



## Decision and Reasons for Decision

---

**Citation:** *B42 and Darling Downs Hospital and Health Service [2025] QICmr 12 (20 March 2025)*

**Application Number:** 317655

**Applicant:** B42

**Respondent:** Darling Downs Hospital and Health Service

**Decision Date:** 20 March 2025

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - BREACH OF CONFIDENCE - medical records of the applicant - information provided by third parties to the health service - confidentiality of communications - schedule 3, section 8(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - medical records - examination authorities and risk assessments - risk of prejudice to system or procedure for the protection of persons - schedule 3, section 10(1)(i) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY AN ACT - schedule 3, section 12(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - medical records - personal information and privacy of other individuals - whether disclosure would, on balance, be contrary to the public interest

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - IRRELEVANT INFORMATION - medical records - incorrectly filed information - deletion under section 88(1) of the *Information Privacy Act 2009* (Qld)

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the Darling Downs Hospital and Health Service (**DDHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to their medical records from a specific hospital for the period 1 January 2013 to 20 July 2023.<sup>1</sup>

---

<sup>1</sup> Application dated 20 July 2023.

2. DDHHS located over 6000<sup>2</sup> relevant pages and granted the applicant access to the majority of the information. With respect to the remainder, DDHHS decided<sup>3</sup> to refuse access on the basis that the information comprised exempt information under section 48 and schedule 3, section 8(1) of the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>4</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of DDHHS's decision.<sup>5</sup>
4. For the reasons set out below, I vary DDHHS's decision and find that:
  - access to certain information in the applicant's medical records may be refused on the basis that it comprises exempt information<sup>6</sup> or because disclosure would, on balance, be contrary to the public interest;<sup>7</sup> and
  - certain information may be deleted on the basis that it is irrelevant to the terms of the application.<sup>8</sup>

## Background

5. Significant procedural steps are set out in the Appendix to this decision.
6. Evidence, submissions, legislation and other material I have considered in reaching this decision are identified in these reasons (including footnotes and the Appendix).
7. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**)<sup>9</sup> particularly the right to seek and receive information.<sup>10</sup> In observing and applying the law prescribed in the IP Act, a decision-maker will be '*respecting*' and '*acting compatibly with*' this right and others prescribed in the HR Act when applying the law prescribed in the RTI Act.<sup>11</sup> I have acted in this way in making this decision in accordance with section 58(1) of the HR Act.
8. The decision under review is the decision of DDHHS dated 27 October 2023.

## Refused information

9. The information to which the applicant has been refused access appears in 88 full pages and parts of 62 pages<sup>12</sup> of the applicant's medical records.<sup>13</sup> The IP Act<sup>14</sup> prohibits me from including specific details about the information in these reasons, however, it generally comprises:

---

<sup>2</sup> Attachment 1 to DDHHS's decision indicates the total pages located was 6137.

<sup>3</sup> Decision dated 27 October 2023.

<sup>4</sup> Attachment 2 to DDHHS's decision and the redacted parts of certain documents also referred to section 47(3)(b) of the RTI Act however the statement of reasons did not consider the application of that provision.

<sup>5</sup> External review application dated 13 November 2023.

<sup>6</sup> Under section 67 of the IP Act and section 47(3)(a) of the RTI Act.

<sup>7</sup> Under section 67 of the IP Act and section 47(3)(b) of the RTI Act.

<sup>8</sup> Under section 88(1) of the IP Act.

<sup>9</sup> Relevant provisions of which commenced on 1 January 2020.

<sup>10</sup> Section 21(2) of the HR Act.

<sup>11</sup> 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 [111]. OIC's approach to the HR Act has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

<sup>12</sup> Based on Attachment 1 to DDHHS's decision, and copy of the documents provided to OIC by DDHHS, showing the redactions.

<sup>13</sup> The documents appear within Volumes 2-7 of the applicant's medical records, including Consumer Integrated Mental Health and Addiction (**CIMHA**) records.

