



Decision and Reasons for Decision

Citation: *E91 and Cairns and Hinterland Hospital and Health Service [2023] QICmr 58 (6 November 2023)*

Application Number: 316697

Applicant: E91

Respondent: Cairns and Hinterland Hospital and Health Service

Decision Date: 6 November 2023

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request to access certain patient travel records of the applicant - accountability, transparency, fair treatment and administration of justice - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - NONEXISTENT OR UNLOCATABLE DOCUMENTS - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents can be refused on the ground they are nonexistent or unlocatable - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Cairns and Hinterland Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access certain patient travel records relating to herself.¹
2. The Health Service located 260 pages of records relevant to the application, disclosed 234 pages to the applicant and decided² to refuse access on various grounds to nine pages and portions of information on a further 17 pages.
3. The applicant sought internal review of the Health Service's decision.³ As the Health Service did not make an internal review decision within the statutory timeframe, it was taken to have affirmed its original decision.⁴

¹ The application is dated 5 August 2021 and was received by the Health Service on 6 August 2021.

² Decision dated 16 February 2022.

4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision.⁵
5. During the external review, the Health Service disclosed additional information to the applicant, however, the applicant continues to seek access to certain undisclosed information and is not satisfied that the Health Service has located all the documents she requested.
6. For the reasons set out below, I vary the Health Service's decision and find that:
 - access may be refused to certain information on the basis that disclosure would, on balance, be contrary to the public interest;⁶ and
 - access to any further documents may be refused on the basis they do not exist or cannot be located.⁷

Background

7. The Health Service has a patient travel subsidiary scheme, which provides financial assistance for eligible patients to access specialist medical services that are not available locally.⁸
8. The access application requested access to emails, for the period January 2021 to June 2021, relating to patient travel for the applicant and adjustment of her travel reimbursements.
9. On commencement of the review, the applicant sought access to all the information which had not been disclosed by the Health Service⁹ (**Undisclosed Information**). However, the applicant subsequently notified OIC¹⁰ that she was particularly interested in the *'text body'* of email exchanges;¹¹ that she was *'not really after'* names, any personal information or any codes; and she did not require the Health Service's internal codes for supplier companies, accounts, cost centres and vendors. OIC therefore confirmed that this information was no longer in issue, as it appeared in the Undisclosed Information.¹²
10. On external review, the applicant raised concerns about certain content within the disclosed documents and about how Health Service staff had dealt with her reimbursements (and responded to concerns she had raised in that regard). OIC's external review jurisdiction under the IP Act does not extend to commenting on the content of agency documents or investigating the conduct of an agency (or its officers).¹³

³ On 15 March 2022.

⁴ Under section 97(2) of the IP Act. The Health Service subsequently confirmed this to the applicant by letter dated 3 May 2022.

⁵ External review application dated 5 May 2022.

⁶ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

⁷ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

⁸ Information about the scheme can be accessed at <<https://www.qld.gov.au/health/services/travel/subsidies>>.

⁹ Comprising nine full pages and portions of information on 17 pages.

¹⁰ Applicant's email dated 30 October 2022.

¹¹ More specifically, the applicant submitted: *'I already know the staff member involved, just the text body of their email exchanges between Cairns Accounts would be enough to satisfy my request'*.

¹² OIC confirmed to the applicant (by email dated 2 November 2022) that, based on the applicant's 30 October 2022 notification, the remaining Undisclosed Information to which the applicant continued to seek access was limited to internal Health Service correspondence and the work email addresses and email signatures of the Health Service's staff.

¹³ This was confirmed to the applicant on 13 September 2023.

11. Throughout the review, the applicant also raised concerns about the Health Service's delays in providing information and responses to OIC. Under the IP Act, the procedure to be taken on external review is, subject to the Act, at the discretion of the Information Commissioner.¹⁴ I accept that the time taken to complete this review has not met the applicant's expectations. I also acknowledge that there were delays in OIC receiving certain information requested from the Health Service. As some of those delays can be attributed to internal resourcing issues at the Health Service, OIC afforded the Health Service a number of extensions of time to respond to OIC. However, as demonstrated in the Appendix, there were periods of time when OIC could not progress the review due to outstanding responses from the Health Service, which consequently impeded the expeditious conduct of the review.
12. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

13. The decision under review is the decision the Health Service is taken to have made pursuant to section 97(2) of the IP Act, affirming its original decision dated 16 February 2023.

