



## Decision and Reasons for Decision

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**Citation:** *Y13 and Queensland Health* [2019] QICmr 52 (28 November 2019)

**Application Number:** 314474 and 314561

**Applicant:** Y13

**Respondent:** Queensland Health

**Decision Date:** 28 November 2019

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS - whether the applicant has previously applied to the same agency for the same documents - whether the later application, on its face, discloses any reasonable basis for again seeking access to the documents - section 62 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENTS - documents detailing Google searches and downloads about the applicant - whether the information sought is nonexistent - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - document regarding secure transfer of information between agency business units - whether deleted information was irrelevant to the terms of the access application - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - documents relating to the applicant and their interactions with the agency - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. This decision relates to two separate access applications made by the applicant to Queensland Health under the *Information Privacy Act 2009* (Qld) (**IP Act**).
2. In the **First Application**, which is the subject of external review 314474, the applicant applied<sup>1</sup> for access to:
  1. *Queensland Ambulance Service [QAS] records of all triple 0 phone calls from [mobile phone number] and [mobile phone number]. Communications to and from QAS staff about [the applicant].  
Date range: 2008 to 4 December 2018.*
  2. *Any medical records or communications by the watchhouse medical staff at Southport Watchhouse.  
Date range: 2012 to 4 December 2018.*
  3. *All records and communications about [the applicant] to and from Office of the Chief Psychiatrist employees, including conference notes, and calendar entries.  
Date range: 2014 to 4 December 2018.*
3. Queensland Health located 190 pages and 1 audio recording and decided<sup>2</sup> to refuse access to 1 page and parts of 31 pages on the basis that the information was either irrelevant to the scope of the access application, exempt from disclosure, or contrary to the public interest to disclose. Then, following an internal review application<sup>3</sup> by the applicant, Queensland Health decided<sup>4</sup> to release additional information contained within one page.<sup>5</sup> Queensland Health otherwise affirmed the original decision.
4. In the **Second Application**, which is the subject of external review 314561, the applicant applied<sup>6</sup> for access to:
  1. *All documents and emails about [the applicant] and [the applicant's] matters seen by, searched by, sent to or from, or created by [named Queensland Health RTI officer who made the original decision regarding the First Application].*
  2. *All QAS documents about [the applicant] and [the applicant's] matters including all communications with police or hospitals or forensic medical officers.*
  3. *All complaints, investigations and related emails and file notes about [the applicant] by QAS. ALL DOCUMENTS ABOUT [the applicant] INCLUDING EMAILS TO AND FROM MINISTRY OF HEALTH. INCLUDE PERSONS BLIND COPIED. INCLUDED GOOGLE SEARCHES AND DOWNLOADS ABOUT [the applicant]. [sic]*

*The time period / date range the applicant would like to search within: 1/1/2008 TO 14/2/19.*
5. In accordance with section 57 of the IP Act, Queensland Health transferred part of the applicant's request relating to documents held by the Minister for Health sought at item 3 of the application to that Minister. In terms of the remainder of the application, Queensland Health refused to deal with some documents, on the basis that the applicant

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<sup>1</sup> Application dated 4 December 2018.

<sup>2</sup> Decision dated 25 January 2019.

<sup>3</sup> Internal review application dated 26 January 2019.

<sup>4</sup> Internal review decision dated 26 February 2019.

<sup>5</sup> Page 63. In the original decision dated 25 January 2019, the applicant was given access in part to this page.

<sup>6</sup> Application dated 14 February 2019.

had made a previous application (that is, the First Application) for such documents. Otherwise, Queensland Health located 295 pages and 5 audio recordings and decided<sup>7</sup> to refuse access to:

