



Decision and Reasons for Decision

Citation:	<i>D29 and Sunshine Coast Hospital and Health Service [2020] QICmr 37 (29 June 2020)</i>
Application Number:	314711
Applicant:	D29
Respondent:	Sunshine Coast Hospital and Health Service
Decision Date:	29 June 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - medical records - information provided by other individuals regarding the applicant - information provided for the purpose of the applicant's medical assessment - information about public safety concerns and measures - whether disclosure would, on balance, be contrary to the public interest - personal information and privacy - whether information would, on balance, be contrary to the public interest to disclose - whether access to information may be refused under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Sunshine Coast Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to his mental health records for the period 24 April 2019 to 10 May 2019.
2. The Health Service located a total of 188 pages from the applicant's Consumer Integrated Mental Health Application (**CIMHA**) file,² Nambour General Hospital file³ and Sunshine Coast University Hospital file.⁴ It gave access to 134 pages and parts of 54 pages, and decided⁵ to refuse access to the rest of the 54 pages on the grounds that the information was exempt information, or its disclosure would, on balance, be contrary to the public interest.

¹ Access applications received on 9 and 16 May 2019. Having examined the two applications and the Health Service's decision dated 4 July 2019, I am satisfied that the Health Service treated the two applications as one, and that its decision deals with the information sought in both.

² Comprising 85 pages.

³ Comprising 16 pages.

⁴ Comprising 87 pages.

⁵ Decision dated 4 July 2019.

3. The applicant applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision.
4. On external review, the applicant elected to not seek access to some of the information to which access had been refused. In relation to the remaining information, for the reasons set out below, I affirm the Health Service's decision and find that access to this information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Background

5. The applicant was held in hospital from 24 April 2019 until 1 May 2019, pursuant to an Emergency Examination Authority (**EEA**)⁷ dated 24 April 2019. He seeks access to his mental health records relating to this period.
6. Significant procedural steps taken during the external review are set out in the Appendix.

Reviewable decision

7. The decision under review is the Health Service's decision dated 4 July 2019.

Evidence considered

8. The applicant provided OIC with submissions⁸ in support of his case. While I have carefully considered all of the applicant's submissions, not all matters raised are relevant to the issues for determination in this review. Accordingly, in this decision, I have addressed the applicant's submissions to the extent they are relevant to the issue for determination.
9. The evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁹ I consider that a decision-maker will, when observing and applying the law prescribed in the IP Act, be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act.¹⁰ Throughout this review¹¹ and in making this decision, I consider that I have observed and applied the law prescribed in the IP Act. Given this, I am satisfied that I have acted compatibly with, and

⁶ External review application dated 8 July 2019.

⁷ The *Public Health Act 2005* (Qld) (**PH Act**) establishes a process for the emergency examination of persons with a major disturbance in mental health capacity in Queensland. Under the PH Act, an EEA is made by an ambulance officer or police officer when a person's behaviour indicates that they are at risk of serious harm caused by a major disturbance in their mental capacity (whether caused by illness, disability, injury, intoxication, or another reason), and the person appears to require urgent examination, treatment or care for the disturbance. At a public sector health facility, the person may be detained for an examination period of not more than 6 hours, although this may be extended by a doctor or health practitioner for periods of not more than 12 hours, to carry out or finish an examination and decide the person's care and treatment needs.

⁸ In the external review application dated 8 July 2019, by telephone on 2 March 2020, and by emails dated 5, 10 and 24 March 2020.

⁹ Section 21 of the HR Act.

¹⁰ See *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 [11].