<sup>14</sup> Section 121(3) of the IP Act.

- information provided by a third party or third parties (other than DDHHS staff) and recorded in the applicant's medical records, in connection with the applicant's treatment (**Collateral Health Information**)<sup>15</sup>
- examination authority and risk assessment documents (**Assessment Information**)<sup>16</sup>
- information that is subject to provisions of another Act (**Remaining Information**)<sup>17</sup>
- names, identifying information and contact information of individuals other than the applicant (**Third Party Information**);<sup>18</sup> and
- information about other patients (**Other Patient Information**).<sup>19</sup>

10. The issues for determination are whether:

- access to the Collateral Health Information, Assessment Information and Remaining Information may be refused on the basis those categories comprise exempt information
- disclosure of the Third Party Information would, on balance, be contrary to the public interest; and
- the Other Patient Information can be deleted on the basis that it is irrelevant to the terms of the access application.

### Relevant law

11. An individual has a right, under the IP Act, to be given access to documents to the extent they contain the individual's personal information.<sup>20</sup> However, this right is subject to the provisions of the IP Act and the RTI Act, including grounds for refusing access to information.<sup>21</sup>
12. Access to a document may be refused to the extent that it comprises exempt information<sup>22</sup> or where its disclosure would, on balance, be contrary to the public interest.<sup>23</sup> Additionally, if giving access to a document under the IP Act would disclose information that is irrelevant to the access application, access may be given with the irrelevant information deleted.<sup>24</sup>
13. The legislation is to be administered with a pro-disclosure bias<sup>25</sup> and it is Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.<sup>26</sup> However, where information satisfies the criteria for any of the categories of exempt information set out in schedule 3 of the RTI Act, Parliament has also determined that the

---

<sup>15</sup> 30 full pages and 51 part pages: Vol 2 page 172; Vol 3 pages 238, 239, 240, 241, 263 and 284; Vol 4 pages 365, 366, 388, 414 and 415; Vol 6 pages 213, 214 and 673; CIMHA 2013 - 18.12.2019 pages 9, 53, 54, 81, 82, 130, 131, 155, 177, 178, 420 and 726; and CIMHA 19.12.2019 - 20.10.2023 pages 344, 540, 546, 578, 766, 1289, 1290, 1304, 1318, 1334, 1335-1340, 1343-1346, 1367, 1388-1390, 1391, 1396, 1399-1405, 1473, 1540, 1626, 1631, 1670, 1671, 1685, 1699, 1700-1706, 1757, 1776, 1777, 1778-1779 and 1844.

<sup>16</sup> 45 full pages: Vol 5 pages 99-101, 164-166 and 251-252; Vol 6 pages 455-457; Vol 7 pages 17-19; and CIMHA 19.12.2019 - 20.10.2023 pages 744-747 and 1026-1052.

<sup>17</sup> 13 full pages: Vol 4 at pages 32-34; Vol 5 pages 95-97; and Vol 6 pages 393-399; referred to as Prohibited Information in our letter to the applicant dated 4 December 2024.

<sup>18</sup> 9 part pages: Vol 6 pages 253 and 340; CIMHA 2013 - 18.12.2019 pages 919 and 920; and CIMHA 19.12.2019 - 20.10.2023 pages 591, 592, 593, 1537 and 1683.

<sup>19</sup> 2 part pages: Vol 2 page 502; Vol 3 page 283.

<sup>20</sup> Section 40 of the IP Act.

<sup>21</sup> 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 that Act.

<sup>22</sup> Section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act.

<sup>23</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>24</sup> Section 88(2) of the IP Act.

<sup>25</sup> Section 64 of the IP Act.

