



Decision and Reasons for Decision

Citation:	<i>Queensland Nurses' Union and Sunshine Coast Hospital and Health Service; Ramsay Health Care (Third Party) [2017] QICmr 6 (23 February 2017)</i>
Application Number:	312770
Applicant:	Queensland Nurses' Union
Respondent:	Sunshine Coast Hospital and Health Service
Third Party:	Ramsay Health Care
Decision Date:	23 February 2017
Catchwords:	<p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – BREACH OF CONFIDENCE – whether disclosure of information would found an action for breach of confidence – whether information is exempt information under schedule 3, section 8 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – whether disclosure of information would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant, Queensland Nurses' Union, (**QNU**) applied¹ to Sunshine Coast Hospital and Health Service (**SCHHS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:

... (1) [a] document that provides the number of each patients [sic] referred to the Sunshine Coast University Private Hospital (SCUPH) per annum; (2) A report containing a summary of any SAC 1, SAC 2 and Sentinel Event Reports by Ramsay Health Services; (3) Any correspondence, letters or electronic, notifying Ramsay that a breach has occurred in relation to patient care; (4) a complaints spreadsheet that contains a meaningful summary of any complaints from patients regarding SCUPH.
2. By letter dated 16 February 2016, after requesting several extensions of time within which to give a decision, SCHHS advised QNU that, as it had not given QNU a decision in response to the access application within the time period specified in the RTI Act, SCHHS was deemed to have given a decision refusing access to the requested information.

¹ Application dated 8 September 2015.

3. By application received on 1 March 2016, the applicant applied to the Office of the Information Commissioner (**OIC**) for external review of SCHHS's deemed refusal of access to the information in issue.
4. For the reasons set out below, I set aside SCHHS's deemed refusal of access. I find that the information in issue is not exempt information under the RTI Act, and nor would its disclosure, on balance, be contrary to the public interest. I therefore find that the information in issue should be released to QNU under the RTI Act.

Background

5. In 2010, Queensland Health (**QH**) invited private hospital operators to bid for the design, construction, finance, commissioning, operation and maintenance of a private hospital on the Sunshine Coast, to be co-located with the public Sunshine Coast University Hospital, which was expected to be built and commissioned by 2018.² The third party, Ramsay Health Care (**Ramsay**), submitted its ultimately successful bid in November 2010. The Sunshine Coast University Private Hospital (**SCUPH**) opened in November 2013. As part of being awarded the contract to build and operate SCUPH, Ramsay was required to enter into a Services Agreement with QH, whereby it agreed to treat public patients at SCUPH while the public hospital was being built and commissioned. The Services Agreement contained the terms and conditions on which Ramsay was to provide public health services on behalf of QH.³
6. QNU seeks access to information concerning the provision by Ramsay of public health services at SCUPH under the Services Agreement and Ramsay's compliance with the terms of the Services Agreement.

External review process

7. Significant steps taken during the external review process are described in the appendix to this decision.

Reviewable decision

8. The decision under review is SCHHS's deemed refusal of access on 11 December 2015.

Material considered

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

Information in issue

10. The information in issue comprises:
 - i. parts of eight (8) pages of spreadsheets containing summaries of Severity Assessment Code (**SAC**) 1, SAC 2⁴ and Sentinel Event⁵ reports/notifications by Ramsay to SCHHS (responsive to item 2 of the access application);

² QH's website currently indicates that the public hospital will open in April 2017.

³ The Services Agreement was later amended to substitute SCHHS in place of QH.

⁴ SAC 1 and SAC 2 refer to clinical incidents that are not reasonably expected as an outcome of health care and which are rated according to the severity of the resultant adverse outcome.

⁵ A sentinel event is any unanticipated event in a healthcare setting resulting in death or serious physical or psychological injury to a patient not related to the natural course of the patient's illness. There are eight categories of nationally defined sentinel events in Australia.

