



Decision and Reasons for Decision

Citation:	<i>B60 and Cairns and Hinterland Hospital and Health Service</i> [2025] QICmr 66 (9 October 2025)
Application Number:	318734
Applicant:	B60
Respondent:	Cairns and Hinterland Hospital and Health Service
Decision Date:	9 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - HEALTHCARE INFORMATION - applicant seeks access to information regarding medical procedure - whether disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(d) and 51 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Cairns and Hinterland Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)¹ for records of a medical procedure and subsequent reviews and tests (**Information in Issue**).²
2. The Health Service decided to refuse access to the Information in Issue on the basis that disclosure might be prejudicial to the applicant's physical or mental health or wellbeing.
3. The applicant applied³ to the Information Commissioner for external review of the Health Service's decision.
4. For the reasons set out below, I affirm the Health Service's decision. I find that access to the requested information may be refused under section 67(1) of the IP Act and section 47(3)(d) of the *Right to Information Act 2009* (Qld) (**RTI Act**).⁴

¹ Administrative access application received on 28 April 2025 later confirmed as an application under the IP Act on 8 May 2025.

² The Information in Issue is 163 pages.

³ Application dated 23 June 2025.

⁴ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and RTI Act. References to the IP Act and RTI Act in this decision are to those Acts as in force prior to 1 July 2025. This is in accordance with transitional provisions in Chapter 8, Part 3 of the current IP Act. Specifically, section 217(2) of the current IP Act provides that 'the former IP Act continues to apply in relation to the application or purported application as if the [IPOLA Act] had not been enacted'.

Reviewable decision

5. The decision under review is the Health Service's decision dated 10 June 2025. The decision was made by an Assistant Clinical Director Access, Adult & Older Persons Community Mental Health Services, who was appointed to make healthcare decisions for the Health Service under section 50(5) of the IP Act (**Healthcare Decision-Maker**).

Evidence considered

6. Where possible, the evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons. However, the Information Commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be exempt information or contrary to the public interest information.⁵ This restriction, and information contained in submissions supplied by the Health Service,⁶ constrains me from discussing those submissions in detail in these reasons.⁷
7. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and the IP Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁰ '*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.*'¹¹

Issue for determination

8. The issue for determination is whether access to the Information in Issue may be refused on the ground that disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant.¹²

Relevant law

9. Under the IP Act, an applicant has a right to be given access to documents of an agency to the extent those documents contain the individual's personal information,¹³ and an agency should decide to give access to a document unless giving access would, on balance, be contrary to the public interest,¹⁴ which is referred to as the pro-disclosure bias. However, this is subject to other provisions of the IP Act, including the grounds on which an agency may refuse access to documents. Under section 67(1) of the IP Act, an agency may refuse access to a document in the same way and to the same extent

⁵ Section 121(3) of the IP Act; section 51(2) of the RTI Act provides that Parliament considers it would, on balance, *be contrary to the public interest* to give access to a document to the extent it comprises relevant healthcare information of the applicant if the disclosure of the information might be prejudicial to the physical or mental health or wellbeing of the applicant. [My emphasis.]

⁶ Particularly, submissions dated 18 August 2025.

⁷ So as to avoid breaching section 121(3) of the IP Act, and/or causing the prejudice section 51(2) of the RTI Act is intended to avoid. I note this approach is consistent with OIC decisions, decided in similar circumstances – see *B86 and Metro South Hospital and Health Service* [2024] QICmr 23 at [22] and [29].

⁸ Section 21(2) of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ *Freedom of Information Act 1982* (Vic) and *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ *XYZ* at [573]. This approach, in the context of the IP Act and RTI Act, was endorsed by McGill J in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

¹² Section 67(1) of the IP Act and sections 47(3)(d) and 51 of the RTI Act.

¹³ Section 40(1)(a) of the IP Act.

¹⁴ Section 64(1) of the IP Act.

the agency could refuse access under section 47 of the RTI Act, had the document been the subject of an access application under the RTI Act.