Evidence considered

14. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
15. I have also had regard to the *Human Rights Act 2019 (HR Act)*, including the right to seek and receive information.¹⁵ I consider a decision-maker will be '*respecting and acting compatibly with*' these rights, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.¹⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the following observations made by Bell J, on the interaction between equivalent pieces of Victorian legislation,¹⁷ that '*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*'.¹⁸

Information and issues for determination

16. External review by the Information Commissioner¹⁹ is merits review—that is, an administrative reconsideration of the applicant's entitlement to access the information requested in the access application under the IP Act.²⁰ As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.²¹
17. During the review:

¹⁴ Section 108(1)(a) of the IP Act.

¹⁵ Section 21(2) of the HR Act.

¹⁶ *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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

¹⁷ Namely, the *Freedom of Information Act 1982 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

¹⁸ In *XYZ* at [573].

¹⁹ Or delegate.

²⁰ This was confirmed to the applicant on 27 March 2023.

²¹ Section 118(1)(b) of the IP Act.

- the Health Service disclosed some of the Undisclosed Information to the applicant;²² and
 - in respect of the remaining Undisclosed Information, OIC confirmed to the applicant that it included information of the nature described in paragraph 9 and conveyed a preliminary view that the balance would be contrary to the public interest to disclose.²³
18. The applicant initially contested OIC's preliminary view, but only with respect to six fully refused pages within the remaining Undisclosed Information.²⁴ However, after considering a further explanation of the preliminary view about those six pages,²⁵ the applicant accepted the preliminary view in full.²⁶ On this basis, the Undisclosed Information is not addressed in this decision.
19. On a number of occasions during the review, the Health Service was asked to conduct further searches for documents relevant to the access application.²⁷ As a result of those further searches, the Health Service located an additional 10 pages of information relevant to the application (**Additional Documents**). The Additional Documents were disclosed to the applicant, subject to the removal of certain information (including information of the nature specified in paragraph 9).²⁸
20. Following these disclosures, the applicant confirmed that she continued to seek access to only the following information removed from the Additional Documents (**Information in Issue**):²⁹
- (a) the PTSS ID numbers removed from pages 1 and 2 of the documents disclosed to the applicant on 20 June 2023³⁰
 - (b) the fully removed section on page 3 of the documents disclosed to the applicant on 20 June 2023³¹
 - (c) the '*longer redacted sentences*' removed from pages 4 and 5 of the documents disclosed to the applicant on 20 June 2023;³² and
 - (d) all the information removed from the five pages disclosed to the applicant on 19 September 2023, apart from one code appearing in the one line item disclosed to the applicant on page 2.³³

²² In March 2023, the Health Service disclosed information appearing on five pages to the applicant.

²³ OIC's emails to the applicant dated 2 and 27 March 2023. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

²⁴ Applicant's email submissions dated 23 April 2023. As the applicant's submission did not address other aspects of the preliminary view, OIC confirmed to the applicant (by email dated 3 May 2023) that, while she continued to seek access to the six fully refused pages, she was not pursuing access to any other Undisclosed Information (which comprised two fully refused pages and the partly refused pages).

²⁵ OIC's email to applicant dated 3 May 2023, sent at 2.23pm.

²⁶ Applicant's email submissions dated 3 May 2023, received at 6.56pm. By letter dated 18 July 2023, OIC confirmed to the applicant that the external review would proceed on the basis of her acceptance of the preliminary view and those six refused pages would also not be addressed in this decision.

²⁷ As set out in the Appendix.

²⁸ Five pages were disclosed to the applicant on 20 June 2023 and an additional five pages were disclosed to the applicant on 19 September 2023.

²⁹ By email submissions dated 5 July 2023, the applicant identified the specific removed information which she wished to access from the five pages disclosed on 20 June 2023. Following the further document disclosure on 19 September 2023, the applicant's email submissions dated 1 and 11 October 2023 indicated that she contested the removal of all information from those five disclosed pages.

³⁰ The other removed information on these pages is therefore not addressed in this decision.

³¹ The other removed information on this page is therefore not addressed in this decision.

