



Decision and Reasons for Decision

Citation: *Z Toodayan and Metro South Hospital and Health Service* [2017] QICmr 34 (11 August 2017)

Application Numbers: 312979, 313107, 313195 and 313229

Applicant: Z Toodayan

Respondent: Metro South Hospital and Health Service

Decision Date: 11 August 2017

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - documents exchanged between agency and internal and external lawyers - legal professional privilege - whether information is exempt under schedule 3, section 7 of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - patient records and witness information - accountability and transparency - personal information and privacy - accuracy of information - administration of justice - prejudice to agency's management function or conduct of industrial relations by agency - prejudice to agency's ability to obtain confidential information - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant, a former employee of Metro South Hospital and Health Service (**MSHHS**), made four consecutive access applications to MSHHS, under the *Information Privacy Act 2009* (Qld) (**IP Act**), seeking access to various files containing his personal information.

2. MSHHS located 1167 pages across the four applications.¹ MSHHS released most of the located information, but refused access to some information on the basis that it was exempt or because its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the four decisions. In each of the external reviews, MSHHS agreed to release additional information to the applicant.
4. The applicant's submissions demonstrate that he is aggrieved by various decisions made and actions taken by MSHHS in relation to his employment. During the external review, the applicant made detailed submissions to OIC regarding what he considers to be the significant public interest reasons favouring disclosure of the information to him. Generally speaking, the applicant considers that he has been the subject of unjust treatment and requires the information to advance his fair treatment and contribute to the administration of justice.
5. For the reasons set out below, 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)(a) and (b) of the *Right to Information Act 2009* (Qld) (**RTI Act**), as it either comprises exempt information or its disclosure would, on balance, be contrary to the public interest.

Background

6. Significant procedural steps relating to the external reviews are set out in Appendix A.

Reviewable decisions

7. The decisions of MSHHS under review are:
 - review 312979—considered decision dated 23 September 2016² refusing access to certain information under section 67(1) of the IP Act and section 47(3) of the RTI Act
 - review 313107—deemed refusal of access decision under section 66(1) of the IP Act³
 - review 313195—original decision dated 31 January 2017 refusing access to certain information under section 67(1) of the IP Act and section 47(3) of the RTI Act; and
 - review 313229—original decision dated 6 March 2017 refusing access to certain information under section 67(1) of the IP Act and section 47(3) of the RTI Act.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendices).

Information in issue

9. The remaining information in issue comprises 24 part and 99 full pages,⁴ and in each review, is as follows:
 - review 312979—15 part and 63 full pages
 - review 313107—9 part pages and 12 full pages

¹ 277 pages for review 312979, 142 pages for review 313107, 444 pages for review 313195, and 304 pages for review 313229.

² Made following an extension of time granted by OIC under section 106(2) of the IP Act.

³ MSHHS's decision notice dated 2 December 2016 was issued outside the statutory timeframe which ended on 14 November 2016.

⁴ This reflects the applicant's agreement to exclude certain information in all four reviews and MSHHS's agreement to release certain information in each of the reviews.

- review 313195—8 full pages; and
 - review 313229—16 full pages.
10. In these reasons, I have dealt with the remaining information in issue in the following categories:
- **Legal Information**—information recording MSHHS’s communications with its internal and external lawyers
 - **Patient Information**—information about patients who were treated at an MSHHS hospital by the applicant, including extracts of a patient’s medical records; and
 - **Witness Information**—witness statements, correspondence with witnesses and other information identifying witnesses.
11. I am limited in the extent to which I can describe the specific content of the remaining information in issue.⁵ However, to the extent permissible under the IP Act, the below reasons describe the nature of the information in each category in some further detail.

Issue for determination

12. The issue for determination is the same in all four reviews—whether access to the remaining information in issue may be refused under section 67(1) of the IP Act and section 47(3)(a) and (b) of the RTI Act, on the basis that it is exempt or contrary to the public interest to disclose.
13. The applicant raised concerns about the fact that MSHHS originally decided not to release certain information.⁶ During the reviews, MSHHS released **all** of this information, with the exception of a mobile number and an email address which the applicant had agreed to exclude. As there is no remaining refused information in issue in these pages, and the applicant accepts that all relevant pages of this information have now been released, there is no outstanding issue requiring determination by OIC. Accordingly, this issue is not addressed in this decision.