- parts of 29 pages on the basis that the information was either exempt from disclosure or contrary to the public interest to disclose; and
  - documents sought at item 3 relating to Google searches and downloads about the applicant on the basis that the documents sought are nonexistent.
6. The applicant applied<sup>8</sup> to the Office of the Information Commissioner (**OIC**) for external reviews of Queensland Health's two decisions refusing access to information and raised concerns about the sufficiency of the searches conducted by Queensland Health for documents responsive to item 3 of the Second Application.
7. During the course of the two external reviews, Queensland Health agreed to release some further information to the applicant. Queensland Health also accepted OIC's view that access to some information could be refused on the ground that its disclosure would be contrary to the public interest, rather than the ground that it was exempt information.<sup>9</sup>
8. For the reasons set out below, I vary Queensland Health's decisions and find that:
- Queensland Health can refuse to deal with items 1 and 2 of the Second Application to the extent that information responding to these items was located and considered in response to the First Application
  - access to certain documents responding to item 3 of the Second Application and any further documents responding to the First and Second Applications may be refused on the ground that they are nonexistent or unlocatable
  - part of one page of the Information in Issue<sup>10</sup> may be deleted on the basis that it is irrelevant to the scope of the Second Application; and
  - access to the remaining Information in Issue may be refused on the ground that it comprises contrary to the public interest information.

## Background

9. Significant procedural steps relating to these external reviews are set out in the Appendix.

## Reviewable decision

10. The decisions under review in external reviews 314474 and 314561 are Queensland Health's decisions dated 26 February 2019 and 4 April 2019 respectively.

## Evidence considered

11. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

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<sup>7</sup> Decision subject of external review 314561 dated 4 April 2019.

<sup>8</sup> For external reviews 314474 and 314561, the applications for external review are dated 26 February 2019 and 4 April 2019 respectively.

<sup>9</sup> Email from Queensland Health dated 23 July 2019 in response to correspondence from OIC dated 22 July 2019.

<sup>10</sup> Defined at paragraph 13 below.

12. The applicant provided extensive submissions during the two reviews. I have considered all of this material and have only extracted those parts which I consider have relevance to the issues to be determined in these external reviews.

### Information in issue

13. As noted at paragraph 7 above, some further information has been released to the applicant. The remaining **Information in Issue** is comprised of parts of 58 pages as set out at paragraphs 42 and 47 below.

### Issues for determination

14. The issues for determination in these external reviews are whether:
- Queensland Health can refuse to deal with items 1 and 2 of the Second Application on the basis that the applicant has made a previous application for the same documents
  - certain documents sought at item 3 of the Second Application are nonexistent; and
  - the Information in Issue may be refused on the grounds that:
    - it is irrelevant to the scope of the access application; or
    - it would, on balance, be contrary to the public interest to disclose.

### Refusal to deal

#### *Relevant law*

15. Under the IP Act, an applicant has a general right to access documents of an agency to the extent they contain the individual's personal information.<sup>11</sup> However, this right is subject to limitations. One such limitation is found under section 62 of the IP Act, which provides that an agency may refuse to deal with a later application where:<sup>12</sup>
- an applicant has made an access application under the IP Act<sup>13</sup>
  - the applicant makes another application under the IP Act to the same agency for access to one or more of the same documents that were sought under the first application
  - the later application does not, on its face, disclose any reasonable basis for again seeking access to the documents; and
  - one of the grounds on which an agency may refuse to deal with the later application applies.

### Findings

#### **Has the applicant previously sought access to the same documents?**

16. Yes, for the reasons that follow.
17. As set out at paragraphs 2 and 3 above, in terms of the *first application* referred to in section 62 of the IP Act:

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<sup>11</sup> Section 40 of the IP Act.

<sup>12</sup> Section 62(1) of the IP Act.

<sup>13</sup> Or the *Right to Information Act 2009* (Qld) (**RTI Act**).

