejudice the protection of an individual's right to privacy;²⁰ and
 - disclosing the information could reasonably be expected to cause a public interest harm if it would disclose personal information of another person.²¹
29. I acknowledge that information relating to the day-to-day work duties and responsibilities of a public sector employee may generally be disclosed under the RTI Act, despite it falling within the definition of personal information. This is because the potential harm from disclosing routine personal work information is, in most

¹⁶ In a letter to the applicant's lawyers dated 28 July 2015, OIC identified the specific pages that were released to the applicant by the Health Service as part of this application that support my findings above.

¹⁷ Section 12 of the *Information Privacy Act 2009* (Qld) 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 reasonably be ascertained, from the information or opinion'.

¹⁸ Schedule 4, part 2, item 7 of the RTI Act.

¹⁹ Applicant submission dated 6 August 2015.

²⁰ Schedule 4, part 3, item 3 of the RTI Act.

²¹ Schedule 4, part 4, item 6(1) of the RTI Act.

circumstances, minimal or nonexistent. However, agency documents can also contain personal information of employees which is not *routine* work information even though the information arises in a work context.

30. I am satisfied that the information provided in the context of workplace grievance investigations is personal information of this kind. Although the personal information appears in a workplace context, it comprises the opinions, observations and experiences of the relevant individuals obtained in the context of an investigation into their conduct. As a result, I am satisfied such information is not related wholly to the routine day-to-day work activities of these individuals and is not their routine personal work information. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the RTI Act.
31. In this context, I consider the information is personal and sensitive in nature. Its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of the public interest factors favouring nondisclosure significant weight.

Prejudice management function and flow of information

32. I have also considered whether disclosing the Information in Issue could reasonably be expected to prejudice:
- the Health Service's management function in relation to the management of its own staff;²² and
 - the Health Service's ability to obtain confidential information in the context of workplace investigations.²³
33. Staff usually supply information to workplace investigators on the understanding that it will only be used for the investigation or any subsequent disciplinary action. It is reasonable to expect staff to cooperate with an investigative process. However, in my view, disclosing this information outside of the investigation process and under the RTI Act, where there can be no restriction on its use, dissemination or republication, could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of information to investigators. This, in turn, could reasonably be expected to adversely impact the Health Service's ability to conduct workplace investigations and manage staff.
34. For these reasons, I afford these nondisclosure factors significant weight in the circumstances.

Balancing the relevant factors

35. The RTI Act is to be administered with a pro-disclosure bias, meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.²⁴ I have taken into account the pro-disclosure bias in balancing the relevant factors.
36. The information which the Health Service has already provided to the applicant furthers the applicant's understanding of how the investigation was conducted and the outcome. This information also provided the applicant with natural justice, in terms of

²² Schedule 4, part 3, item 19 of the RTI Act.

²³ Schedule 4, part 3, item 16 of the RTI Act.

²⁴ Section 44 of the RTI Act.

being able to respond to the allegations made against her. The weight of the factors relating to transparency and accountability is reduced in relation to the remaining information in issue. As a result, I afford both of these factors low weight.

37. To the extent the information comprises the applicant's personal information, I afford the factor favouring disclosure significant weight. However, the information also comprises the personal information of other individuals which is sensitive and the relevant nondisclosure factors relating to personal information and privacy carry significant weight.
38. Disclosing this information could reasonably be expected to adversely impact the Health Service's ability to obtain confidential information in the conduct of workplace investigations and manage staff during a workplace grievance. As a result, I afford significant weight to both of the public interest factors favouring nondisclosure.
39. Overall, the factors favouring nondisclosure of this information outweigh the factors favouring disclosure. Accordingly, I find that the Health Service was entitled to refuse access to this information as its disclosure would, on balance, be contrary to the public interest.