³² As the applicant described this information (in her email submissions dated 5 July 2023) as being '*what appears to be more than names or codes*', I have taken the applicant's request to mean that she continued to seek access to only the following removed information—in two boxes at the bottom of page 4; in the box at the top of page 5; and in three boxes appearing within the smaller text on page 5. The other information removed from these pages is therefore not addressed in this decision.

21. While I am limited in the extent to which I can describe the Information in Issue,³⁴ I can confirm that it broadly comprises:

- the names and other personal information of private individuals other than the applicant (including their patient identification/file numbers and information concerning their personal circumstances)³⁵
- the Health Service's internal processing and payment codes³⁶
- names of Health Service staff³⁷ and an email signature block of one Health Service officer (which includes the officer's direct contact details);³⁸ and
- discussions between Health Service staff about matters that do not relate to the applicant's patient travel or the incorrect adjustment of her claim reimbursements,³⁹ including information about the work circumstances of a Health Service officer.⁴⁰

22. As noted in paragraphs 9, 17 and 18 above:

- the applicant had notified OIC during the review that she did not seek to access names, personal information and codes; and
- the applicant accepted OIC's preliminary view about the remaining Undisclosed Documents, which confirmed that the remaining Undisclosed Documents included information of the nature described in paragraph 9.

23. It was on this basis that the types of information outlined in paragraph 9 were deleted from the Additional Documents before their disclosure.⁴¹ However, notwithstanding the applicant's notification about the types of information she did not seek to access, her subsequent submissions confirmed that she did continue to seek access to certain names, personal information and codes within the Additional Documents. Previously, OIC has considered it appropriate to continue to rely on an applicant's prior acceptance of a preliminary view, on the basis that certainty and efficiency in the review process would be hindered were it possible for the applicant to revoke their acceptance.⁴² However, in the particular circumstances of this review, noting the nature of the Additional Documents and the fact that the applicant had not viewed any part of them at the time she accepted OIC's view, I consider it appropriate to proceed on the basis that the applicant did not agree to exclude the information noted at paragraph 9 as it appears in the Additional Documents.

³³ On 4 October 2023, I confirmed to the applicant that the redacted code in the disclosed line item on page 2 was her patient identification number. I asked the applicant to notify me by 11 October 2023 if she required a further copy of that page released to her, showing her patient identification number. The applicant did not request the provision of that further copy.

³⁴ Section 121 of the IP Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

³⁵ This information appears on pages 1, 2, 3 and 5 of the Additional Documents disclosed to the applicant on 20 June 2023 and all the information removed on page 2 of the Additional Documents disclosed to the applicant on 19 September 2023.

³⁶ Comprising all of the two columns of information removed from the table on page 4 of the Additional Documents disclosed to the applicant on 19 September 2023.

³⁷ These names appear within the 'fully removed section on page 3' and the 'longer redacted sentences' removed from pages 4 and 5 of the Additional Documents disclosed to the applicant on 20 June 2023; all the information removed on pages 1 and 2 of the Additional Documents disclosed to the applicant on 19 September 2023; and part of the information removed from page 5 of the Additional Documents disclosed to the applicant on 19 September 2023.

³⁸ Page 5 of the Additional Documents disclosed to the applicant on 19 September 2023.

³⁹ Pages 4 and 5 of the Additional Documents disclosed to the applicant on 20 June 2023

⁴⁰ Page 4 of the Additional Documents disclosed to the applicant on 20 June 2023.

⁴¹ Section 88 of the IP Act permits information that is not relevant to the access application to be deleted from the document before giving access to a copy of the document.

⁴² *Osgood and the Public Trustee of Queensland* [2017] QICmr 24 (3 July 2017) at [10]; *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [15].

24. The applicant also raised concerns about the adequacy of the searches conducted by the Health Service and submitted that certain documents had not been located by the Health Service.⁴³
25. For these reasons, the issues for determination are whether:
- access to the Information in Issue may be refused on the basis disclosure would, on balance, be contrary to the public interest;⁴⁴ and
 - access to further documents may be refused on the basis that they do not exist or cannot be located.⁴⁵
26. I have taken account of the applicant's submissions to the extent that they are relevant to these issues.