- The First Application was made by the applicant under the IP Act to Queensland Health on 4 December 2018.
  - The First Application applied for access to:
    1. *Queensland Ambulance Service records of all triple 0 phone calls from [mobile phone number] and [mobile phone number]. Communications to and from QAS staff about [the applicant].  
Date range: 2008 to 4 December 2018.*  
...
    3. *All records and communications about [the applicant] to and from Office of the Chief Psychiatrist employees, including conference notes, and calendar entries.  
Date range: 2014 to 4 December 2018.*
  - In response to the First Application, Queensland Health located 190 pages and 1 audio recording and made a decision on access to those documents.
  - The First Application is the subject of external review 314474.
18. As set out at paragraphs 4 and 5 above, in terms of the *later application* referred to in section 62 of the IP Act:
- The Second Application was made by the applicant under the IP Act to Queensland Health on 14 February 2019.
  - The Second Application applied for access to:
    1. *All documents and emails about [the applicant] and [the applicant's] matters seen by, searched by, sent to or from, or created by [named Queensland Health RTI officer who made the original decision regarding the First Application] .*
    2. *All QAS documents about [the applicant] and [the applicant's] matters including all communications with police or hospitals or forensic medical officers.*  
...  
... *date range: 1/1/2008 to 14/2/19.*
  - Queensland Health relevantly decided to refuse to deal with items 1 and 2 of the Second Application to the extent the information sought was located and considered in response to the First Application.
  - The Second Application is the subject of external review 314561.
19. Having carefully considered item 1 of the Second Application, I am satisfied that this item seeks access to two categories of information – firstly, all documents located and considered by the Queensland Health RTI officer in their original decision regarding the First Application (in other words, the information in issue responsive to the First Application); and secondly, all documents sent, received or created by the RTI officer during the process of making that decision (for example, documents related to locating and receiving copies of the information in issue from other officers within Queensland Health and preceding the final version of the original decision). Insofar as item 1 of the Second Application seeks access to the first category of information, I consider it clear that documents sought at item 1 of the Second Application were sought under the First Application.<sup>14</sup>

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<sup>14</sup> Insofar as item 1 of the Second Application seeks the second category of information, I note that Queensland Health located 74 pages of information and, in its decision dated 4 April 2019, decided to release 72 pages in full and 2 pages in part.

20. In terms of item 2 of the Second Application, I consider that this item fully subsumes the documents sought under item 1 of the First Application, and also covers other documents. This is because item 2 of the Second Application seeks a wider range of QAS documents than item 1 of the First Application, and covers a small additional period of time.<sup>15</sup> Noting the extent to which the types of documents sought by the two items and the date ranges for them overlap, I am satisfied that *some* of the documents sought at item 2 of the Second Application<sup>16</sup> were sought under item 1 of the First Application.<sup>17</sup>

**Does the Second Application, on its face, disclose a reasonable basis for seeking access to those same documents?**

21. No. There is no information on the face of the Second Application which discloses any reasonable basis for again seeking access to these documents.

**Does a ground for refusing to deal with a later application apply?**

22. The grounds on which an agency may refuse to deal with the later application are listed in section 62(3) of the IP Act. Relevantly, these grounds include the ground that the applicant was given notice under section 68 of the IP Act that access to some of the documents was to be given,<sup>18</sup> and the ground that the first application is the subject of a review<sup>19</sup> that is not complete.<sup>20</sup> Given that Queensland Health decided to give the applicant access to some of the documents sought under the First Application, and given that the First Application is, until this decision is made and given to the parties, the subject of an external review that is not complete, I am satisfied that grounds for refusing to deal with the Second Application apply.

**Conclusion**

23. In summary, I am satisfied that:
- to the extent that the information responding to items 1 and 3 of the First Application was located and considered in response to the First Application, items 1 and 3 of the First Application and items 1 and 2 of the Second Application cover the same documents
  - the grounds for refusing to deal with a later application listed at section 62(3)(b)(i) and (d)(i) of the IP Act apply; and
  - the Second Application does not, on its face, disclose any reasonable basis for again seeking access to these documents.
24. Accordingly, I find that Queensland Health was entitled to refuse to deal with items 1 and 2 of the Second Application, to the extent that the information sought was located and considered in response to the First Application.

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<sup>15</sup> From 5 December 2018 to 14 February 2019.

<sup>16</sup> That is, the 3 pages and 1 audio recording responsive to item 1 of the First Application that Queensland Health's original decision dated 25 January 2019 decided to release in full.

<sup>17</sup> Insofar as item 2 of the Second Application applies to a wider range of QAS documents and covers a small additional period of time, I note that Queensland Health located 221 pages and 5 audio recordings and, in its decision dated 4 April 2019, decided to release 194 pages and the 5 audio recordings in full and 27 pages in part.