<sup>26</sup> Section 67(2)(a) of the IP Act and section 47(2)(a) of the RTI Act.

disclosure of this information is contrary to the public interest, and access may therefore be refused without further consideration of public interest arguments.<sup>27</sup>

## Findings

### ***Collateral Health Information***

14. DDHHS refused access to this category of information on the basis that its disclosure could reasonably be expected to found an action for breach of confidence.<sup>28</sup>
15. The test for exemption under schedule 3, section 8(1) of the RTI Act must be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, with appropriate standing to bring an action to enforce an obligation of confidence said to be owed to that plaintiff by an agency such as DDHHS.<sup>29</sup>
16. The cause of action referred to in schedule 3, section 8(1) of the RTI Act can arise in contract or equity.<sup>30</sup> In its decision, DDHHS relied on an equitable obligation of confidence owed by DDHHS to third party individuals. There is no evidence to suggest a contractual obligation arises in this case.
17. The requirements for establishing an equitable obligation of confidence are:
  - i) the information in question must be identified with specificity
  - ii) it must have the necessary quality of confidence
  - iii) it must have been received in circumstances importing an obligation of confidence; and
  - iv) there must be an actual or threatened misuse of the information.<sup>31</sup>
18. I consider that the requirements at i) and ii) are met for the Collateral Health Information. I am satisfied that the Collateral Health Information has been identified with specificity, and that information provided by the third parties to the applicant's treating doctors in connection with care and treatment has the necessary quality of confidence.<sup>32</sup>
19. In relation to the third requirement, generally, an obligation of confidence is imposed at the time the information is imparted and it can be imposed expressly or by implication, based on the circumstances. The existence and scope of any obligation of confidence will be determined both by what the recipient of the information knew and ought to have known in the circumstances.<sup>33</sup> Even when the participants in a discussion do not expressly mention confidentiality, certain kinds of discussions can be ones which participants would generally assume will be treated confidentially. It is necessary to consider and evaluate all the circumstances surrounding the supply of the information to determine whether those circumstances, as a whole, imparted an obligation of confidence.<sup>34</sup>
20. Having considered the Collateral Health Information, I am satisfied that the third party individual/s who provided this information did so on the understanding that the information was being provided in confidence and would be treated as such by DDHHS.

---

<sup>27</sup> Section 48(2) of the RTI Act.

<sup>28</sup> Schedule 3, section 8(1) of the RTI Act.

<sup>29</sup> *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (**B and BNRHA**).

<sup>30</sup> *Ramsay Health Care v Office of the Information Commissioner & Anor* [2019] QCATA 66 (**Ramsay**).

<sup>31</sup> *Ramsay* at [94], adopting previous formulations in *Optus Networks Pty Ltd v Telstra Corporation Ltd* (2010) 265 ALR 281 and *Smith Kline & French Laboratories (Aust) Ltd v Secretary, Department of Community Services & Health* (1990) 22 FCR 73.

<sup>32</sup> See for example, quality of confidence discussion in *B and BNRHA* at [64]-[75].

<sup>33</sup> *H64 and Redland City Council* [2022] QICmr 26 (12 May 2022) at [56].

<sup>34</sup> See *Ramsay* at [77]-[95].

Some of the Collateral Health Information includes express assurances of confidentiality. Even in instances where there is no such assurance, I consider an implied obligation of confidence arose because participants to these kinds of discussions would generally assume the discussion will be treated confidentially. As such, I consider the third requirement is satisfied.

21. I am also satisfied that the scope of the obligation of confidence binding DDHHS means that disclosure of the Collateral Health Information to the applicant under the IP Act would constitute misuse of the information, as it would be inconsistent with the purpose for which it was received by DDHHS. This satisfies the fourth requirement.
22. Based on the reasons set out in the preceding paragraphs, I find that the necessary requirements are met and that disclosure of the Collateral Health Information could reasonably be expected to<sup>35</sup> found an action, in equity, for breach of confidence. Accordingly, I find that the Collateral Health Information is exempt under schedule 3, section 8(1) of the RTI Act.
23. I acknowledge the applicant's submission that they seek access to the refused information for '*legal reasons*', because of certain issues relating to medical treatment.<sup>36</sup> While these submissions may raise public interest factors favouring disclosure,<sup>37</sup> there is no scope for me to consider public interest arguments in circumstances where information is exempt (as with the Collateral Health Information, as well as the Assessment Information and Remaining Information discussed below). This is because Parliament has determined that disclosure of the kinds of information listed in schedule 3 of the RTI Act is, in all cases, contrary to the public interest.<sup>38</sup> However, to the extent these submissions are relevant to the public interest balancing test which applies to the Third Party Information, I have considered them below.