Relevant law

14. The IP Act confers on an individual a right to access documents of an agency, to the extent they contain the individual’s personal information.⁷ Section 12 of the IP Act defines ‘*personal information*’ 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.*
15. However, this right of access is subject to some limitations, including grounds for refusing access.⁸ One ground for refusing access is where the requested information comprises exempt information.⁹ Another ground for refusing access is where disclosing information would, on balance, be contrary to the public interest.¹⁰

⁵ Section 121(3) of the IP Act.

⁶ Submissions received on 24 June 2017 and 6 July 2017.

⁷ Section 40(1)(a) of the IP Act.

⁸ Grounds for refusal of access are set out in section 47 of the RTI Act. Section 67(1) of the IP Act provides that access to information may be refused under the IP Act on the same grounds as in section 47 of the RTI Act.

⁹ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act sets out the categories of exempt information.

¹⁰ Sections 47(3)(b) and 49 of the RTI Act.

16. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest,¹¹ and explains the steps that a decision-maker must take¹² in deciding the public interest as follows:
- identify any irrelevant factors and disregard them¹³
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to the public interest.

Applicant's submissions – summary

17. The applicant provided extensive submissions to OIC during the reviews.¹⁴ I have distilled the central issues raised by the applicant and endeavoured to summarise the relevant arguments he has put forward to OIC. In making my decision on these reviews, I have carefully considered all of the issues raised by the applicant in his submissions, to the extent they are relevant to the issue for determination in these reviews.
18. The applicant submits that numerous public interest factors favouring disclosure apply to disclosure of the information in issue, as follows:¹⁵
- disclosure will promote open discussion about the bullying and discrimination of junior doctors in Australian public hospitals, and also enhance the Government's accountability around these same issues¹⁶
 - disclosure will contribute to the debate around bullying of doctors and the misuse of the notifications process, both of which are current and serious issues for the medical profession¹⁷
 - disclosure could reasonably be expected to inform the community of the Government's operations, as members of the public would be interested in how government organisations deal with allegations arising at workplaces¹⁸
 - disclosure could reasonably be expected to ensure effective oversight of expenditure of public funds in two ways—firstly, in that time and money was 'wasted' on inappropriate investigations that should never have been initiated, and secondly, the public may be interested to know why public funds were not used to initiate an investigation into the applicant's case when so many 'injustices' are demonstrable on the evidence¹⁹
 - disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official, as the applicant's internship and early medical career were 'irreversibly [jeopardised]' due to 'very poor' management decisions²⁰
 - disclosure could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct—as there is already 'evidence' that MSHHS staff had adopted a discriminatory strategy, it

¹¹ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these lists of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

¹² Section 49(3) of the RTI Act.

¹³ I consider that no irrelevant factors arise in the circumstances of these reviews, and I have not taken any into account in making my decision.

¹⁴ Including the external review application for 312979, submissions received on 29 November 2016, 18 February 2017 and 3 June 2017, and submissions made by telephone on 28 November 2016.

¹⁵ Submission received on 3 June 2017.

¹⁶ Schedule 4, part 2, item 1 of the RTI Act.

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

¹⁸ Schedule 4, part 2, item 3 of the RTI Act.

¹⁹ Schedule 4, part 2, item 4 of the RTI Act.