<sup>18</sup> Section 43(3)(b)(ii) of the RTI Act.

<sup>19</sup> 'Review' is defined in section 62(5) of the IP Act to include an external review or a proceeding under chapter 3, part 11 of the RTI Act (that is, certain proceedings before the Queensland Civil and Administrative Tribunal).

<sup>20</sup> Section 43(3)(d)(i) of the RTI Act.

## Nonexistent information

### Relevant law

25. The right to access information in section 40 of the IP Act is also subject to grounds for refusal of access.<sup>21</sup> Under the RTI Act, access to a document may be refused if the document is nonexistent.<sup>22</sup>
26. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors,<sup>23</sup> which include:
  - the administrative arrangements of government
  - the agency structure
  - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
  - the agency's practices and procedures (including but not exclusive to its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
27. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
28. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors.<sup>24</sup>

## Findings

### Google searches and downloads

29. As part of seeking external review of the entirety of Queensland Health's decisions to refuse access to documents, the applicant sought review of Queensland's Health's decision that Google searches and downloads may be refused on the ground that they are non-existent – and, in this sense, can be taken to have challenged the sufficiency of Queensland Health's searches for such documents.

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<sup>21</sup> Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the RTI Act.

<sup>22</sup> Sections 47(3)(e) and 52 of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act.

<sup>23</sup> *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [19] which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009).

<sup>24</sup> *Pryor* at [21].

30. As set out at paragraph 5 above, Queensland Health refused access to documents relating to Google searches and downloads about the applicant sought at item 3 of the Second Application on the basis that the documents sought are nonexistent.

31. In item 3 of the applicant's Second Application, the applicant sought access to:

*All complaints, investigations and related emails and file notes about [the applicant] by QAS. ALL DOCUMENTS ABOUT [the applicant] INCLUDING EMAILS TO AND FROM MINISTRY OF HEALTH. INCLUDE PERSONS BLIND COPIED. INCLUDED GOOGLE SEARCHES AND DOWNLOADS ABOUT [the applicant]. [sic, my emphasis]*

32. Queensland Health's decision states:<sup>25</sup>

*In response to the document search request for information relating to "google searches and downloads re [the applicant]", eHealth has advised:*

"Our filtering software does not record what is searched by an employee, only that they have visited "Google". Similarly, we do not record what staff have searched for on other search engines / facebook or other social media sites.

Therefore, the records of what a user has searched does not exist in our reports. I have also clarified that the information is not currently recorded in our proxy logs either - that will change over the next 12 months as we migrate to some newer technology."

*There are no documents or records relevant to Item 3 of [the access] application.*

33. Based on the advice of Queensland Health's eHealth regarding the extent of information recorded by Queensland Health regarding internet searches and downloads, as set out at paragraph 32 above, I am satisfied that it is not necessary for searches regarding Google searches and downloads about the applicant to be conducted. I find that access to documents detailing Google searches and downloads about the applicant may be refused under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act on the ground that the documents sought are nonexistent.<sup>26</sup>

### Other documents

34. In the application for external review of Queensland Health's internal review decision regarding the First Application, the applicant expressed concern that all QAS documents had not been located – however, these concerns were raised as a query regarding the scope of the application,<sup>27</sup> rather than in a manner suggesting that Queensland Health had failed to conduct sufficient searches for responsive documents. In the application for external review of Queensland Health's decision regarding the Second Application, the applicant did not raise any concern regarding whether Queensland Health had located responsive documents.

35. Several months after the commencement of the external reviews, the applicant submitted that:

- *THE ISSUE IS INSUFFICIENT SEARCHES AND THAT THIRD PARTY DETAILS were used for the malicious purpose of creating a defamatory impression and a stigmatising criminalised mental health image which incited discrimination including severe torture and removal of personhood rights.*

<sup>25</sup> At pages 2-3.

<sup>26</sup> Section 52(1)(a) of the RTI Act.

<sup>27</sup> As noted at paragraph 20 above, the scope of item 1 of the First Application seeks a narrower range of QAS documents than item 2 of the Second Application, and covers a slightly shorter period of time.