Relevant law

27. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent they contain the individual's personal information.⁴⁶ This right of access is subject to some limitations, including the grounds on which access to information may be refused.⁴⁷
28. One refusal ground is where disclosing information would, on balance, be contrary to the public interest.⁴⁸ 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.⁴⁹
29. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁵⁰
- 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

30. I have not taken any irrelevant factors into account in reaching my decision.

⁴³ The applicant identified these in her email submissions dated 23 April and 3 May 2023. The applicant's 11 October 2023 email submissions also generally contended that the Health Service had conducted insufficient searches.

⁴⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁴⁵ Sections 47(3)(e) and 52 of the RTI Act.

⁴⁶ Section 40 of the IP Act. '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

⁴⁷ The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

⁴⁸ Sections 47(3)(b) and 49 of the RTI Act.

⁴⁹ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

⁵⁰ Section 49(3) of the RTI Act.

Factors favouring disclosure

31. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- enhance the government's accountability⁵¹
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁵² and
 - reveal the reason for a government decision and any background or contextual information that informed the decision⁵³
 - advance the fair treatment of individuals in accordance with the law in their dealings with agencies;⁵⁴ and
 - contribute to the administration of justice generally, including procedural fairness, or for a person.⁵⁵
32. There is a strong public interest in the Health Service being accountable for their treatment of patients and for the decisions they make as part of that treatment, including in relation to the processing of claims for reimbursement of patient travel costs under the subsidiary scheme. The applicant has received a significant amount of information about how her claims (and reimbursements) under the patient travel subsidiary scheme were dealt with by the Health Service during a particular period of time. I consider disclosure of this information has substantially advanced the accountability and transparency factors,⁵⁶ by enabling scrutiny of the actions taken by the Health Service under the subsidiary scheme and by providing background information which informed those actions. I am satisfied that, given the nature of the majority of the Information in Issue, its disclosure would not further advance the Health Service's accountability and transparency in any way and therefore, these factors do not apply to favour its disclosure. Given the nature of the small amount of remaining Information in Issue (such as officer names and contact details) and the context in which it appears, I consider its disclosure could only be expected to further advance these factors in a marginal way. Accordingly, I afford these factors very low weight in respect of that small component of the Information in Issue.
33. I am also satisfied that disclosure of some of the Information in Issue—being the names and personal information of other individuals and the Health Service codes—would not advance the applicant's fair treatment in her dealings with the Health Service, or any other agency. Taking into account the nature of the remaining Information in Issue, the information which has been disclosed to the applicant and the applicant's prior interactions with various Health Service staff concerning her claims under the patient travel subsidiary scheme, I do not consider disclosure of that remaining information would, in any meaningful way, advance the fair treatment of the applicant in her dealings with the Health Service or any other agency. On this basis, I afford no weight to this factor favouring disclosure.
34. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an

⁵¹ Schedule 4, part 2, item 1 of the RTI Act.

⁵² Schedule 4, part 2, item 3 of the RTI Act.

⁵³ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 10 of the RTI Act.

⁵⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act.

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

investigation or decision.⁵⁷ Although the applicant has raised general fairness arguments,⁵⁸ she has not enunciated how she considers disclosure of any part of the Information in Issue would contribute to her procedural fairness. Taking into account the limited nature of the Information in Issue and the information which has been disclosed to the applicant, I am not satisfied that disclosing the Information in Issue would contribute to the general administration of justice or procedural fairness for the applicant or any other individual. Accordingly, I do not consider that this factor⁵⁹ applies to favour disclosure of the Information in Issue.

35. In determining whether the disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant, I must consider whether:⁶⁰

- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.

36. The applicant has not identified that she is wishing to pursue any particular remedy and there is no evidence before me to indicate that disclosure of the Information in Issue is required to enable the applicant to pursue a legal remedy or evaluate whether a remedy (legal or otherwise) is available or worth pursuing. For these reasons, I do not consider this factor favouring disclosure⁶¹ applies.