²⁰ Schedule 4, part 2, item 5 of the RTI Act.

is reasonable to suggest that further information involving these same individuals may reveal further misconduct²¹

- a considerable amount of the information is the applicant's personal information²²
- disclosure would help to advance fair treatment in all of the applicant's proceedings²³
- disclosure would reveal the real reasons and background information that led to '*extremely unjust*' decisions being made and acted upon in the applicant's case, relating to the applicant's internship and the allegations arising at the workplace²⁴
- disclosure could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant, as disclosure will reveal any such inconsistencies which could help to explain the discrepancies and the '*extremely unjustified*' outcome in the applicant's case, relating to the applicant's internship and the allegations arising at the workplace²⁵
- disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness,²⁶ or for a person²⁷—the applicant has '*suffered immensely*' due to improper decisions by MSHHS staff, and the release of information relating to these decisions will contribute to the administration of justice, which he says is '*actively being pursued*', and will further allow for procedural fairness throughout the proceedings; and
- disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law—the applicant submits that '*capital misconduct*' has already occurred, and as it is not unreasonable to suspect that there may be '*more of the same*' evident on his records (eg, demonstrating criminal acts such as corruption), disclosure would assist in the enforcement of the criminal law.²⁸

19. The applicant further submits that²⁹ while there are some public interest factors potentially favouring nondisclosure,³⁰ these cannot reasonably be applied to his case, and even if significant weight was to be given to those factors, the applicant maintains that the balance of the public interest favours disclosure.

Findings

Legal Information

20. This category comprises 37 full pages set out in Appendix B. Generally speaking, these pages comprise information recording MSHHS's communications with its internal and external lawyers.
21. Information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (**Privilege**).³¹ This exemption reflects the requirements for establishing Privilege at common law.³²

²¹ Schedule 4, part 2, item 6 of the RTI Act.

²² Schedule 4, part 2, item 7 of the RTI Act.

²³ Schedule 4, part 2, item 10 of the RTI Act.

²⁴ Schedule 4, part 2, item 11 of the RTI Act.

²⁵ Schedule 4, part 2, item 12 of the RTI Act.

²⁶ Schedule 4, part 2, item 16 of the RTI Act.

²⁷ Schedule 4, part 2, item 17 of the RTI Act.

²⁸ Schedule 4, part 2, item 18 of the RTI Act.

²⁹ Submission received on 3 June 2017.

³⁰ Schedule 4, part 3, items 3, 16 and 19 of the RTI Act.

³¹ Schedule 3, section 7 of the RTI Act.

³² The Electoral and Administrative Review Commission, *Report on Freedom of Information*, Report No 90/R6 (1990) at [7.152] states that '[t]he exemption incorporates the common law concept of legal professional privilege'. This statement was confirmed in the context of the RTI Act in *Ozcare and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 13 May 2011) at [12].

22. At common law, Privilege attaches to confidential communications between a client and their lawyer, made for the dominant purpose of giving or obtaining legal advice or for use in existing or reasonably anticipated litigation. When these requirements are met, Privilege is established. Qualifications and exceptions to Privilege³³ may, in particular circumstances, affect whether information attracts or remains subject to Privilege.
23. Having considered the nature and purpose of the communications contained in the Legal Information, I consider that it is covered by Privilege as:
- internal and external lawyers were engaged by MSHHS to provide legal services
 - the information in the Legal Information comprises confidential communications; and
 - the communications:
 - are between MSHHS as client and the lawyers as legal advisers; and
 - were for the dominant purpose of seeking and/or providing legal advice, or for use in existing litigation.
24. I have carefully assessed the Legal Information and the applicant's submissions. I am satisfied that none of the Legal Information records or otherwise evidences an illegal or improper purpose. Accordingly, I find that the improper purpose exception does not apply to preclude the application of Privilege to the Legal Information.³⁴
25. The applicant also raises public interest reasons in favour of disclosure of the Legal Information.³⁵ I acknowledge that the IP Act is to be administered with a pro-disclosure bias.³⁶ However, the exemptions in schedule 3 of the RTI Act set out the types of information which Parliament has decided would, on balance, be contrary to the public interest to disclose. Once the requirements of an exemption, such as Privilege, have been established, I am precluded from considering any public interest factors, no matter how compelling.³⁷
26. Accordingly, I am satisfied that access to the Legal Information can be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act as it is subject to the exemption in schedule 3, section 7 of the RTI Act.

Patient Information

27. This category comprises 24 full pages and 1 part page, as identified in Appendix B. Generally speaking, these pages comprise information about patients who were treated at an MSHHS hospital by the applicant, including extracts of a patient's medical records.