- ii. three (3) letters from SCHHS to Ramsay attaching schedules relating to Key Performance Indicators under the Services Agreement (responsive to item 3 of the access application);
- iii. parts of a spreadsheet containing a summary of complaints made about treatment of public patients at SCUPH (responsive to item 4 of the access application).⁶

Objections to disclosure

11. Ramsay objects to disclosure of the information in issue on the following grounds:

- the information is exempt information because its disclosure would found an action for breach of confidence – schedule 3, section 8(1) of the RTI Act;
- disclosure would, on balance, be contrary to the public interest because:
 - it could reasonably be expected to prejudice Ramsay's business, professional, commercial or financial affairs;⁷
 - it could reasonably be expected to prejudice SCHHS's ability to obtain confidential information.⁸

12. SCHHS also argues that disclosure of the information in issue would found an action for breach of confidence under schedule 3, section 8(1). It relies on the following factors in support of its claim that disclosure would, on balance, be contrary to the public interest:

- disclosure could reasonably be expected to cause a public interest harm because it would disclose personal information of a person;⁹
- disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;¹⁰ and
- disclosure could reasonably be expected to prejudice the management function of an agency.¹¹

Exempt information - breach of confidence

13. The RTI Act gives a right of access to documents of government agencies.¹² This right is subject to other provisions of the RTI Act, including grounds on which access may be refused. Access may be refused to information to the extent the information comprises 'exempt information'.¹³ 'Exempt information' includes information¹⁴ the disclosure of which would found an action for breach of confidence.

14. The test for exemption must be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, with appropriate standing to bring an action to enforce an obligation of confidence claimed to bind SCHHS not to disclose relevant information.¹⁵

15. In this case, both SCHHS and Ramsay claim that Ramsay is the hypothetical plaintiff, with SCHHS submitting that Ramsay had an expectation that the information it provided

⁶ The document responsive to item 1 of the access application was released to QNU during the course of the review. See the appendix to the decision.

⁷ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(c) of the RTI Act.

⁸ Schedule 4, part 3, item 16 and schedule 4, part 4, section 8 of the RTI Act.

⁹ Schedule 4, part 4, section 6 of the RTI Act.

¹⁰ Schedule 4, part 3, item 3 of the RTI Act.

¹¹ Schedule 4, part 3, item 19 of the RTI Act.

¹² Section 23 of the RTI Act.

¹³ Section 47(3)(a) of the RTI Act.

¹⁴ Section 48 and schedule 3 of the RTI Act.

¹⁵ *B and Brisbane North Regional Health Authority* [1994] QICmr 1 (**B and BNRHA**), a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**) at [44].

to SCHHS under the Services Agreement would be kept confidential. This submission overlooks the fact that item ii of the information in issue was communicated by SCHHS, rather than Ramsay. I will discuss this further below.

Contractual term

16. Ramsay argues that the information in issue was communicated pursuant to the Services Agreement. Clause 13 of the Services Agreement is a confidentiality clause that requires that neither party to the Agreement disclose any confidential information of the other party without consent. Exceptions to that general restriction are contained in clause 13.2. Ramsay claims that the information in issue is confidential information under the Services Agreement and is therefore subject to the express contractual obligation of confidence contained in clause 13.
17. In *'B' and BNRHA*,¹⁶ Commissioner Albietz said that an action for breach of confidence may be based on a contractual or an equitable obligation of confidence. However, he noted that a contractual term requiring that certain information be kept secret will not necessarily equate to a contractual obligation of confidence: an issue may arise as to whether an action for breach of the contractual term would satisfy the description of an 'action for breach of confidence'.
18. In *TSO08G and Department of Health*¹⁷, Right to Information Commissioner Mead applied the decision of the Administrative Appeals Tribunal in *Callejo and Department of Immigration and Citizenship*¹⁸ in finding that, where a contractual term requiring confidentiality exists, disclosure (or threatened disclosure) of information may, in itself, only found an action for breach of contract. An action for breach of contract, and in equity, for breach of confidence, are separate and distinct causes of action at general law. An action for breach of confidence for the purposes of schedule 3, section 8(1) of the RTI Act will only be established where the five cumulative requirements to found an action in equity for breach of confidence are met.¹⁹
19. Accordingly, I find that, if a breach of clause 13 of the Services Agreement were to give rise to an action for breach of a contractual term, it would not give rise to an action for breach of confidence within the meaning of schedule 3, section 8(1) of the RTI Act. In order to give rise to an action for breach of confidence, the five cumulative requirements referred to in the preceding paragraph (and discussed below) must be met.
20. In its submissions dated 29 August 2016, Ramsay argued that this test was too narrow and that until there had been a judicial interpretation of this issue, the test for exemption under schedule 3, section 8(1) of the RTI Act should be read as covering a hypothetical plaintiff who would have a cause of action to enforce a contractual obligation of confidence. However, for the reasons explained above, I prefer the interpretation set out in *Callejo*.
21. Even if I am incorrect in my view in that regard, such that a breach of clause 13 of the Services Agreement is sufficient to found an action for breach of confidence under schedule 3, section 8(1) of the RTI Act, it is well-established that a public interest exception applies in respect of both contractual obligations of confidence and equitable obligations of confidence.²⁰ For the reasons that I will explain below, I am satisfied that

¹⁶ At [43].