37. The applicant's submissions reference her concerns about how her claims under the patient travel subsidiary scheme have, over time, been dealt with.⁶² She also submitted that the Health Service is deliberately withholding information from her and, in doing so, the applicant alluded to her belief that this was because the information evidenced wrongdoing.⁶³ Given the issues the applicant raised in her submissions, I have given consideration to the following public interest factors favouring disclosure, which arise where disclosing information could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official⁶⁴
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;⁶⁵ and
- reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.⁶⁶

38. I have carefully reviewed the Information in Issue (together with the applicant's submissions). There is nothing before me which suggests that the Health Service is

⁵⁷ The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

⁵⁸ For example, in her submissions dated 23 April 2023, the applicant submitted that she has for some time been seeking explanations about changes that occurred in the reimbursement of her travel claims.

⁵⁹ Schedule 4, part 2, item 16 of the RTI Act.

⁶⁰ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

⁶¹ Schedule 4, part 2, item 17 of the RTI Act.

⁶² For example, the applicant's 24 April 2023 submissions refer to 'constant errors', 'delayed reimbursements' and her strained relationship with patient travel at a particular hospital.

⁶³ For example, in the applicant's submissions dated 20 March 2023. In her submissions dated 23 April 2023 the applicant also raised specific concerns about the actions of particular Health Service staff.

⁶⁴ Schedule 4, part 2, item 5 of the RTI Act.

⁶⁵ Schedule 4, part 2, item 6 of the RT Act.

⁶⁶ Schedule 4, part 2, item 12 of the RTI Act.

deliberately withholding information from the applicant or that the Information in Issue is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. While I acknowledge the concerns the applicant has raised, there is also nothing within the Information in Issue which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. Accordingly, I find that these public interest factors do not apply to favour disclosure of the Information in Issue.

39. Taking into account the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.⁶⁷

Factors favouring nondisclosure

40. The RTI Act recognises that there is a public interest harm in disclosing an individual's personal information to someone else⁶⁸ and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁶⁹ 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.⁷⁰
41. Most of the Information in Issue solely relates to private individuals other than the applicant and I am satisfied that it comprises the personal information of those other individuals. In particular, I am satisfied that the Information in Issue described in paragraphs 20(a) and (b) does not relate to the applicant and instead comprises the personal information of other individuals.⁷¹ This information is of a highly sensitive and personal nature. I am satisfied that disclosing this information would be a significant intrusion into the privacy of these private individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to these factors which favour nondisclosure of this personal information.
42. In respect of the remaining Information in Issue,⁷² I am satisfied that it comprises the routine personal work information of public sector officers. While a public interest harm in its disclosure therefore automatically arises, I afford this nondisclosure factor only low weight given the limited nature of this personal work information.⁷³

⁶⁷ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Information in Issue could, for example, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); reveal environmental or health risks or measures relating to public health and safety (schedule 4, part 2, item 14 of the RTI Act); or contribute to the maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 15 and 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

⁶⁸ Schedule 4, part 4, section 6 of the RTI Act.

⁶⁹ Schedule 4, part 3, item 3 of the RTI Act.

⁷⁰ 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.

⁷¹ This was confirmed to the applicant on 18 July 2023.

⁷² Apart from the Health Service codes refused on page 4 of the Additional Documents disclosed to the applicant on 19 September 2023.

⁷³ Schedule 4, part 4, section 6 of the RTI Act.

43. In terms of the privacy factor, I note that some of this remaining information includes the direct contact details of a Health Service officer, which would allow the officer to be contacted directly.⁷⁴ I also note that the applicant's submissions during this review confirm her dissatisfaction with the actions of the Health Service staff who have dealt with her reimbursement claims and her subsequent complaints in that regard. In the particular circumstances of this matter, I am satisfied that disclosure of this personal work information could reasonably be expected to cause some level of prejudice to the right of these public sector officers to preserve their personal spheres free from interference. On this basis, I afford low weight to the nondisclosure factor relating to privacy.
44. While the applicant may be aware of some of this routine personal work information by virtue of her interactions with the Health Service and information which has been disclosed, I do not consider this reduces the weight of these nondisclosure factors, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.
45. Finally, I consider disclosure of the Health Service processing and payment codes within the Information in Issue could be expected to cause a low level of prejudice to the Health Service's management function.⁷⁵ On this basis, although I consider a further nondisclosure factor applies to favour nondisclosure of these codes, I afford it only low weight.