DECISION

40. For the reasons set out above, I vary the Health Service's decision and find that access to the Information in Issue can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance be contrary to the public interest.
41. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

J Mead
Acting Privacy Commissioner

Date: 27 August 2015

APPENDIX

Significant procedural steps

Date	Event
17 July 2014	The Health Service received the applicant's access application.
10 September 2014	The Health Service made a decision on the access application.
9 October 2014	The applicant applied for external review of the Health Service's decision.
13 October 2014	OIC wrote to the Health Service and the applicant to confirm receipt of the external review application and requested the Health Service provide documents relevant to processing the access application.
20 October 2014	The Health Service provided OIC with the requested documents.
21 October 2014	OIC wrote to the Health Service and the applicant to confirm that the application had been accepted for external review. OIC also requested the Health Service to provide copies of the documents located in response to the access application.
6 November 2014	OIC received copies of the documents located by the Health Service in response to the access application.
4 March 2015	OIC requested confirmation from the applicant's solicitor regarding the issues for determination in the review, noted the 'practical onus' on the applicant in relation to sufficiency of search and invited the applicant's solicitor to make a submission regarding any documents that the applicant considered to have not been located by the Health Service.
30 March 2015	The applicant's solicitor wrote to OIC and identified the documents that the applicant was seeking on external review. The applicant's solicitor also submitted that there was an insufficiency of search by the Health Service and that access to the documents was required as a matter of procedural fairness.
28 April 2015	OIC requested another copy of one of the documents in issue from the Health Service.
4 May 2015	The Health Service provided OIC with a copy of the requested document.
21 May 2015	OIC conveyed a written preliminary view to the Health Service. In this preliminary view OIC identified some additional information that could be disclosed to the applicant. OIC also informed the Health Service that there was insufficient evidence to support the decision that information in issue was exempt.
29 May 2015	The Health Service indicated that it accepted OIC's preliminary view and agreed to release additional information to the applicant.
17 June 2015	OIC conveyed a preliminary view to the applicant that certain information to which access was refused by the Health Service was irrelevant or outside the scope of the access application and that the Health Service was entitled to refuse access to the remaining information on the basis that its disclosure, would, on balance be contrary to the public interest. OIC also conveyed its preliminary view that the applicant had not met the practical onus in relation to sufficiency of search, and that there was no basis to believe that the Health Service had not taken all reasonable steps to locate the documents relevant to the application. OIC invited the applicant to make submissions in response to the preliminary view.
17 June 2015	OIC wrote to the Health Service confirming that it had agreed to release certain additional information to the applicant and requested that this occur by 25 June 2015.
22 June 2015	The Health Service confirmed it had released the additional information to the

	applicant in accordance with OIC's preliminary view.
29 June 2015	The applicant's solicitors provided submissions contesting the preliminary view and also identified a number of documents which they considered had not been identified by the Health Service and therefore raised sufficiency of search concerns. The applicant's solicitors also requested additional information regarding a separate workplace complaint outside the scope of the initial access application.
28 July 2015	OIC wrote to the applicant's solicitors in response to their submissions of 29 June 2015 and explained that its preliminary view had not changed. OIC explained that it could not consider the request for documents outside the scope of the access application as part of this external review. OIC also sought to confirm that the applicant's solicitors only objected to OIC's preliminary view with respect to specific categories of information. Finally OIC explained to the applicant's solicitors that the Health Service appeared to have located the documents that the applicant considered to be missing and that access had been refused to that information. OIC provided the applicant with a further opportunity to make submissions.
6 August 2015	The applicant's solicitors wrote to OIC with further submissions and identified a list of documents that they considered the Health Service had not disclosed to the applicant despite a direction from OIC.
13 August 2015	OIC contacted the applicant's solicitors by phone and explained that the Health Service was not directed by OIC to disclose the listed documents and that some of the documents identified by the applicant's submissions were subject to OIC's preliminary view on refusal of access. OIC also confirmed the outstanding issues in the review that the applicant sought to have addressed in a decision of the Information Commissioner
17 August 2015	OIC emailed the applicant's solicitors to confirm that the remaining issue was the refusal of access to the Information in Issue as described in this decision. OIC indicated to the applicant's solicitors that this matter would now proceed to a final decision and invited the applicant's solicitors to contact OIC if they had any further questions.