Factors favouring nondisclosure

28. I have considered whether disclosing the Patient Information could reasonably be expected to prejudice the protection of other individuals' right to privacy³⁸ and/or cause a public interest harm by disclosing those individuals' personal information.³⁹
29. The applicant submits that:⁴⁰

³³ Such as waiver or improper purpose.

³⁴ Further, I find that no other exception or qualification to Privilege applies.

³⁵ Submission received on 3 June 2017.

³⁶ Section 58(4) of the IP Act.

³⁷ Section 118(2) of the IP Act.

³⁸ Schedule 4, part 3, item 3 of the RTI Act.

³⁹ Schedule 4, part 4, item 6(1) of the RTI Act.

⁴⁰ Submission received on 3 June 2017.

- he would expect and demand the release of the Patient Information to be entirely free of identifying information of any kind, including patient names, initials, Unit Record Numbers (URNs), dates of birth, ages and genders; and
 - if this information were removed, it would be impossible to identify the particular patients, given the high number of patients doctors see every year.
30. As the applicant acknowledges, the Patient Information in its entirety comprises the personal information of the relevant patients. However, I have considered whether the Patient Information could be redacted to an extent which would mean that the remaining information no longer meets the definition of *'personal information'*—ie, whether sufficient information could be removed so as to make the information no longer *'... about an individual whose identity is apparent, or can reasonably be ascertained, from the information ...'* (emphasis added).⁴¹
31. Where a document does not contain information that obviously identifies an individual, I have previously considered that, in some instances, an individual may be reasonably identifiable through additional information. I found that the below factors will influence whether an individual's identity can be reasonably ascertained:⁴²
- how available the additional information is
 - how difficult it is to obtain
 - how many steps are required to identify the individual
 - how certain the identification will be
 - whether it will identify one specific individual or a group of people; and
 - whether the individual receiving the information can use it to identify the individual.
32. I consider that the final factor listed above is critical in these reviews. It appears likely that the applicant is aware of the relevant patients' identities, given he was their treating doctor, and the Patient Information formed part of the material in relation to a notification about his conduct. Accordingly, even if the information suggested by the applicant—ie, patient names, initials, URNs, dates of birth, ages and genders—were removed, it is reasonable to expect that the applicant would nonetheless be able to identify the relevant patients from the remaining parts of the Patient Information. On that basis, I am satisfied that the Patient Information comprises the patients' personal information, and I am also satisfied that it is not possible to redact the Patient Information to the degree necessary to prevent it from revealing the patients' personal information.
33. Given the nature of the information, being a patient's medical records and information about patients' medical history, it comprises extremely sensitive personal information, and for this reason, I consider that disclosure under the IP Act would be a significant intrusion into the privacy of the patients and the extent of the public interest harm that could be anticipated from disclosure is extremely high. As noted above, it appears likely that the applicant is aware of the relevant patients' identities; however, given the nature of the information and particularly, the sensitivity of information afforded to medical records, I do not consider that this reduces the weight of these factors to any degree. As a result, I afford both of these factors significant weight in favour of nondisclosure.

Factors favouring disclosure

34. I acknowledge that the applicant's personal information—including his name, position title and contact details—appears in some of the Patient Information, as the applicant is listed as the treating doctor. I acknowledge the importance of providing individuals with

⁴¹ Section 12 of the IP Act.

⁴² *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [21].

access to their personal information held by government and therefore, I give substantial weight to this factor favouring disclosure.⁴³ However, I note that the applicant's personal information forms only a very small part of the Patient Information; that is, the Patient Information is substantively about the patients, being their medical records or information about their medical history.

35. In view of the applicant's submissions about the conduct of MSHHS staff, and the way in which the applicant says he was treated, including in relation to notifications, I have considered whether disclosing the Patient Information could reasonably be expected to give rise to the factors favouring disclosure raised by the applicant.⁴⁴
36. By obtaining access to the Patient Information, the applicant would be able to view all of the information which was before MSHHS in the context of the relevant matters. However, the information released to the applicant in the course of the four applications and reviews discloses nearly all of the information held by MSHHS about the applicant, and comprehensively reveals how MSHHS dealt with these matters. Given the particular nature of the Patient Information, I consider that its disclosure would only provide the applicant with limited further insight into how MSHHS handled these matters. Accordingly, I consider minimal weight can be given to factors favouring disclosure regarding MSHHS's accountability and transparency.⁴⁵
37. However, in relation to the other factors favouring disclosure raised by the applicant,⁴⁶ I cannot see how disclosure of the Patient Information could reasonably be expected to give rise to these factors. Further, I am unable to identify any other public interest factors favouring disclosure of the Patient Information.