Balancing the relevant public interest factors

46. I have taken into account the pro-disclosure bias of the IP Act.⁷⁶ Further, for the reasons set out above, I have identified factors which favour disclosure of some of the Information in Issue (including those relating to the Health Service's transparency and accountability). However, taking into account the nature of the Information in Issue, I have afforded these factors low or no weight.
47. On the other hand, for the reasons set out above, I am satisfied that, for most of the Information in Issue, the nondisclosure factors relating to the protection of privacy and personal information of other individuals are deserving of significant weight. I have also afforded low weight to these factors in respect of the balance of the Information in Issue. For the processing and payment codes within the Information in Issue, I consider the nondisclosure factor concerning the Health Service's management functions is deserving of only low weight.
48. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Information in Issue outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on this basis.⁷⁷

⁷⁴ I note that in a recent decision of the Office of Australian Information Commissioner—'WN' and Inspector General of Taxation (*Freedom of Information*) [2020] AICmr 71 (22 December 2020)—it was accepted that release of the direct contact details of public servants could reasonably be expected to have a substantial adverse effect on the relevant agency's operations. As the remaining Information in Issue also includes the names of Health Service officers, I also note that the Administrative Appeals Tribunal in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 (9 November 2020) decided to refuse access to the names of public sector officers in the particular circumstances of that matter.

⁷⁵ Schedule 4, part 3, item 19 of the RTI Act.

⁷⁶ Section 64 of the IP Act. I have also had regard to all the public interest factors listed in Schedule 4 of the RTI Act and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly (section 47(2)(a) of the RTI Act).

⁷⁷ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

Further documents

Relevant law

49. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁷⁸ However, access to a document may be refused if it is nonexistent or unlocatable.⁷⁹
50. To be satisfied that a document is nonexistent, an agency must rely on their particular knowledge and experience and have regard to a number of key factors which include:⁸⁰
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities⁸¹
 - 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.
51. 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, depending on which of the key factors are most relevant in the particular circumstances.
52. 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.⁸²
53. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁸³ However, where an external review involves the issue of missing documents, as is the case here, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its

⁷⁸ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

⁷⁹ Sections 47(3)(e) and 52(1) 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. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act.

⁸⁰ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

⁸¹ Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

⁸² *Pryor* at [21].

⁸³ Section 100(1) of the IP Act.

obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.⁸⁴

Applicant's submissions and Additional Documents

54. The applicant submitted⁸⁵ that she considered the following documents relevant to her application should exist and they had not been located by the Health Service (**Missing Documents**):
- (a) an email sent from [Officer A] to [Officer B], showing the enquiry [Officer B] was responding to in an 18 January 2021 email regarding the applicant's travel claims as a whole
 - (b) the 18 January 2021 email from [Officer B] to [Officer A] described above
 - (c) the response from [Officer A] to [Officer B's] 18 January 2021 email
 - (d) documents confirming to [Officer B] that the officer should action/change anything in the applicant's travel claims or [Officer B] confirming that the officer did so of the officer's own accord
 - (e) any documentation as to when the change to the applicant's travel reimbursements occurred; and
 - (f) any correspondence from 'Cairn Accounts', or anyone at all, confirming officially the change to the applicant's reimbursement amount.
55. As noted in paragraph 19, the further searches undertaken during the external review located the Additional Documents, which comprise 10 pages as detailed below.
56. In May 2023, the Health Service was asked to conduct further searches for the Missing Documents and five pages of the Additional Documents were located as relevant to the application—these pages comprised the Missing Documents identified in paragraphs 54(a) and (b) above and internal correspondence within the Health Service discussing the change to the applicant's reimbursements. The remaining Missing Documents were not located by the Health Service's further searches.
57. Despite the partial disclosure of those pages,⁸⁶ the applicant maintained that the Health Service had not conducted adequate searches. More specifically, the applicant submitted that notes on 'OPTML' were missing⁸⁷ and that additional relevant documents would be located by the Health Service undertaking further searches using her nominated 'PTSS ID' numbers.⁸⁸
58. The Health Service was then asked to conduct further searches for documents relevant to the access application, using the applicant's PTSS ID numbers.⁸⁹ Those further searches located the remaining five pages of the Additional Documents and, as noted above, those were partially disclosed to the applicant.⁹⁰

⁸⁴ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁸⁵ Applicant's submissions attached to her email dated 23 April 2023 and clarified by the applicant's further email submissions dated 3 May 2023.