¹¹ Including in terms of the applicant's hearing impairment. On becoming aware of this, OIC offered to arrange to use telephone equipment with assistance for hearing impaired users, and otherwise offered the applicant the option of communicating with OIC in writing. The applicant did not seek telephone assistance and thereafter communicated with OIC by email only. In this regard, it is relevant to note that the procedures to be followed in an external review are within the discretion of the Information Commissioner and therefore me as her delegate (see sections 108(1)(a) and 139 of the IP Act), subject to the IP Act (including section 110 of the IP Act) and procedural fairness at common law. I consider that the procedures adopted in this review have ensured that the applicant's hearing impairment has had no detrimental impact on his communications with OIC, the extent to which I have been able to afford him procedural fairness, or my consideration of matters relevant to the issue for determination.

given proper consideration to, relevant human rights.¹² In this regard, I note Bell J's observations on the interaction between the Victorian equivalents of Queensland's *Right to Information Act 2009* (Qld) (**RTI Act**) and IP Act and HR Act: '*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*'.¹³

Information in issue

11. On external review, OIC identified that the applicant held an entire copy of the EEA.¹⁴ As the applicant did not wish to pursue access to duplicate copies of the EEA,¹⁵ six part pages¹⁶ are no longer be in issue. Further, as the applicant also did not wish to pursue access to segments of information relating to the EEA on three pages,¹⁷ these segments of information are no longer in issue.¹⁸
12. The remaining information in issue (**Information in Issue**) comprises parts of 48 pages.¹⁹ I am precluded from describing the Information in Issue in detail,²⁰ however I can confirm that, generally, it may be categorised as follows:
 - **Third Party Information** - The majority of the Information in Issue, comprising information provided to the Health Service by individuals other than the applicant for the purpose of the admission, care and assessment of the applicant, such as their names, relationship to the applicant and contact details, and their opinions, observations, experiences and/or concerns relating to the applicant. Also, a small number of comments by Health Service staff about the need or intention to seek information, or further information, from these third parties.
 - **Safety Information** - A small number of segments of the Information in Issue,²¹ recording communications and actions regarding public safety issues.

Issue for determination

13. Before identifying the issue for determination in this review, I will address two preliminary issues raised by the applicant.

¹² As required by section 58(1) of the HR Act.

¹³ XYZ at [573].

¹⁴ This was not among the information that the Health Service decided to release to the applicant in response to the access application. The circumstances in which it was provided to the applicant have not become apparent during this review.

¹⁵ OIC's letter to the applicant dated 27 August 2019 informed the applicant that, given he held a copy of the EEA, OIC would proceed on the basis he did not seek any duplicate copy of the EEA, and asked the applicant to advise OIC if that was not correct. In the absence of any response, OIC confirmed to the applicant by letter dated 16 September 2019 that OIC therefore was proceeding on the basis that he did not seek access duplicates copies of the EEA.

¹⁶ OIC's letter to the applicant dated 21 February 2020 identified the six part pages as being pages 12, 13 and 15 of the Nambour General Hospital file; and pages 3, 4 and 6 of the CIMHA file.

¹⁷ Comprising information contained within redacted segments on pages 7 and 27 of the applicant's CIMHA file and on page 4 of the Nambour General Hospital file. OIC's letter to the applicant dated 21 February 2020 noted that it was evident the applicant already had that information, and the applicant did not maintain a claim for access to the three portions of information. Given the applicant's oral submissions on 2 March 2020 in response to my letter dated 21 February 2020 and written submissions dated 5 and 10 March 2020 in response to OIC's email dated 4 March 2020, I have taken it that the applicant does not wish pursue access to the portions of information on these pages, and proceeded on this basis.

¹⁸ However other segments of information on these three pages remain in issue.

¹⁹ That is, parts of pages 2, 4, 5, 9, and 11 of the Nambour General Hospital file; 7, 8, 9, 10, 11, 12, 13, 17, 22, 23, 24, 27, 28, 29, 30, 31, 37, 41, 42, 43, 44, 46, 47, 50, 51, 55, 57, 58, 59, 63, 64, 65, 66, 67, 70, 71, 72, 76, 84 and 85 of the CIMHA file; and 22, 23, and 45 of the Sunshine Coast University Hospital file.