### **Assessment Information**

24. The RTI Act also provides that information will be exempt if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons.<sup>39</sup> To determine whether the Assessment Information is exempt under schedule 3, section 10(1)(i) of the RTI Act, I must consider<sup>40</sup> whether:
  - i) there is an identifiable system or procedure
  - ii) it is a system or procedure for the protection of persons; and
  - iii) disclosure of the information in issue could reasonably be expected to prejudice that system or procedure.
25. The evidence available to OIC establishes that DDHHS gathered the Assessment Information under the following:
  - the process set out in the *Public Health Act 2005* (Qld) (**PH Act**) for applying for emergency examination authorities;<sup>41</sup> and

<sup>35</sup> The term '*could reasonably be expected to*' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

<sup>36</sup> External review application dated 13 November 2023 and email to OIC dated 30 April 2024.

<sup>37</sup> Such as those set out in schedule 4, part 2 of the RTI Act.

<sup>38</sup> Section 48(2) of the RTI Act.

<sup>39</sup> Schedule 3, section 10(1)(i) of the RTI Act.

<sup>40</sup> As outlined in *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at [27]-[36] and *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at [9].

<sup>41</sup> Chapter 4A of the PH Act.

- the process set out in the *Mental Health Act 2016* (Qld) (**MH Act**) for applying for mental health assessments.<sup>42</sup>
26. I am satisfied that the above processes constitute identifiable systems or procedures and also, that they exist for the protection of persons receiving or requiring mental health treatment, and the community more broadly.<sup>43</sup> On this basis, the second requirement is met.
27. The Assessment Information identifies third parties and the information supplied by those third parties in connection with the emergency examination authority application and assessment process. Granting access to this kind of information could, to my mind, reasonably be expected to prejudice these systems by impeding the flow of information to relevant agencies or the willingness of parties to engage with those agencies.<sup>44</sup> The emergency examination authority process relies on information provided by third parties to initiate an assessment under the PH Act. Disclosing this information could reasonably be expected to impact on the likelihood that individuals will raise concerns in the future, and on the quality of information health services receive. In turn, this could reasonably be expected to negatively impact patient care and treatment, where these assessment systems are critical to patient outcomes.
28. Additionally, I consider that unrestricted disclosure under the IP Act of information about risk assessments could reasonably be expected to prejudice the assessment function under the MH Act. I consider that, if individuals who are or may become subject to treatment authorities were aware of the specific ways their behaviour is assessed under a treatment authority, those individuals could attempt to modify their behaviour to achieve a more favourable outcome. This could reasonably be expected to compromise the risk assessment process and the ability of health services to ensure the effectiveness of their assessment systems.
29. Accordingly, I find that the three requirements listed at paragraph 24 are satisfied and that disclosing the Assessment Information could reasonably be expected to prejudice a system or procedure for the protection of persons. On that basis, it is my view that the Assessment Information is exempt under schedule 3, section 10(1)(i) of the RTI Act.<sup>45</sup> I have considered the exceptions to this exemption and find that none apply to the Assessment Information.<sup>46</sup>

### **Remaining Information**

30. Under schedule 3, section 12 of the RTI Act, information will be exempt where its disclosure is prohibited under specific provisions of other legislation; those provisions are set out in schedule 3, section 12(1) of the RTI Act.
31. In these reasons, I am limited in the extent to which I can describe the Remaining Information or the applicable provision in schedule 3, section 12(1) of the RTI Act.<sup>47</sup> I consider section 121(3) of the IP Act prevents me from providing any further explanation,

---

<sup>42</sup> Chapter 7, part 3 of the MH Act.