⁸⁶ On 20 June 2023.

⁸⁷ It appears that the applicant's submissions in his regard relate to the reference to such notes in an email which had been disclosed to her.

⁸⁸ Applicant's email submissions dated 5 July 2023.

⁸⁹ On 13 July 2023.

⁹⁰ On 19 September 2023.

Findings

59. The Health Service relied on searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents relevant to the application and provided information to me about its searches, as set out below.
60. As the Health Service has relied on searches by its officers to demonstrate that all relevant documents have been located, the question I must consider is whether the Health Service has taken *all reasonable steps* to locate documents responsive to the application. This entails consideration of whether the Health Service has engaged appropriate staff to conduct sufficient searches of all locations where the documents in question could reasonably be expected to be found.
61. In summary, the information the Health Service provided about its searches shows that:
- (a) in processing the application, the Health Service conducted searches across the email records of Health Service staff which it considered relevant to the terms of the access application; and
 - (b) on external review, the Health Service:
 - conducted searches of the email accounts of all Health Service staff to identify email documents containing the applicant's name⁹¹
 - conducted searches for the Missing Documents within the Health Service's generic email accounts relating to the patient travel subsidiary scheme
 - conducted searches across the specific email accounts of the staff identified in the applicant's submissions concerning Missing Documents; and
 - conducted further searches across the Health Service's emails using a number of search terms, such as the Health Service's ID number for the applicant and a number of PTSS numbers (including those nominated by the applicant).⁹²
62. Having considered these searches, in the context of the terms of the access application, there is nothing in the material before me which calls into question either the efficacy of the searches or the accuracy of the search records the Health Service provided to OIC. Therefore, I accept the Health Service's submissions in relation to its search efforts and enquiries.
63. Although the applicant submitted that further documents relevant to her request *should* have been created by the Health Service this, of itself, is insufficient to support an expectation that such further documents were in fact created.⁹³ As I have noted above, there is also no evidence before me which supports the applicant's assertions that the Health Service has deliberately withheld documents from her.
64. To the extent the applicant submitted that further searches should be conducted to locate '*notes on OPTML*', I note that the applicant applied to access *email records*.

⁹¹ These searches were conducted by the Department of Health's IT department, using the applicant's name and the timeframe specified in the access application.

⁹² These searches were conducted by the Department of Health's IT department.

⁹³ For example, in respect of the Missing Documents specified in paragraph 54(c), (d) and (e), which were not located by the Health Service's further searches, the applicant had submitted that she did not understand how her patient travel claim was '*significantly altered without there being a paper trail of how this happened*' (email submissions dated 23 April 2023). Further, the applicant submitted that there had been no change of, or review to, the relevant guidelines which would have impacted her reimbursements and '*no such documentation of such a thing has ever been provided*' (email submissions dated 5 May 2023).

Accordingly, any notes relating to the applicant that may exist within the Health Service's 'OPTML' system fall outside the terms of the access application.

65. The applicant has framed some of her submissions about the adequacy of the Health Service's searches in generalised terms.⁹⁴ In these circumstances, *all reasonable steps* must be considered within the context of what is reasonably apparent on the face of the application itself.
66. Based on my consideration of the entirety of searches conducted by the Health Service and the information before me, I consider that officers of the Health Service have conducted comprehensive, appropriately targeted searches of relevant Health Service record keeping systems for information responsive to the access application. Accordingly, I am satisfied that the Health Service has taken all reasonable steps to locate documents relevant to the application and access to any further documents may be refused on the basis they do not exist or cannot be located.⁹⁵

DECISION

67. For the reasons set out below, I vary the Health Service's decision and find that:
- access may be refused to the Information in Issue on the basis that disclosure would, on balance, be contrary to the public interest;⁹⁶ and
 - access to any further documents may be refused on the basis they do not exist or cannot be located.⁹⁷
68. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

T Lake
Acting Assistant Information Commissioner

Date: 6 November 2023

⁹⁴ For example, in the applicant's email submissions dated 11 October 2023 she submitted that she did not believe the Health Service had conducted sufficient searches.

⁹⁵ Under section 47(3)(e) of the RTI Act.