Balancing the public interest

38. I acknowledge the general public interest in furthering access to government-held information.⁴⁷ I have given substantial weight to the factor favouring disclosure insofar as the Patient Information contains the applicant's own personal information. I have also recognised that minimal weight can be given to factors favouring disclosure regarding MSHHS's accountability and transparency. Balanced against these factors is the significant weight to be given to the factors favouring nondisclosure concerning the patients' personal information and privacy. I consider that the weight of the nondisclosure factors far outweighs the weight to be afforded to the factors favouring disclosure.
39. For these reasons, I am satisfied that access to the Patient Information may be refused, as its disclosure would, on balance, be contrary to the public interest.

Witness Information

40. This category comprises 38 full pages and 23 part pages, as identified in Appendix B, and:
 - mostly comprises the full witness statements taken by MSHHS of individuals, or correspondence or file notes recording contact with such witnesses

⁴³ Schedule 4, part 2, item 7 of the RTI Act.

⁴⁴ Including schedule 4, part 2, items 1, 2, 3, 4, 5, 6, 10, 11, 12, 16, 17 and 18 of the RTI Act.

⁴⁵ For example, schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

⁴⁶ For example, schedule 4, part 2, items 4, 5, 6, 10, 12, 16, 17 and 18 of the RTI Act.

⁴⁷ Implicit in, for example, the primary object set out in section 3 of the IP Act, and the pro-disclosure bias enshrined in section 58 of the IP Act.

- does **not** include witness statements taken by the Queensland Police Service (QPS);⁴⁸ and
- includes a small amount of information identifying witnesses, including their names, contact details, summaries of statements and position titles.

Factors favouring nondisclosure

41. I have considered whether disclosing the Witness Information could reasonably be expected to prejudice the protection of other individuals' right to privacy⁴⁹ and/or cause a public interest harm by disclosing those individuals' personal information.⁵⁰
42. As with the Patient Information, the applicant submits that if the Witness Information is released, it must be anonymised.⁵¹ However, the same issue arises as with the Patient Information—ie, the applicant is likely to be aware of the identities of the witnesses, given he has copies of certain QPS witness statements. On that basis, I am satisfied that the Witness Information comprises the witnesses' personal information, and I am also satisfied that it is not possible to redact the Witness Information to the degree necessary to prevent it from revealing the witnesses' personal information.
43. The Witness Information comprises the witnesses' accounts concerning allegations about the applicant's conduct. Although the personal information appears in an employment context, I consider that it is not routine work information⁵² as it comprises sensitive personal statements given in relation to an investigation into allegations at the workplace. For this reason, I consider that disclosure under the IP Act would be a significant intrusion into the witnesses' privacy and the extent of the public interest harm that could be anticipated from disclosure is significant. As noted above, it appears likely that the applicant is aware of the relevant witnesses' identities; however, given the nature of the information and particularly, the sensitivity of information given by witnesses, I do not consider that this reduces the weight of these factors to any significant degree. As a result, I afford significant weight to both of the factors favouring nondisclosure concerning others' privacy and personal information.
44. I also consider that disclosing the Witness Information could reasonably be expected to have a detrimental effect on MSHHS's management function⁵³ as it may deter witnesses from providing full and frank accounts to investigators in future workplace investigations, thereby prejudicing investigation processes and outcomes. The applicant submits that it does not follow that future witnesses with no ties to the applicant or knowledge of his matters would be deterred from providing such accounts.⁵⁴ I consider, however, that it is reasonable to expect that, if potential witnesses in future investigations were aware that witness statements had been released under the IP Act following a previous investigation, this would make staff reluctant to fully participate in such investigations.⁵⁵ Similarly, information that is provided by witnesses in workplace investigations is ordinarily treated confidentially, except to the extent that procedural fairness requires otherwise.⁵⁶ Accordingly, I consider that disclosing the Witness Information could

⁴⁸ The applicant provided copies of those QPS statements to OIC with his email on 29 November 2016.