¹⁷ (Unreported, Queensland Information Commissioner, 13 December 2011).

¹⁸ [2010] AATA 244 at [163-166].

¹⁹ See *Kalinga Woolloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd; Treasury Department (CNI case)* (Unreported, Queensland Information Commissioner, 9 May 2012) at [64-65].

²⁰ See *Seeney and Department of State Development; Berri Limited (Third Party) (Berri)* (2004) 6 QAR 354 at [191 ff].

there are strong public interest considerations favouring the disclosure of the information in issue in the interests of proper accountability of SCHHS for the delivery of public health services in Queensland.

Equitable obligation of confidence

22. Both Ramsay and SCHHS argue that the information in issue is subject to an equitable obligation of confidence.
23. The following five cumulative requirements must be established to give rise to an equitable obligation of confidence:
 - a) the information must be capable of being specifically identifiable as information that is secret, rather than generally available;
 - b) the information must have the necessary quality of confidence, i.e., it must not be trivial or useless, and must have a degree of secrecy sufficient for it to be subject to an obligation of confidence;
 - c) the circumstances of the communication must create an equitable obligation of confidence;
 - d) disclosure of the information to the access applicant must constitute an unauthorised use of the confidential information; and
 - e) disclosure must cause detriment to the confider of the information.²¹
24. As noted above, item ii of the information in issue was communicated by SCHHS rather than Ramsay. SCHHS has not argued that it is owed an obligation of confidence in respect of this information. Rather, it argues that it is under an obligation of confidence in respect of information that Ramsay supplied. It has not argued that disclosure of item ii would constitute a use unauthorised by SCHHS, or that its disclosure would cause SCHHS detriment. I do not consider that Ramsay has standing to bring an action in equity for breach of confidence in respect of information which it did not supply. I therefore find that the requirements to establish an equitable obligation of confidence in respect of item ii of the information in issue are not met.
25. Moreover, as regards all of the information in issue, assessing whether requirement c) is satisfied requires an evaluation of all relevant circumstances surrounding the communication in question, so as to determine whether the recipient '*should be fixed with an enforceable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it.*'²² These include public interest considerations relating to the community's legitimate interest in obtaining information about the affairs of government, which may affect the question of whether enforceable obligations of confidence should be imposed on government agencies in respect of information purportedly supplied in confidence by parties outside government.²³
26. In my view, the present circumstances fall within this 'public interest exception'. The information in issue concerns the manner in which Ramsay discharged its obligations to provide public health services on behalf of SCHHS. It involves complaints about the care provided by Ramsay; and details of adverse outcomes for patients under Ramsay's care in the form of SAC1, SAC2 and Sentinel Event notifications. The information in issue also concerns the manner in which SCHHS discharged its obligations to monitor the

²¹ *B and BNRHA* at [60-63].

²² *B and BNRHA* at [76].

²³ See *Berri* at [191] citing *Esso Australia Resources Ltd & Ors v Plowman & Ors* (1995) 183 CLR 10, *Commonwealth of Australia v Cockatoo Dockyard Pty Ltd* (1995) 36 NSWLR 662 and *Cardwell Properties Pty Ltd & Williams and Department of Premier, Economic and Trade Development* (1995) 2 QAR 671 at pp.693-698 ([51-60]). See also *Orth and Medical Board of Queensland; Cooke (Third Party)* (2003) 6 QAR 209 at [34] (**Orth**).

standard of care being provided by Ramsay, as well as Ramsay's compliance with its obligations under the Services Agreement.