*I ask you to find all the calls from the watchhouse to QAS because those calls ridicule me and set me up for abusive medical treatment and more CIMHA records. I'd like the entire CIMHA record;*<sup>28</sup> and

- *emails around [named officer of the Office of Chief Psychiatrist] are essential ... INSUFFICIENT SEARCHES FOR [named officer of the Office of Chief Psychiatrist ].*<sup>29</sup>

36. These submissions comprise the only information before me raising concerns about the sufficiency of Queensland Health's searches for documents. Given the IP Act is beneficial legislation, I have considered these submissions and will now address them.
37. Based on the applicant's references to QAS, it is my understanding that the applicant considers that further QAS documents responsive to item 1 of the First Application, item 2 of the Second Application, and possibly item 3 of the Second Application, exist and should have been located by Queensland Health. Based on the applicant's submissions regarding a named officer of the Office of the Chief Psychiatrist, it is my understanding that the applicant considers that further documents of the Office of the Chief Psychiatrist responsive to item 3 of the First Application exist, and should have been located by Queensland Health.
38. I note that, in response to the First Application, Queensland Health located 3 pages and 1 audio recording of QAS documents, while in response to the Second Application, it located 221 pages and 5 audio recordings of QAS documents. I also note that, in response to the Second Application, Queensland Health located 187 pages of documents of the Office of the Chief Psychiatrist.
39. I have carefully considered the applicant's submissions about further documents of QAS or the Office of the Chief Psychiatrist. The applicant's submissions assert that such documents exist, but provide no independent evidence or explanation to support this assertion. Given this position, the applicant's submissions do not, in my opinion, provide sufficient evidence to establish, or reasonably suggest, that further documents responsive to the relevant items of the two applications exist.
40. In these circumstances, and noting the significant amount of information responsive to the relevant items located and considered in Queensland Health's decisions, there is nothing before me to suggest that Queensland Health has failed to conduct all reasonable searches, and I am satisfied that it is not necessary for Queensland Health to conduct further searches. Accordingly, I find that access to any further documents of QAS or the Office of the Chief Psychiatrist may be refused under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act on the basis that the further documents sought at item 3 of the Second Application are nonexistent or unlocatable.<sup>30</sup>

## **Irrelevant information**

### ***Relevant law***

41. Under the IP Act, an agency may delete information that is irrelevant to the scope of the terms of the original application.<sup>31</sup> This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is

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<sup>28</sup> Submission dated 22 August 2019.

<sup>29</sup> Submission dated 29 August 2019.

<sup>30</sup> Section 52(1) of the RTI Act.

<sup>31</sup> Section 88(2) of the IP Act.

necessary to consider whether the information is pertinent to the terms of the access application.

### **Findings**

42. Part of 1 page<sup>32</sup> of the Information in Issue comprises a single password. I have carefully considered this information and the terms of the Second Application as set out at paragraph 4 above. I am satisfied that this information is not information which responds to the access application as it is not about the applicant. Rather, it is about secure transfer of documents between business units within Queensland Health.
43. Accordingly, I find that this information may be deleted under section 88 of the IP Act on the basis that it is not relevant to the access application.

### **Contrary to the public interest information**

#### **Relevant law**

44. Under the RTI Act, access to documents may also be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.<sup>33</sup>
45. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.<sup>34</sup>
46. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>35</sup>
- 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**

47. The remaining Information in Issue is contained within parts of 57 pages and comprises:
- (i) mobile phone numbers of public service officers<sup>36</sup>
  - (ii) names of public service officers in the context of their direct email address<sup>37</sup>
  - (iii) leave details of public service officers<sup>38</sup>

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<sup>32</sup> Being page 25 of the 'IP4834 processing documents' in relation to external review 314561.

<sup>33</sup> Section 47(3)(b) of the RTI Act.

<sup>34</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>35</sup> Section 49(3) of the RTI Act.

<sup>36</sup> Appearing within pages 26, 29, 96 and 103 in relation to external review 314474 and page 34 of the 'IP4834 processing documents' and pages 94, 104, 138, 156, 168, 175, 178, 180, 183-184, 186-188, 190, 192-193, 195 and 197 of the 'QAS documents about applicant' in relation to external review 314561.