⁴⁹ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁰ Schedule 4, part 4, item 6(1) of the RTI Act.

⁵¹ Submission received on 3 June 2017.

⁵² Generally, information relating to the day-to-day work duties of a public servant may be disclosed under the RTI Act, despite it falling within the definition of personal information. However, agency documents can also contain personal information of public servants which is not *routine* work information: see *Gapsa and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 12 April 2013) at [71].

⁵³ Schedule 4, part 3, item 19 of the RTI Act.

⁵⁴ Submission received on 3 June 2017.

⁵⁵ *I6XD0H and Department of Community Safety* (Unreported, Queensland Information Commissioner, 26 June 2012) at [35].

⁵⁶ As the Witness Information was gathered in early 2014 and there is no current MSHHS matter against which the applicant must defend himself, no procedural fairness issues arise in these circumstances.

reasonably be expected to prejudice MSHHS's ability to obtain confidential information.⁵⁷ I consider that both of these factors carry significant weight in favour of nondisclosure.

Factors favouring disclosure

45. I acknowledge that the applicant's personal information appears in some of the Witness Information, as it includes accounts given by other individuals concerning allegations about his conduct. I acknowledge the importance of providing individuals with access to their personal information held by government and therefore, I give substantial weight to this factor favouring disclosure.⁵⁸ However, I note that some of the Witness Information—eg, a small amount of information identifying witnesses on some of the part pages—contains none of the applicant's personal information, and therefore, this factor does not apply to that part of the Witness Information.
46. The applicant submits that disclosing the Witness Information will help him obtain a potential remedy for the '*irreversible damages*' arising from the improper actions and decisions of MSHHS staff, as he is seeking to pursue claims of discrimination and maladministration.⁵⁹ I have therefore considered whether disclosing the Witness Information could reasonably be expected to contribute to procedural fairness and/or the administration of justice for the applicant.⁶⁰
47. In *Willsford and Brisbane City Council*,⁶¹ the Information Commissioner found that the administration of justice factor will arise where an applicant can demonstrate that:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist them to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
48. I have carefully considered the nature of the Witness Information and the context in which it appears, together with the applicant's submissions on this issue. Based on this information, I am unable to identify how the Witness Information would assist the applicant in identifying or pursuing any legal remedy against MSHHS or its staff.⁶² In the event that this information is identified as directly relevant to legal proceedings in the future, the applicant would foreseeably have court disclosure and subpoena processes available to him. However, at present, I do not consider that disclosing the Witness Information to the applicant would assist him to pursue a legal remedy or evaluate whether such a remedy is available. As a result, I consider that these disclosure factors do not apply.
49. I have considered whether disclosing the Witness Information could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective, or irrelevant.⁶³ The applicant submits that, as OIC only has limited (if any) knowledge about what happened during the period covered by the Witness Information, I am not in a position to reach a conclusion about the accuracy of the information.⁶⁴ The applicant points to information within the QPS witness statements which he believes is '*categorically false*', unfairly subjective or '*utterly irrelevant*', and

⁵⁷ Schedule 4, part 3, item 16 of the RTI Act.

⁵⁸ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁹ Submission received on 3 June 2017.

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

⁶¹ (1996) 3 QAR 368.

⁶² I make no finding on whether or not there is a legal remedy available to the applicant in the circumstances of these reviews.

⁶³ Schedule 4, part 2, item 12 of the RTI Act.

⁶⁴ Submission received on 3 June 2017.

seeks disclosure of the Witness Information to ascertain if there are any incorrect statements within it.