10. Access to '*relevant healthcare information*' may be refused under the RTI Act if disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant.¹⁵
11. '*Relevant healthcare information*' is defined as '*healthcare information given by a healthcare professional*'.¹⁶ A '*healthcare professional*' is a person who carries on, and is entitled to carry on, an occupation involving the provision of care for a person's physical or mental health or wellbeing, including, for example:¹⁷
 - a doctor, including a psychiatrist
 - a psychologist
 - a social worker; or
 - a registered nurse.
12. The Information Commissioner has the power to decide any matter in relation to an access application that could have been decided by an agency.¹⁸

Submissions of the Health Service

13. Upon commencing the external review,¹⁹ I asked the Health Service to provide a submission in support of its decision, explaining:
 - the specific nature of the prejudice to the applicant that is expected to result from partial or full disclosure of the Information in Issue
 - the reasons why prejudice might occur as a result of disclosing the Information in Issue to the applicant
 - whether any protective factors, such as current care and treatment, would ameliorate the possible prejudice; and
 - whether any information may be disclosed to the applicant through a nominated healthcare provider.
14. I later wrote to the Healthcare Decision-Maker, asking him to confirm whether, in reaching a decision, he took into account:²⁰
 - any positive impact that may arise from releasing records of the applicant's medical procedure; and
 - the applicant's right to recognition and equality before the law as set out in section 15 of the HR Act which provides that:
 - (1) *Every person has the right to recognition as a person before the law.*
 - (2) *Every person has the right to enjoy the person's human rights without discrimination.*
 - (3) *Every person is equal before the law and is entitled to the equal protection of the law without discrimination.*
 - (4) *Every person has the right to equal and effective protection against discrimination...*

¹⁵ Sections 47(3)(d) and 51 of the RTI Act.

¹⁶ See definition in schedule 5 of the RTI Act.

¹⁷ See definition in schedule 5 of the RTI Act.

¹⁸ Section 118(1)(b) of the IP Act. As such, I have the power to make a decision on the relevant healthcare information, under section 67(1) of the IP Act.

¹⁹ Letter to the Health Service dated 30 June 2025.

²⁰ Letter dated 12 August 2025.

15. In response, the Healthcare Decision-Maker—a registered psychiatrist whose qualifications permit an objective, professional evaluation of potential prejudice to physical or mental health and wellbeing²¹—provided submissions together with cogent evidence in support.²² As discussed above, I am constrained in the amount of detail I can give of this material; it does, however:

- address the various issues put by me to the Healthcare Decision-Maker as summarised at paragraphs 13-14 above; and
- point to a real and tangible risk²³ that disclosure of the Information in Issue²⁴ might prejudice the applicant's physical or mental health or wellbeing, consistently with the decision under review.

Submissions of the applicant

16. In summary terms, the applicant's position is that the medical procedure the subject of the Information in Issue has had serious adverse impacts on him and that he is '*entitled to my information*'.²⁵

Findings

Does the Information in Issue comprise the applicant's relevant healthcare information?

17. Yes, for the reasons that follow.

18. As I explained to the applicant in my preliminary view letter dated 9 September 2025, under the IP Act, '*relevant healthcare information*' is healthcare information given by a healthcare professional.²⁶ There is no definition of the word '*healthcare*' in the RTI Act, however, the ordinary and natural meaning of the word is '*the organized provision of medical care to individuals or a community*'.²⁷

19. The Information in Issue records the 'organized provision of medical' and health care to the applicant, as delivered or given by various health professionals. I am, as a matter of fact, satisfied that the Information in Issue is the applicant's relevant healthcare information.

Might disclosing the Information in Issue prejudice the applicant's physical or mental health or wellbeing?

20. Yes, for the reasons that follow.

21. It is important to note that this ground to refuse access is phrased differently to other provisions, where the likelihood of prejudice must be '*reasonably expected*' to occur. In this case, if disclosure of the requested information '*might*' be prejudicial to the

²¹ The Healthcare Decision-Maker is listed on the Australian Health Practitioner Regulation Agency's register of practitioners: <https://www.ahpra.gov.au/Registration/Registers-of-Practitioners.aspx> (viewed 2 October 2025).

²² Submissions dated 4 July 2025 and 18 August 2025.

²³ See discussion below at paragraph 212.

²⁴ Including by way of release through a nominated healthcare professional, as allowed for in appropriate circumstances under section 92 of the IP Act (see submission dated 18 August 2025).