<sup>37</sup> Appearing within pages 3, 6, 21-22, 27, 41-42, 47, 51, 95-96, 99, 101-102, 114, 119-120, 151-153, 157, 171-173, 184 and 187 in relation to external review 314474.

<sup>38</sup> Appearing within pages 182 and 190 of the 'QAS documents about applicant' in relation to external review 314561.

- (iv) names of and other details about third parties;<sup>39</sup> and
- (v) collateral health information about the applicant provided by a third party.<sup>40</sup>

### Irrelevant factors

48. No irrelevant factors have been taken into account in my decision.

### Factors favouring disclosure

49. The RTI Act provides that there are factors favouring disclosure of information where such release could reasonably be expected to promote open discussion of public affairs, enhance the Government's accountability, and inform the community of the Government's operations.<sup>41</sup>
50. Queensland Health must be transparent and accountable about how it deals with members of the public; however, I do not consider that the disclosure of the remaining Information in Issue would advance Queensland Health's accountability and transparency in any significant way, particularly in light of the information which has been disclosed to the applicant in response to the access applications. I therefore afford the accountability and transparency factors favouring disclosure low weight.
51. I acknowledge that the applicant's personal information<sup>42</sup> appears in the information at (v) above as it comprises collateral health information about the applicant given by a third party. I acknowledge the importance of providing individuals with access to their personal information held by government and therefore, I give significant weight to the factor favouring disclosure regarding an applicant's personal information<sup>43</sup> in relation to the information at (v) above.
52. On the other hand, the information at (i), (ii), (iii) and (iv) above appears in documents about the applicant, but nevertheless does not comprise the applicant's personal information. Accordingly, this factor favouring disclosure does not apply in relation to the information at (i), (ii), (iii) and (iv) above.

### Factors favouring nondisclosure

53. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>44</sup> 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.<sup>45</sup>
54. The information at (i), (ii), (iii) and (iv) above solely comprises the personal information of third parties. While some of this information relates to public service officers, I do not consider that it is routine personal work information<sup>46</sup> as it allows officers to be contacted

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<sup>39</sup> Appearing within pages 63 and 157 in relation to external review 314474 and page 68 of the 'IP4834 processing documents' and pages 3-5, 7-8 and 11 of the 'QAS documents about a named individual' in relation to external review 314561.

<sup>40</sup> Appearing within page 63 in relation to external review 314474.

<sup>41</sup> Schedule 4, part 2, items 1 and 3 of the RTI Act.

<sup>42</sup> *Personal information* is defined at section 12 of the IP Act: 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

<sup>43</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>44</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>45</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>46</sup> *Routine personal work information* is information that is solely and wholly related to the routine day to day work duties and responsibilities of a public sector employee, such as the fact of authorship of a work document or a work responsibility. Generally, it is not considered to be contrary to the public interest to disclose routine personal work information. However, it is considered to be contrary to the public interest to disclose sensitive personal information of public sector employees, such as complaints

directly and outside of work hours or it comprises details of leave taken by those officers. Disclosure of this type of information permits potential contact with a public service officer when off duty and/or engaged in private activity or discloses private details about their leave arrangements, thus giving rise to a reasonable expectation of intrusion in to the officer's private life or 'personal sphere'.

55. In relation to the information at (v) above, while it comprises the applicant's personal information, it also comprises sensitive personal information of a third party, including their opinions and observations, which cannot be separated.
56. I consider disclosure of the information at (i), (ii), (iii), (iv) and (v) above could reasonably be expected to prejudice the protection of the right to privacy of other individuals and cause a public interest harm by disclosing their personal information. Given the nature of the information and the context in which it appears, I afford moderate weight to both of these factors with respect to the information at (i), (ii), (iii) and (iv). Noting the greater sensitivity and highly personal nature of the information at (v), I afford very high weight to the two factors with respect to this type of information.