<sup>43</sup> *D77 and Gold Coast Hospital and Health Service* [2020] QICmr 28 (22 May 2020) (**D77**) at [16]; *E33 and Metro South Hospital and Health Service* [2021] QICmr 50 (12 October 2021) (**E33**) at [22]; *VA6Q6J and Sunshine Coast Hospital and Health Service* [2015] QICmr 18 (14 August 2015) (**VA6Q6J**) at [17]-[19].

<sup>44</sup> *E33* at [23]-[25]; *D77* at [17]; *VA6Q6J* at [21]-[25].

<sup>45</sup> DDHHS decided that the Assessment Information was exempt under schedule 3, section 8(1) of the RTI Act. Section 118(1)(b) of the IP Act provides that the Information Commissioner has the power, on external review, to decide any matter in relation to an access application that could, under the IP Act, have been decided by an agency. In undertaking merits review, and stepping into the shoes of the original decision maker, I have instead found that the exemption at schedule 3, section 10(1)(i) of the RTI Act applies to that information.

<sup>46</sup> Schedule 3, section 10(2) of the RTI Act.

<sup>47</sup> Section 121(3) of the IP Act.

including discussing the particular nature of the Remaining Information or identifying the specific legislative provisions prohibiting disclosure, because doing so could lead to the particular prejudice or harm that the exemption is designed to prevent.

32. The same constraints also applied during this review. Given these considerations, I was satisfied that not giving the applicant details of the specific provision or provisions prohibiting disclosure, as listed in schedule 3, section 12(1) of the RTI Act, was both reasonable and necessary, notwithstanding the obligations of procedural fairness in the IP Act<sup>48</sup> and at common law.<sup>49</sup> I am satisfied that, during this review, I *'adopt[ed] procedures that are fair, having regard to the obligations of the commissioner under [the IP] Act'*,<sup>50</sup> as is within my discretion as a delegate of the Information Commissioner.<sup>51</sup>
33. Having independently considered the Remaining Information, I am satisfied that its disclosure is prohibited by one of the applicable legislative provisions in schedule 3, section 12(1) of the RTI Act, and that the exception to the exemption in schedule 3, section 12(2) of the RTI Act does not apply.<sup>52</sup>

### **Third Party Information**

34. The Third Party Information is about other individuals<sup>53</sup> including public sector employees, and comprises their names, contact details and/or identifying information.
35. Access to information may also be refused where its disclosure would, on balance, be contrary to the public interest.<sup>54</sup> 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. Generally, 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, although there are some recognised public interest considerations that may apply for the benefit of an individual.<sup>55</sup>
36. In assessing whether disclosure of information would, on balance, be contrary to the public interest, the IP Act and RTI Act require a decision maker to disregard any irrelevant factors<sup>56</sup>, consider relevant factors for and against disclosure<sup>57</sup> and decide where the balance of the public interest lies according to the relative weight of those factors, as they apply to the particular information in question.<sup>58</sup>

### **Factors favouring disclosure**

37. The RTI Act recognises that the public interest will favour disclosure of an applicant's personal information to them and this factor is generally afforded significant weight.<sup>59</sup> While the Third Party Information appears within the applicant's medical records, the information, in and of itself is not *about* the applicant, or the applicant's care and treatment; it is about other individuals. Accordingly, I do not consider the public interest

<sup>48</sup> Section 110(2)(a) of the IP Act.

<sup>49</sup> See for example *Kioa v West* (1985) 159 CLR 550 at 584.

<sup>50</sup> Section 110(2)(a) of the IP Act.

<sup>51</sup> Sections 108(1)(a) and 139 of the IP Act.

<sup>52</sup> As indicated in footnote 45 above, the external review process involves merits review and while DDHHS relied on the exemption in schedule 3, section 8 of the RTI Act in relation to this information, I have found a different exemption applies based on the information available to me.