50. This factor does not operate to favour disclosure of information to an applicant, in order for them to have the opportunity of identifying inaccuracies etc after the fact of such disclosure. Instead, this factor will be enlivened where disclosing information **could reasonably be expected** to reveal that that information itself is incorrect etc; this requires *'a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect that'* a given consequence would follow the disclosure of information.⁶⁵
51. I note that a large part of the Witness Information is, by its very nature, the particular versions of events of the relevant individuals, and it is shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not, however, mean that the Witness Information is necessarily incorrect etc or unfairly subjective.⁶⁶ I consider that disclosing the Witness Information would only potentially reveal that other individuals may have different recollections of events from the applicant's own. The Witness Information presents to me as nothing more than personal accounts or interpretations of particular events from the witnesses' perspectives, no aspect of which, viewed objectively, presents as incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. In the circumstances, I consider that this factor favouring disclosure does not arise in respect of the Witness Information.
52. By obtaining access to the Witness Information, the applicant would be able to view all of the information which was before MSHHS in the context of the relevant matters. However, the information released to the applicant in the course of the four applications and reviews discloses nearly all of the information held by MSHHS about the applicant, and reveals how MSHHS dealt with these matters. Given the nature of the Witness Information, I consider that its disclosure would provide the applicant with limited further understanding of how MSHHS handled these matters. Accordingly, I consider that limited weight can be given to factors favouring disclosure regarding MSHHS's accountability and transparency.⁶⁷
53. However, in relation to the other factors favouring disclosure raised by the applicant,⁶⁸ I cannot see how disclosure of the Witness Information could reasonably be expected to give rise to these factors. Further, I am unable to identify any other public interest factors favouring disclosure of the Witness Information.

Balancing the public interest

54. I acknowledge the general public interest in furthering access to government-held information.⁶⁹ I have given substantial weight to the factor favouring disclosure insofar as the Witness Information contains the applicant's own personal information. I have also recognised that limited weight can be given to factors favouring disclosure regarding MSHHS's accountability and transparency. Balanced against these factors is the significant weight to be given to the factors favouring nondisclosure concerning the witnesses' personal information and privacy, and also the prejudice to MSHHS's management function and ability to obtain confidential information. I consider that the

⁶⁵ *Attorney-General's Department v Cockcroft* (1986) 64 ALR 97 at [29].

⁶⁶ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20].

⁶⁷ For example, schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

⁶⁸ For example, schedule 4, part 2, items 4, 5, 6, 10 and 18 of the RTI Act.

⁶⁹ Implicit in, for example, the primary object set out in section 3 of the IP Act, and the pro-disclosure bias enshrined in section 58 of the IP Act.

significant weight given to these factors favouring nondisclosure outweighs the weight given to the factors favouring disclosure.

55. For these reasons, I am satisfied that access to the Witness Information may be refused, as its disclosure would, on balance, be contrary to the public interest.

DECISION

56. For the reasons set out above, I:

- vary MSHHS's decision for review 312979, and find that access to the remaining information in issue may be refused under section 67(1) of the IP Act and section 47(3)(a) and (b) of the RTI Act, as it either comprises exempt information or its disclosure would, on balance, be contrary to the public interest
- vary MSHHS's decision for review 313107, and 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, as its disclosure would, on balance, be contrary to the public interest
- affirm MSHHS's decision for review 313195, and 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, as its disclosure would, on balance, be contrary to the public interest; and
- affirm MSHHS's decision for review 313229, and 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, as its disclosure would, on balance, be contrary to the public interest.