²⁵ See particularly email dated 9 September 2025, received 2:22PM and sent in response to my letter of the same date, explaining my preliminary view that access to the Information in Issue may be refused, on the basis its disclosure might be prejudicial to the applicant's physical or mental health or wellbeing. The applicant conveyed similar information to OIC via telephone on 24 and 30 June 2025, including explaining he was contemplating legal action.

²⁶ Schedule 5 of the RTI Act.

²⁷ P62 and Sunshine Coast Hospital and Health Service [2024] QICmr 17 (2 May 2024) at [19].

applicant's physical or mental health or wellbeing, I must refuse access,²⁸ keeping in mind that the grounds on which access may be refused are to be interpreted narrowly.²⁹ To meet this burden, the Health Service must establish³⁰ that the prejudice contemplated to the applicant's physical or mental health or wellbeing must be a real and tangible possibility, as opposed to a fanciful, remote or far-fetched possibility.³¹

22. As set out at paragraphs 5 and 15 above, the Healthcare Decision-Maker is a registered psychiatrist and Assistant Clinical Director Access, Adult & Older Persons Community Mental Health Services. I am satisfied that the Healthcare Decision-Maker has qualifications and experience appropriate to assess the relevant healthcare information, i.e. the Information in Issue. Therefore, the decision to refuse access was made by an appropriately qualified healthcare professional.³²
23. As noted above, the Healthcare Decision-Maker provided several submissions explaining and affirming his decision. His submissions are cogent and supported by reference to relevant evidence. While the applicant has, as noted, an understandable desire to access the Information in Issue, I have no reason to question the Healthcare Decision-Maker's professional evaluation that there is a real and tangible possibility disclosure of the Information in Issue³³ might prejudice the applicant's physical or mental health and wellbeing. I accept that evaluation.
24. On this basis, I am satisfied that disclosing the Information in Issue might prejudice the applicant's physical or mental health and wellbeing.

Conclusion – can access to the Information in Issue be refused?

25. I recognise that it is very important to the applicant that he obtain this information. As noted above, he has explained that the medical procedure has had a serious impact on his quality of life and wishes to obtain access to his information. These are understandable reasons to seek access to the Information in Issue.
26. However, having carefully considered all material before me, including the applicant's submissions, the Healthcare Decision-Maker's submissions and the Information in Issue, I am satisfied that the Information in Issue is the applicant's relevant healthcare information and disclosure might be prejudicial to his physical or mental health or wellbeing. Consequently, I consider that access to the Information in Issue may be refused under section 47(3)(d) of the RTI Act.

²⁸ Noting that, under section 67(2)(b) of the IP Act, the Health Service has a discretion to release information even if a ground on which access may be refused applies, however, the Information Commissioner has no such discretion in accordance with section 118(2) of the IP Act.

²⁹ Section 67(2)(a) of the IP Act.

³⁰ Noting that the Health Service bears the onus in this external review, in accordance with section 100(1) of the IP Act.

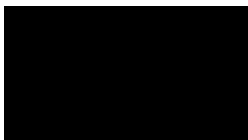
³¹ This meaning of the term 'might be prejudicial' was adopted by the Commonwealth Administrative Appeals Tribunal for the purposes of a similar provision in the *Freedom of Information Act 1982* (Cth) in *Re K and Director-General of Social Security* (1984) 6 ALD 354 at 356-7 and endorsed by the Information Commissioner in *S and Medical Board of Queensland* (1994) 2 QAR 249 when considering section 44(3) of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**). Section 51(2) of the RTI Act is similar to section 44(3) of the repealed FOI Act. As this section also contains the phrase 'might be prejudicial', this interpretation remains relevant.

³² Section 50(5)(b) of the IP Act provides that an agency may appoint an 'appropriately qualified healthcare professional' to make a healthcare decision, which includes decisions under sections 47(3)(d) and 51 of the RTI Act (Section 50(6) of the IP Act). Under Schedule 5, '**Appropriately qualified**, in relation to a healthcare professional, means having the qualifications and experience appropriate to assess relevant healthcare information in a document.'

³³ Including through a nominated healthcare professional, under section 92 of the IP Act.

DECISION

27. I affirm the Health Service's decision to refuse access to the Information in Issue under section 67(1) of the IP Act and sections 47(3)(d) and 51 of the RTI Act.
28. I have made this decision under section 123(1)(a) of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.



Jim Forbes
Assistant Information Commissioner

Date: 9 October 2025