²⁰ Section 121(3) of the IP Act prohibits OIC from disclosing information which is claimed to be exempt or contrary to the public interest to disclose.

²¹ Consisting of portions of information on page 9 of the Nambour General Hospital file and pages 8, 10, 13, 17, 22, 23, 28, 30, 31, 57, 58, 59, 72, 84 and 85 of the CIMHA file.

14. Firstly, the applicant has submitted that the Health Service's decision 'vindictively' censored his personal information and inconsistently released information.²² In terms of this submission, it is my understanding that the applicant considers that the Health Service's decision to release particular information²³ is at odds with its decision to refuse access to what the applicant believes is similar information.²⁴ Given that I am conducting a merits review and considering matters afresh, and also noting that the inconsistency the applicant perceives is not a matter OIC may review,²⁵ concerns about the conduct of the Health Service in processing the applicant's application are not strictly relevant to this review. I note, in any event, that the released information identified by the applicant is largely only about the applicant. That is not the case in respect of the refused information raised by him. While I cannot disclose detailed information about this refused information,²⁶ I can confirm that it is Third Party Information. In these circumstances, there is no evidence which would give me reason to consider the Health Service's actions were vindictive, as alleged by the applicant, and no basis on which the Information Commissioner's obligations relating to disciplinary action could be said to arise.²⁷
15. Secondly, at one stage in the review, the applicant expressed the belief that he should have been provided with a report by one doctor and two reports by another doctor.²⁸ In response,²⁹ I confirmed that the information located by the Health Service included notes by the two doctors in question,³⁰ and notes by a third doctor recording the presence of one of those doctors in meetings.³¹ I also advised that, following my careful review of the documents located by the Health Service, I was satisfied that there was no indication that either of the two doctors had prepared any reports or notes, other than the notes I had identified. I asked that, if the applicant believed that other reports existed, he provide OIC with the details of such reports and explain the basis of his belief. I also confirmed that, in the absence of any information from the applicant by 13 March 2020, I would proceed on the basis that the reports I had identified were the ones he sought. The applicant provided OIC with written submissions on 10 and 24 March 2020 – however, neither of these submissions included any information about the three doctors' reports. In these circumstances, I have taken it that the applicant does not wish to maintain that the Health Service has failed to locate these reports. Accordingly, I have proceeded on the basis that no question regarding the sufficiency of the Health Service's searches for such reports need be addressed in this decision.³²

²² External review application dated 8 July 2019.

²³ On pages 81-85 of the CIMHA file.

²⁴ On pages 46-47, 64-66 and 70 of the CIMHA file.

²⁵ Because the 'reviewable decision' that is the subject of this review is 'a decision **refusing** access to all or part of a document under section 67...' (my emphasis) – see (f) of definition of 'reviewable decision' in schedule 5 of the IP Act. Accordingly, this review is confined to reviewing the Health Services' decision *refusing* access to information and does not extend to reviewing its decision to *give* access to information.

²⁶ Section 121(3) of the IP Act.

²⁷ If evidence of sufficient force of a breach of duty or misconduct in the administration of the IP Act was identified, the Information Commissioner would take the actions specified in section 126 of the IP Act.

²⁸ In his submissions by email dated 5 March 2020, the applicant expressed the belief that he should have been provided with a report by Dr [A] from Nambour General Hospital dated 24 or 25 April 2019 and two reports by another named doctor from Sunshine Coast University Hospital. The documents located by the Health Service do not contain any references to a doctor from Sunshine Coast University Hospital with the name referred to by the applicant. However, it is my understanding that the applicant intended to refer to a Dr [B], who has a similar last name, and is noted in the located documents as being involved in the applicant's care and assessment.

²⁹ By email dated 6 March 2020

³⁰ That is, notes by Dr [A] dated 24 April 2019 at pages 22-24 of the CIMHA file; and by Dr [B] dated 26 April 2019 at pages 47-48 of the CIMHA file.