<sup>53</sup> DDHHS officers and public sector employees, and other patients.

<sup>54</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

<sup>55</sup> Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

<sup>56</sup> Including those in Schedule 4, part 1 of the RTI Act.

<sup>57</sup> Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case.

<sup>58</sup> Section 49(3) of the RTI Act.

<sup>59</sup> Schedule 4, part 2, item 7 of the RTI Act.

in affording the applicant access to their personal information applies to the Third Party Information.

38. I recognise that providing the applicant with all pages of their medical record with no redactions would serve to somewhat enhance the accountability and transparency of DDHHS.<sup>60</sup> However, given the limited nature of the Third Party Information and the level of information already disclosed to the applicant by DDHHS, I do not consider disclosing the Third Party Information would advance the accountability or transparency of DDHHS in any material way, and I afford these factors very low weight.
39. I have considered the submission that the applicant requires the refused information '*for legal reasons*'.<sup>61</sup> I accept that provision of unredacted documents would provide the applicant with further details of individuals involved in the applicant's treatment, and such information may be relevant to consideration of what action the applicant seeks to pursue in a legal context. However, given the limited nature of the Third Party Information and the extent of information the applicant already has about their treatment in released medical records, I afford the factor at schedule 4, part 2, item 17 of the RTI Act limited weight.
40. The applicant's submissions raise concerns about medical treatment. I am however, satisfied that disclosing the Third Party Information, given its very limited nature, would not reveal any misconduct, improper or unlawful conduct and therefore, that factor does not apply.<sup>62</sup> Though, similarly for the reasons outlined in the preceding paragraph, I accept that the provision of unredacted documents would provide the applicant with a more complete picture of the individuals involved in treatment and their contact details which may *allow* or *assist* inquiry into possible deficiencies in conduct within DDHHS.<sup>63</sup> For these reasons, I afford low weight to the factor in schedule 4, part 2, item 5 of the RTI Act.

### Factors favouring nondisclosure

41. As noted in paragraph 34 above, the Third Party Information concerns other individuals. I am satisfied that it comprises their '*personal information*'<sup>64</sup> as it identifies them, either by name, contact details, or other identifying information.
42. The RTI Act seeks to safeguard the personal information of other individuals and protect their right to privacy.<sup>65</sup> The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>66</sup>
43. Some of the Third Party Information about public sector employees is of a routine nature as it appears in the context of their day to day duties. I accept that the harm arising from disclosure of routine personal work information of public sector employees is generally low. However, for this particular information, I consider that the factors favouring nondisclosure which relate to protecting the privacy and personal information of third parties<sup>67</sup> deserve low to moderate, rather than negligible, weight.<sup>68</sup> I take this view

<sup>60</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>61</sup> As mentioned in paragraph 27 of these reasons.

<sup>62</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>63</sup> The threshold for this factor to apply is low, see for example *Kelson v Queensland Police Service* [2019] QCATA 67 at [55]-[74].

<sup>64</sup> Defined in section 12 of the IP Act.

<sup>65</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

<sup>66</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 paragraph 1.56.

<sup>67</sup> Schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.

<sup>68</sup> *E24 and Department of Justice* [2025] QICmr 6 (27 February 2025) at [31]-[35].

because the information appears in the context of staff working in mental health and dealing with sensitive processes under the MH Act and PH Act as part of their routine duties.<sup>69</sup> I am satisfied that these public sector employees should be afforded a greater level of privacy due the particular environment they work in, and the context in which their information appears.