### **Balancing the public interest**

57. I have considered the pro-disclosure bias in deciding access to information.<sup>47</sup>
58. As outlined above, I afford accountability and transparency factors favouring disclosure low weight with respect to all 5 types of information. I also afford the factor favouring disclosure concerning an applicant's personal information<sup>48</sup> significant weight regarding the information at (v) above. On the other hand, I afford the factors favouring nondisclosure regarding the personal information and privacy of other individuals moderate weight with respect to the information at (i), (ii), (iii) and (iv) and very high weight with respect to the information at (v).
59. On balance, for each of the 5 types of information, I consider the nondisclosure factors outweigh the disclosure factors in relation to the Information in Issue. Accordingly, I find that access to the remaining Information in Issue 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.

### **DECISION**

60. I vary Queensland Health's decisions and find that:
- Queensland Health can refuse to deal with items 1 and 2 of the Second Application<sup>49</sup> to the extent that information responding to these items was located and considered in response to the First Application
  - access to Google searches and downloads responding to item 3 of the Second Application and further documents responding to the First and Second Applications may be refused on the ground that they are nonexistent or unlocatable<sup>50</sup>

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made by or about a public sector employee and reasons why an officer is accessing leave entitlements of any kind or when they have taken, or intend to take, leave.

<sup>47</sup> Section 44 of the RTI Act.

<sup>48</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>49</sup> Under section 62 of the IP Act.

<sup>50</sup> Under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

- part of one page of the Information in Issue may be deleted on the basis that it is irrelevant to the scope of the Second Application;<sup>51</sup> and
- access to the remaining Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest information.<sup>52</sup>

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

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**A Rickard**  
**Assistant Information Commissioner**

**Date: 28 November 2019**

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<sup>51</sup> Under section 88(1) of the IP Act.

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

## APPENDIX

## Significant procedural steps

Date	Event
26 February 2019	OIC received the applicant's application for external review 314474.
27 February 2019	OIC received emailed submissions from the applicant.
1 March 2019	OIC notified Queensland Health and the applicant that the application for external review 314474 had been received and requested procedural documents from Queensland Health.
12 March 2019	OIC received the requested documents from Queensland Health.
15 March 2019	OIC received two emailed submissions from the applicant.
4 April 2019	OIC received the applicant's application for external review 314561. OIC received emailed submissions from the applicant.
15 April 2019	OIC notified Queensland Health and the applicant that the application for external review 314561 had been received and requested procedural documents from Queensland Health. OIC received the requested documents from Queensland Health.
15 May 2019	OIC notified Queensland Health and the applicant that the applications for external review 314474 and 314561 had been accepted, and requested copies of the documents located in relation to both reviews from Queensland Health.
20 May 2019	OIC received emailed submissions from the applicant.
29 May 2019	OIC received copies of the documents located in relation to both external reviews 314474 and 314561 from Queensland Health.
12 July 2019	In relation to external review 314474, OIC received a copy of page 63 of the documents located marked in accordance with Queensland Health's internal review decision.
22 July 2019	OIC conveyed a written preliminary view to Queensland Health in relation to external reviews 314474 and 314561.
23 July 2019	OIC received a response from Queensland Health advising that it accepted OIC's preliminary view.
8 August 2019	OIC received emailed submissions from the applicant.
22 August 2019	OIC conveyed a written preliminary view to the applicant in relation to both external reviews 314474 and 314561. OIC requested Queensland Health release additional information to the applicant as agreed. OIC received emailed submissions from the applicant.
23 August 2019	Queensland Health advised OIC that it had released the additional information to the applicant.
27 August 2019	OIC received emailed submissions from the applicant.

Date	Event
28 August 2019	OIC received three emailed submissions from the applicant. With Queensland Health's agreement, OIC released the additional information to the applicant in PDF format as the applicant was unable to access additional information that Queensland Health sent via secure file transfer on 23 August 2019.
29 August 2019	OIC received emailed submissions from the applicant.
11 September 2019	OIC received emailed submissions from the applicant.
13 September 2019	OIC received emailed submissions from the applicant.
19 September 2019	OIC received emailed submissions from the applicant.
25 September 2019	OIC wrote to the applicant about their external reviews.
26 September 2019	OIC received emailed submissions from the applicant.