³¹ Dr [C]'s notes at pages 64-66 and 70-73 of the CIMHA file record the presence of Dr [B] at meetings on 30 April 2019 and 1 May 2019 respectively.

³² Had this issue arisen for consideration, based on the material currently before me, I would conclude that access to the three doctors' reports may be refused on the ground that they do not exist under section 47(3)(e) and 52(1)(a) of the RTI Act in conjunction with section 67(1) of the IP Act.

16. Accordingly, the sole issue for determination in this review is whether access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Would disclosure of the Information in Issue be contrary to the public interest?

Relevant law

17. The IP Act confers on an individual a right to access documents of an agency, to the extent the documents contain the individual's personal information.³³ However this right of access is subject to certain limitations, including grounds for refusal of access.³⁴ One such ground is that access to information may be refused to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.³⁵
18. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the wellbeing 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.³⁶
19. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:³⁷
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Findings

20. I have kept in mind the IP Act's pro-disclosure bias³⁸ and Parliament's intention that grounds for refusing access to information be interpreted narrowly.³⁹ Also, in my below assessment of whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I have carefully considered the non-exhaustive lists of factors in schedule 4, and also considered whether any other public interest factors are relevant.
21. I have not taken any irrelevant factors into account.⁴⁰

Factors favouring disclosure

22. Except for a small amount of the Third Party Information which relates solely to third parties (such as their names and contact details), the Information in Issue is about the applicant and therefore comprises his personal information.⁴¹ The RTI Act recognises

³³ Section 40 of the IP Act.

³⁴ Grounds for refusal of access are set out in section 47 of the RTI Act. Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

³⁵ Section 47(3)(b) of the RTI Act.

³⁶ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

³⁷ Section 49(3) of the RTI Act.

³⁸ Section 64 of the IP Act.

³⁹ Section 47(2) of the RTI Act.

⁴⁰ Section 49(3)(d) of the RTI Act.

⁴¹ 'Personal information' is defined in section 12 of the IP Act as '*information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

this as a pro-disclosure factor.⁴² As the information in question comprises part of the applicant's medical record, I consider this factor warrants significant weight.

23. The applicant has submitted that the Information in Issue should be released to him, because without it, he is unable to know about the assessments of his mental state which firstly led to him being held in hospital and then, several days later, led to him being discharged—for example:⁴³
- *'You will note the reports of Dr [A] on pages 22-24 are heavily censored...'*
 - *'Pages 46-48 have also been heavily censored. How am I meant to know what my mental state is/was if I cannot read the report?'*
 - *'Again, on pages 64-66, what am I reading? There is nothing there to tell me anything of value'*.
24. These submissions appear to contend that advancing an applicant's understanding of their mental state is a public interest factor favouring disclosure.
25. Significant amounts of information regarding the applicant's mental state have already been provided to him. The applicant has a copy of the EEA,⁴⁴ which sets out concerns about him on the day of his admission to hospital. Further, the 134 pages and 54 part pages of information that the Health Service released to the applicant in response to his access application include the notes of a Psychiatric Registrar⁴⁵ and a Consultant Psychiatrist,⁴⁶ which clearly outline the circumstances in which the EEA was issued. The released information also indicates that the applicant was required to remain in hospital as further assessment was required.⁴⁷ Throughout, the released information contains observations about aspects of the applicant's mental state during the period that he was held in hospital under the EEA. Finally, the released information sets out how the applicant's discharge from hospital was as a result of the assessing medical officers concluding that no mental illness had been identified during the admission, and that the applicant did not appear to meet criteria for any further involuntary assessment or treatment.
26. If it is accepted that advancing an applicant's understanding of his mental state is a public interest factor favouring disclosure, I consider that this factor has been advanced to a significant degree by the information already available to him (as noted in the preceding paragraph). Given this, I consider that disclosure of the Information in Issue would advance such a factor little, if any, further, and consequently, I would give this particular factor low weight. However, in my opinion, the factor favouring disclosure of an applicant's personal information subsumes any factor about advancing an applicant's understanding of their mental state. And, as set out at paragraph 22 above, I already have afforded this factor significant weight.
27. Despite being in possession of the information noted at paragraph 25 above, the applicant has submitted that he does not know the reason why he was detained in hospital by the Health Service, nor the reason for his discharge. He also submits that accessing the Information in Issue will enable him to demonstrate the poor operation of the Health Service.⁴⁸ Further, the applicant states that he made four complaints and