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

J Mead
Right to Information Commissioner

Date: 11 August 2017

APPENDIX A

Significant procedural steps

Date	Event
26 September 2016	OIC received the external review application for review 312979.
27 September 2016	OIC notified MSHHS of the external review application for review 312979, and requested procedural documents.
11 October 2016	OIC received from MSHHS the requested procedural documents for review 312979.
14 October 2016	OIC notified the applicant and MSHHS that the external review application for review 312979 had been accepted. OIC also asked MSHHS to provide the documents located in response to that access application.
1 November 2016	OIC received from MSHHS a copy of the documents located in response to the application relevant to review 312979.
28 November 2016	The applicant discussed review 312979 with OIC.
29 November 2016	OIC received from the applicant copies of witness statements taken by QPS.
11 December 2016	OIC received the external review application for review 313107.
12 December 2016	OIC notified MSHHS of the external review application for review 313107, and requested procedural documents.
19 December 2016	OIC received from MSHHS the requested procedural documents for review 313107.
22 December 2016	OIC notified the applicant and MSHHS that the external review application for review 313107 had been accepted. OIC also asked MSHHS to provide the documents located in response to that access application.
18 January 2017	OIC received from MSHHS a copy of the documents located in response to the application relevant to review 313107.
4 February 2017	OIC received the external review application for review 313195.
6 February 2017	OIC notified MSHHS of the external review application for review 313195, and requested procedural documents.
10 February 2017	OIC asked MSHHS to provide the documents located in response to the access application for review 313195.
13 February 2017	OIC received from MSHHS the requested documents for review 313195.
17 February 2017	OIC notified the applicant and MSHHS that the external review application for review 313195 had been accepted.
18 February 2017	OIC received from the applicant a written submission for review 313195.
24 February 2017	OIC sought the applicant's agreement to exclude certain categories of information from further consideration in reviews 312979, 313107 and 313195.
26 February 2017	The applicant agreed to exclude these categories of information from further consideration in reviews 312979, 313107 and 313195.
7 March 2017	OIC received the external review application for review 313229.
8 March 2017	OIC notified MSHHS of the external review application for review 313229, and requested procedural documents.
14 March 2017	OIC asked MSHHS to provide the documents located in response to the access application for review 313229.

Date	Event
15 March 2017	OIC received from MSHHS the requested procedural documents for, and the documents located in response to the access application for, review 313229.
27 March 2017	OIC notified the applicant and MSHHS that the external review application for review 313229 had been accepted. OIC also sought the applicant's agreement to exclude certain categories of information from further consideration in review 313229. The applicant agreed to exclude certain information in review 313229.
11 April 2017	OIC discussed reviews 312979, 313107, 313195 and 313229 with MSHHS.
13 April 2017	OIC conveyed a preliminary view to MSHHS about reviews 312979, 313107, 313195 and 313229, and invited MSHHS to provide submissions in response.
5 May 2017	OIC received from MSHHS a response confirming its agreement with the preliminary view about reviews 312979, 313107, 313195 and 313229.
18 May 2017	OIC conveyed a preliminary view to the applicant about reviews 312979, 313107, 313195 and 313229, and invited him to provide submissions in response. OIC asked MSHHS to release to the applicant the agreed information for reviews 312979, 313107, 313195 and 313229.
3 June 2017	OIC received from the applicant a written submission for reviews 312979, 313107, 313195 and 313229.
20 June 2017	OIC wrote to the applicant about reviews 312979, 313107, 313195 and 313229.
24 June 2017	The applicant responded to OIC's correspondence dated 20 June 2017.
6 July 2017	OIC wrote to the applicant about reviews 312979, 313107, 313195 and 313229. The applicant responded to OIC.

APPENDIX B**Legal Information**

No. of pages	Location
Review 312979	
37 full pages	Staff Complaints Unit, pp 76-78, 106, 138-139, 184-193, 217-223, 255-268

Patient Information

No. of pages	Location
Review 313107	
1 part page	Executive Services Unit, p 133* ⁷⁰
Review 313195	
8 full pages	Medical Education Unit Volume 1, pp 137-144
Review 313229	
16 full pages	Workforce Services, pp 128-135, 200-207

Witness Information

No. of pages	Location
Review 312979	
15 part pages	Staff Complaints Unit, pp 13, 14, 28, 30, 31, 73, 74*, 75*, 82, 86, 110, 111, 149, 151, 152
26 full pages	Staff Complaints Unit, pp 4-10, 22-24, 51, 67-70, 117-119, 122-129
Review 313107	
8 part pages	Executive Services Unit, pp 113, 115, 116, 117, 119, 120, 136, 137*
12 full pages	Executive Services Unit, pp 97-99, 102-106, 109-112

⁷⁰ Pages marked with an asterisk (*) indicate pages which also contain information which the applicant agreed to exclude from further consideration in these reviews, as indicated at footnote 4.