⁹⁶ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁹⁷ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
5 May 2022	OIC received the external review application.
8 June 2022	OIC notified the applicant and the Health Service that the application for external review had been accepted and requested information from the Health Service.
8 June 2022	OIC received the requested information from the Health Service.
5 October 2022	OIC conveyed a preliminary view to the Health Service and requested submissions about the Health Service's disclosure position for certain refused information.
19 October 2022	OIC received the Health Service's submissions.
30 October 2022	The applicant confirmed to OIC that she did not wish to access certain types of refused information (namely, names, personal information, codes and the Health Service's internal codes for supplier companies, accounts, cost centres and vendors).
2 November 2022	OIC wrote to the applicant to confirm the types of refused information she wished to access.
12 January 2023	OIC conveyed a preliminary view to the Health Service.
27 January 2023	The Health Service requested an extension of time to respond to the preliminary view and OIC granted the requested extension.
10 February 2023	OIC received the Health Service's submissions, including a request to clarify the preliminary view.
16 February 2023	OIC provided the requested clarification of the preliminary view to the Health Service.
21 February 2023	OIC provided an update to the applicant.
2 March 2023	The Health Service confirmed its acceptance of the preliminary view. OIC notified the applicant that further information would be disclosed and conveyed a preliminary view to the applicant about the remaining refused information.
10 March 2023	The Health Service disclosed additional information to the applicant.
20 March 2023	OIC received the applicant's submissions and a request for further explanation of the preliminary view.
27 March 2023	OIC wrote to the applicant providing a further explanation of the preliminary view.
3 April 2023	At the applicant's request, OIC granted the applicant further time to respond to the preliminary view.
13 April 2023	At the applicant's request, OIC granted the applicant further time to respond to the preliminary view.
23 April 2023	OIC received the applicant's submissions, contesting the preliminary view about the remaining refused information and raising concerns about missing documents.

Date	Event
3 May 2023	OIC wrote to the applicant to reiterate the preliminary view about the remaining refused information and received the applicant's further submissions, accepting that preliminary view and providing further information regarding missing documents.
3 and 4 May 2023	OIC wrote to the Health Service outlining the applicant's concerns about missing documents and asked the Health Service to provide information about its searches.
19 May 2023	The Health Service requested an extension of approximately 57 days to undertake further searches.
24 May 2023	OIC granted an extension to 21 June 2023 for the Health Service to provide the information requested on 3 and 4 May 2023.
14 June 2023	The Health Service confirmed to OIC that it had identified additional documents, comprising five relevant pages, and provide details of its conducted searches.
15 June 2023	OIC received the Health Service's search submissions.
16 June 2023	OIC notified the applicant that the Health Service would disclose additional documents and conveyed a preliminary view to the applicant about the Health Service's searches.
20 June 2023	The Health Service disclosed the additional five pages of documents to the applicant.
26 June 2023	At the applicant's request, OIC granted the applicant further time to respond to the preliminary view.
5 July 2023	OIC received the applicant's submissions, which contested the refusal of information within the additional documents and the preliminary view about the Health Service's searches. The applicant also requested that a formal decision be issued.
13 July 2023	OIC asked the Health Service to provide further information about its searches to address the applicant's submissions in that regard.
18 July 2023	OIC conveyed a preliminary view to the applicant about the refusal of information within the additional documents.
25 July 2023	The Health Service requested further time for its response.
26 July 2023	OIC granted the Health Service requested further time to respond about its searches.
7 September 2023	OIC received the Health Service's submissions, confirming that it had identified additional documents, comprising five relevant pages.
11 September 2023	OIC received the applicant's further submissions.
13 September 2023	OIC wrote to the applicant to respond to the applicant's queries about the preliminary view and notify that further documents had been located by the Health Service's searches.
19 September 2023	The Health Service disclosed the further, additional five pages of documents to the applicant.
20 September 2023	OIC wrote to the applicant conveying a preliminary view about the Health Service's searches and the refusal of access to information in the additional documents.

Date	Event
1 October 2023	The applicant requested clarification of the preliminary view and requested further time for her response.
4 October 2023	OIC provided the requested clarification to the applicant and granted the requested extension of time for her response.
11 October 2023	OIC received the applicant's further submissions.