⁴² Schedule 4, part 2, item 7 of the RTI Act.

⁴³ At items 1, 2 and 3 of the applicant's email dated 10 March 2020, referring to pages from the CIMHA file.

⁴⁴ As noted at footnote 14 above, this was not among the information released to the applicant in response to his access application, but has been obtained by him by other means.

⁴⁵ At page 79 of the CIMHA file.

⁴⁶ At page 84 of the CIMHA file.

⁴⁷ For example, see page 4 of the Nambour General Hospital file, which states: *'He was brought in on an EEA...Require further assessment by Psych Reg given the possible risk he may pose to theres [sic] or himself.... [applicant's name] will remain on EEA until above can be collected and further assessment completed'*.

⁴⁸ Applicant's email dated 10 March 2020.

'never received a reply',⁴⁹ and appears to contend that the Information in Issue should be released in lieu of any reply. Given these submissions, it is necessary to consider whether disclosure of the Information in Issue could reasonably be expected to:

- enhance the Government's accountability⁵⁰
- inform the community of the Government's operations;⁵¹ or
- reveal reasons for a Government decision and any background or contextual information that informed the decision.⁵²

28. As noted at paragraph 12 above, the majority of the Information in Issue comprises Third Party Information. Information provided by third parties does not, in and of itself, reveal anything about the Health Service's actions and decision-making processes. However, information sought from, or provided by, third parties could arguably provide the applicant with some background or contextual information that may have informed the Health Service's clinicians' deliberations and decisions about the applicant's his involuntary admission, care and assessment. In this regard, however, I again note (as noted at paragraph 25 above) the significant amount of information which has already been provided to the applicant. In light of the amount and nature of this information, I do not consider that disclosure of the Third Party Information would advance the Health Service's accountability and transparency in any significant way, or add much to the applicant's understanding of the reasons for his involuntary detention or his discharge. Consequently, I consider that the abovementioned factors regarding accountability⁵³ should only be afforded low to moderate weight with respect to such information.
29. In terms of the remaining Information in Issue – that is, the Safety Information – I note that, generally, this information records communications and actions addressing certain aspects of the concerns for the applicant's safety and possibly the safety of others which led to the making of the EEA.⁵⁴ Given the nature of this information, and also noting the extent to which the released information refers to public safety measures,⁵⁵ I again consider that the abovementioned accountability factors⁵⁶ warrant low to moderate weight regarding the Safety Information.
30. In terms of the applicant's concerns about the the conduct of medical staff at the time of his admission and assessment, while I acknowledge the significance of these concerns for the applicant, I am unable to discern any evidence that could be construed as supporting a view that disclosure of the Information in Issue could assist to reveal any misconduct or possible deficiencies in the conduct of any Health Service staff. Accordingly, I consider that pro-disclosure factors regarding misconduct or deficiencies in agency conduct⁵⁷ do not arise.
31. Noting the specific nature of the Information in Issue, I can identify no further public interest considerations telling in favour of disclosure, in schedule 4, part 2 of the RTI Act or otherwise.⁵⁸ For example, I cannot identify how disclosure of the Information in Issue could reasonably be expected to contribute to fair treatment of the applicant,⁵⁹ the

⁴⁹ Item 5 of applicant's email dated 10 March 2020.