44. I am further satisfied that the Third Party Information comprising mobile numbers of public sector employees is not routine in nature.<sup>70</sup> Mobile numbers form part of a public sector employee's private sphere, as disclosure would allow those individuals to be contacted outside of business hours.<sup>71</sup> I consider that disclosing this information, along with the contact details and patient IDs of individuals other than the applicant, would cause a public interest harm by disclosing their personal information, and prejudice their rights to privacy.<sup>72</sup> I afford these factors high weight.
45. While it is possible the applicant already knows the identities and contact details of certain individuals, I do not consider this reduces the weight of these factors in circumstances where there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.<sup>73</sup>

### **Balancing the public interest**

46. I acknowledge the pro-disclosure bias<sup>74</sup> and the important public interest in ensuring that a public health provider, such as DDHHS, is accountable for its actions and transparent in its operations and treatment of patients. However, I am not satisfied that disclosing the Third Party Information would meaningfully advance those public interest factors and I have afforded them very low weight. I acknowledge that the applicant has concerns about treatment that they seek to investigate, and has indicated an intention to seek legal action; to the extent those public interest factors apply, I afford them limited to low weight.
47. On the other hand, I am satisfied that the public interest in protecting the privacy and personal information of other individuals are relevant to the Third Party Information. For the reasons set out in paragraphs 43 to 45, I have afforded those factors low to moderate weight in respect of the routine personal work information, due to the sensitive context the public sector employees work in, and high weight for the balance of the Third Party Information.
48. I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure of the Third Party Information. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on this basis.<sup>75</sup>

### **Other Patient Information**

49. Section 88 of the IP Act provides that access may be given to a document subject to the deletion of information reasonably considered not relevant to an application. This is a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.

---

<sup>69</sup> See for example, *E91 and Cairns and Hinterland Hospital and Health Service* [2023] QICmr 58 (6 November 2023) at [42]-[44].

<sup>70</sup> *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) (**Underwood**) at [66]-[68]; applying *Kiepe and University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [18]-[21].

<sup>71</sup> See for example, *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at paragraphs [18]-[21] and *Underwood* at [66]-[67].

<sup>72</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

<sup>73</sup> *FLK v Information Commissioner* [2021] QCATA 46 at [17].

<sup>74</sup> Section 64(1) of the IP Act.

<sup>75</sup> Under section 47(3)(b) of the RTI Act.

50. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>76</sup>
51. The access application requested the applicant's own medical records from a named hospital and connected health service facilities.<sup>77</sup>
52. On its face, the Other Patient Information comprises information about other hospital patients and appears to have been included in the applicant's medical records in error. I am satisfied this information does not comprise part of the applicant's medical record, nor is it about the applicant's medical treatment.
53. Accordingly, I find that the Other Patient Information is irrelevant to the access application and can be deleted under section 88 of the IP Act.

## DECISION

54. I vary DDHHS's decision to refuse access to the information in issue, and I find that:
  - a) access to the Collateral Health Information, Assessment Information and Remaining Information may be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act because this information is exempt
  - b) access to the Third Party Information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest; and
  - c) the Other Patient Information can be deleted under section 88(1) of the IP Act on the basis of irrelevance.
55. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

---

**Katie Shepherd**  
**Assistant Information Commissioner**

**Date: 20 March 2025**

---

<sup>76</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52] which was a decision made under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld).

<sup>77</sup> Application dated 20 July 2023.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
13 November 2023	OIC received the application for external review. OIC contacted the applicant and acknowledged receipt of the external review application. OIC requested procedural documents from DDHHS.
16 November 2023	The applicant confirmed that they wished to proceed with external review.
23 November 2023	OIC received the requested documents from DDHHS.
6 December 2023	OIC notified the applicant and DDHHS that the application for external review had been accepted. OIC asked DDHHS to provide a copy of the documents located in response to the application, including the refused information.
20 December 2023	OIC received the requested documents from DDHHS.
17 March 2023	OIC received correspondence from the applicant.
16 April 2024	OIC conveyed a preliminary view to the applicant.
30 April 2024	OIC received emails from the applicant confirming the applicant wished to proceed to a formal decision and providing submissions.
4 December 2024	OIC conveyed a further preliminary view to the applicant.
13 January 2025	OIC received an email from the applicant confirming the applicant wished to proceed to a formal decision.
24 February 2025	OIC advised DDHHS that a formal decision would be required to finalise the review.