⁵⁰ Schedule 4, part 2, item 1 of the RTI Act.

⁵¹ Schedule 4, part 2, item 3 of the RTI Act.

⁵² Schedule 4, part 2, item 11 of the RTI Act.

⁵³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁵⁴ Section 121(3) of the IP Act prevents me from providing more detailed information in this regard.

⁵⁵ For example, seizure of firearms and conversations with federal law enforcement officers.

⁵⁶ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁵⁷ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁵⁸ Given, as noted at paragraph 20 above, the factors in schedule 4 of the RTI Act are non-exhaustive.

⁵⁹ Schedule 4, part 2, item 10 of the RTI Act.

administration of justice generally or for a person,⁶⁰ or enforcement of the criminal law.⁶¹

Factors favouring nondisclosure

32. The RTI Act recognises that disclosing an individual's personal information⁶² to someone else can reasonably be expected to cause a public interest harm⁶³ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁶⁴
33. Most of the Safety Information relates only to the applicant, not any other individuals. Consequently, the factors mentioned in the preceding paragraph do not apply to this information. On the other hand, to the extent the applicant continues to seek to access Third Party Information that relates solely to third parties (such as names and contact details),⁶⁵ I consider that these factors warrant significant weight.
34. Otherwise, the Information in Issue relates to both the applicant and third parties. Given the intertwined nature of this information, it is not possible to separate information concerning the applicant from information concerning the third parties. While the information is about the applicant, it is not solely about him, and its disclosure would also disclose personal information of the third parties.
35. In regard to the intertwined information, I will first address the parts of the Safety Information which relate to particular law enforcement officers. This information consists of information sought from, and provided by, certain officers about their dealings with the applicant around the time that he was admitted under the EEA; and information about steps to ensure public safety involving particular officers.⁶⁶ I am satisfied that these types of information comprise the relevant officers' routine personal work information, and that their disclosure would cause little public interest harm, and little prejudice the protection of the officers' right to privacy. In terms of these parts of the Safety Information, I therefore afford the factors mentioned at paragraph 32 above low weight.
36. The rest of the intertwined information is Third Party Information sought from, and provided by, individuals other than the applicant and law enforcement officers. This information records these other individuals' opinions, observations, experiences and/or concerns relating to the applicant. As such, it records their thoughts and, at times, emotions. I consider that this information is highly sensitive in nature, given that it is obtained in the context of health concerns about the applicant. The applicant has submitted that he already has a copy of the EEA, and contends that he knows 'the name of a third party'.⁶⁷ It is my understanding that he considers that these circumstances diminish the weight of the factors mentioned at paragraph 32 above. However, the level of detail in the Third Party Information in question exceeds that set out in the EEA, and relates to a number of third parties (not a single third party as posited by the applicant). Having carefully considered the content of all 188 pages located by the Health Service (that is, both the released information and the Information in Issue), I am satisfied that disclosing this Third Party Information could reasonably be expected to cause a

⁶⁰ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁶¹ Schedule 4, part 2, item 18 of the RTI Act.

⁶² Again, '*personal information*' is defined in section 12 of the IP Act as '*Information or an opinion ... whether true or not ... about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion*'.

⁶³ Schedule 4, part 4, section 6(1) of the RTI Act.

⁶⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁵ By telephone conversation on 2 March 2020, the applicant submitted that he only sought information about himself, and did not seek access to information about other individuals. However, as subsequent submissions by the applicant indicated ongoing interest in information regarding third parties, I have proceeded on this basis that this type of information remains in issue.

⁶⁶ Section 121(3) of the IP Act prevents me from providing more detailed information in this regard.

⁶⁷ Submissions contained in the external review application dated 8 July 2019 and provided by telephone on 2 March 2020 and email dated 10 March 2020.

substantial public interest harm, and be highly prejudicial to the protection of the right to privacy of the third parties. Accordingly, in terms of this information, I give significant weight to both of the abovementioned factors.

37. I have also considered whether disclosure of the Information in Issue could reasonably be expected to:
- prejudice an agency's ability to obtain confidential information;⁶⁸ and
 - cause a public interest harm by disclosing information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information.⁶⁹
38. I note that the Third Party Information was sought from, and provided by, third parties to medical officers assessing the applicant to assist them with his assessment and care during a time when the applicant was perceived to be in need of medical assistance. I also note that, in general terms, the Safety Information records actions addressing certain aspects of the concerns for the applicant's safety and possibly that of others which led to the making of the EEA. I am satisfied that both categories of information consist of information of a confidential nature that was communicated in confidence.
39. In terms of the Third Party Information, I consider it relevant to note that healthcare agencies such as the Health Service frequently rely on information provided by third parties with relevant knowledge of patients to inform patient care and treatment. Such information is often provided in the expectation it will be treated as confidential and be used only for the care and treatment of the patient. In some instances, the information is sought from the third party by the healthcare agency, and in other instances it is provided voluntarily. In both instances, it is reasonable to expect that, in the future, third parties may be deterred from providing this type of information if they are aware that it would be disclosed to the patient under the IP Act. This, in turn, could prejudice the ability of healthcare providers to effectively assess and treat patients, by reducing the likelihood that they have all relevant information about the patient before them. Taking into account the sensitivity of the Third Party Information and the importance of this type of information for treating healthcare providers (so that they may, after assessing its accuracy and relevance, act on it where necessary), I consider the public interest harm arising from disclosure of this information would be significant, and accordingly afford the above two factors significant weight.
40. In terms of the Safety Information, I consider it reasonable to expect that, in future, law enforcement officers will continue to convey information they consider to be necessary or relevant to medical officers assessing individuals under EEAs. Further, I consider it reasonable to expect that steps to address public safety concerns will continue to occur, and the Health Service will continue to be informed of those steps. Noting the roles and responsibilities of relevant law enforcement officers, I consider this to be so, whether or not these particular types of information are disclosed in this review. In these circumstances, I consider that the factors mentioned at paragraph 37 above do not tell in favour of nondisclosure; however, if I am wrong in this regard, I consider that they warrant only low weight.
41. I have also considered whether disclosure of the Safety Information in particular could reasonably be expected to:

⁶⁸ Schedule 4, part 3, item 16 of the RTI Act.

⁶⁹ Schedule 4, part 4, section 8(1) of the RTI Act.

- prejudice security, law enforcement or public safety;⁷⁰ or
 - prejudice the flow of information to a law enforcement agency.⁷¹
42. The Safety Information records communications between Health Service and law enforcement officers about particular safety matters, and actions addressing certain aspects of the concerns for the applicant's safety and possibly the safety of others.⁷² These communications and actions were, in effect, ad hoc steps customised to the specific circumstances surrounding the making of the EEA regarding the applicant. Such circumstances do not, in my opinion, appear to be unique or unlikely to occur again in future. Given this, I consider that disclosing information of this nature could reasonably be expected to allow individuals to adjust their behaviour in future, so as to avoid prompting communications and actions like those recorded in the Safety Information. The consequent lack of such steps could, in my opinion, reasonably be expected to prejudice the flow of information about public safety issues to relevant law enforcement agencies, and thereby prejudice public safety. Given the seriousness of the particular public safety concerns, and the importance of putting measures in place to address them, I consider that the abovementioned factors warrant significant weight.

Balancing the public interest

43. As outlined above, I afford the pro-disclosure factors regarding accountability, government operations, and background or contextual information⁷³ low to moderate weight. I also afford the pro-disclosure factor concerning an applicant's personal information⁷⁴ significant weight regarding all of the Information in Issue except for Third Party Information solely related to individuals other than the applicant. In the event that a pro-disclosure factor of assisting the understanding of an applicant's mental state arises as a separate and additional factor to the factor regarding an applicant's personal information, I consider that such a factor warrants no more than low weight.
44. On the other hand, I afford the nondisclosure factors regarding the personal information and privacy of other individuals⁷⁵ low weight regarding the parts of the Safety Information which relate to particular law enforcement officers, and significant weight regarding the both the Third Party Information solely about third parties and the intertwined Third Party Information. Similarly, I afford the nondisclosure factors favouring avoidance of prejudice or harm to the Health Service's ability to obtain confidential information⁷⁶ low to no weight regarding the Safety Information, and significant weight regarding the Third Party Information. Further, I afford the nondisclosure factors regarding prejudice to law enforcement and public safety⁷⁷ significant weight with respect to the Safety Information.
45. On balance, for the entirety of the Information in Issue, I consider that the nondisclosure factors outweigh the pro-disclosure factors. Accordingly, I find that access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.⁷⁸

⁷⁰ Schedule 4, part 3, item 7 of the RTI Act.

⁷¹ Schedule 4, part 3, item 13 of the RTI Act.

⁷² Section 121(3) of the IP Act prevents me from providing more detailed information in this regard.

⁷³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁷⁴ Schedule 4, part 2, item 7 of the RTI Act.

⁷⁵ Schedule 4, part 3, item 3 of the RTI Act and part 4, section 6(1) of the RTI Act.

⁷⁶ Schedule 4, part 3, item 16 of the RTI Act and part 4, section 8(1) of the RTI Act.

⁷⁷ Schedule 4, part 3, items 7 and 13 of the RTI Act.

⁷⁸ Under section 47(3)(b) and 49 of the RTI Act, in conjunction with section 67(1) of the IP Act.

DECISION

46. For the reasons set out above, I affirm the Health Service's decision insofar as it relates to the Information in Issue, and find that access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.
47. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 29 June 2020

APPENDIX

Significant procedural steps

Date	Event
8 July 2019	OIC received the external review application.
10 July 2019	OIC notified the Health Service and the applicant that the external review application had been received, and requested procedural documents from the Health Service.
17 July 2019	OIC received the requested documents from the Health Service.
22 July 2019	OIC notified the Health Service and the applicant that the application for external review had been accepted and requested further documents from the Health Service, including the information to which access was refused.
5 August 2019	OIC received the requested documents from the Health Service.
27 August 2019	OIC wrote to the applicant regarding information already held by the applicant.
16 September 2019	OIC wrote to the applicant confirming that some information was no longer in issue.
21 February 2020	OIC conveyed to the applicant a written preliminary view about the Information in Issue. OIC invited the applicant, if he did not accept the preliminary view, to provide submissions in response.
2 March 2020	The applicant provided OIC with oral submissions by telephone.
4 March 2020	OIC wrote to the applicant, explaining and reiterating OIC's preliminary view about the Information in Issue. OIC invited the applicant, if he did not accept the further preliminary view, to provide submissions in response. OIC also offered to arrange to use telephone equipment with assistance for hearing impaired users, should the applicant wish to use such assistance, and otherwise offered the applicant the option of communicating with OIC in writing.
5 March 2020	The applicant provided OIC with written submissions by email.
6 March 2020	OIC wrote to the applicant, addressing his concerns about whether the information released to him by the Health Service included all relevant information. OIC also asked that the applicant provide information about three doctors' reports that he had raised, if he considered that the Health Service had failed to locate them.
10 March 2020	The applicant provided OIC with further written submissions by email.
13 March 2020	OIC wrote to the applicant, again explaining and reiterating OIC's preliminary view about the Information in Issue. OIC invited the applicant, if he did not accept the further preliminary view, to provide submissions in response.
24 March 2020	The applicant notified OIC by email that he did not accept the further preliminary view and provided OIC with further written submissions.
30 March 2020	OIC wrote to the applicant, confirming that, having considered his submissions, OIC's preliminary view remained unchanged.