27. Ramsay received a significant amount of public funding in order to provide these public health services on behalf of SCHHS. SCHHS/QH are accountable to the public for their decision to engage Ramsay to provide public health services. There is a significant public interest in scrutinising their actions in monitoring and assessing the public health services provided by Ramsay and in ensuring that such health services were discharged to a high standard and in accordance with the terms and conditions agreed upon in the Services Agreement. I consider that Ramsay should reasonably have expected, in contracting with a government agency to provide public health services, and in receiving payment from the public purse, a legitimate public interest in scrutinising the actions of both Ramsay and SCHHS/QH in that regard.
28. Ramsay contests the relevance of public interest considerations of the kind referred to by the Information Commissioner in paragraph 25 above, in determining whether an equitable obligation of confidence exists. Ramsay argues that the application of public interest considerations to a claim for exemption under schedule 3, section 8(1) of the RTI Act imposes an additional legal requirement to establish the exemption that was not contemplated by the legislature and that is not supported by the language used in section 8. It argues that public interest considerations are not relevant to establishing requirement c).
29. Firstly, the language used in section 8 is, for practical purposes, identical to the language used in section 46(1)(a) and section 46(2) of the repealed FOI Act, under which the previous decisions upon which I rely were made by the Information Commissioner.²⁴ I do not accept that Parliament intended that the words used in section 8(2) of the RTI Act operate as the only limitation on a claim for breach of confidence. As the case law demonstrates, there are a number of cumulative requirements that must be met in order to found an action in equity for breach of confidence. The whole of the relevant circumstances surrounding each communication must be considered in determining whether the defendant's conscience ought to be bound with an equitable obligation of confidence.
30. Ramsay also argues that public interest considerations may arise only as a potential defence to an action for breach of confidence, considerations which a decision-maker under the RTI Act is precluded from taking into account given that schedule 3, section 8(1) only requires that disclosure of information would 'found' an action for a breach of confidence.²⁵ Even if public interest considerations are relevant, Ramsay submits that the information in issue is simply information generated under the machinery of the Services Agreement and is not significant enough to justify breaking a confidence.²⁶
31. I do not accept Ramsay's submissions. First, I do not accept that it is correct to characterise the information as routine contractual information of no particular significance. I have described the nature of the information in issue at paragraph 26 above. Secondly, I consider that public interest considerations form part of the constellation of relevant circumstances that I am required to take account of in assessing whether requirement c) is established in a breach of confidence claim for exemption under the RTI Act. In my view, the community's legitimate interest in obtaining

²⁴ See *Berri and Orth* (cited above) and the various decisions referred to therein.

²⁵ Applying Administrative Appeals Tribunal (AAT) Deputy President Forgie's reasoning that, to quote Ramsay's submissions, the 'founding of an action is separate and apart from the defences to that action': *Re Lobo v Department of Immigration and Citizenship* [2011] AATA 705. See also *Callejo* at paragraphs 180-185.

²⁶ Relying on *Castrol Australia Pty Ltd v Emtech Associates Pty Ltd* (1980) 33 ALR 31, 51-57; *A v Hayden (No 2)* (1984) 156 CLR 532; *Smith Kline and French Laboratories (Aust) Ltd & AlphaPharm Pty Ltd v Department of Community Services* (1980) 22 FCR 73; *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434.

information about the actions of government, which are taken on the community's behalf, and which are funded by the taxpayer, affect the question of whether an enforceable obligation of confidence should be imposed on government agencies in respect of information purportedly supplied in confidence by parties outside government. This is especially so when one bears in mind Parliament's express intentions as set out in the RTI Act's Preamble, including the recognition that, in a *'free and democratic society'*, *'there should be open discussion of public affairs'*; that *'the community should be kept informed of government's operations'*; and that *'openness in government enhances the accountability of government'*.

32. I am unaware of any authority decisively precluding my taking matters of a public interest nature into account in evaluating whether information has been communicated in circumstances that give rise to an equitable obligation of confidence. In the circumstances, I am content to follow the reasoning of the Information Commissioner as extracted at paragraph 25 above. I do not accept that equity would hold SCHHS conscience-bound to keep confidential from the Queensland community, information concerning the discharge by Ramsay of its obligations to provide public health services on behalf of the government, and for which it was paid public monies, or information concerning the discharge by SCHHS of its obligations to monitor the compliance by Ramsay of its obligations. I consider that there is a strong public interest in information that concerns the standard of health services provided to the public.

Finding

33. I find that requirement c) of the five cumulative requirements necessary to found an action in equity for breach of confidence is not established in respect of any of the information in issue. I find that the circumstances of the communication between Ramsay and SCHHS did not create an equitable obligation of confidence. As regards item ii of the information in issue, I also find, for the reasons explained at paragraph 24 above, that requirements d) and e) are not met, and that Ramsay would not have standing to bring an action in equity for breach of confidence in respect of information that it did supply.
34. I therefore find that the information in issue is not exempt information under schedule 3, section 8 of the RTI Act.

Contrary to public interest information

35. Ramsay and SCHHS also contend that disclosure of the information in issue would, on balance, be contrary to the public interest²⁷ within the meaning of section 47(3)(b) and 49 of the RTI Act. This comprises a further ground on which access to information may be refused under the Act.
36. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest²⁸ and explains the steps that a decision-maker must take, as follows:²⁹
- identify any irrelevant factors and disregard them;
 - identify relevant public interest factors favouring disclosure and nondisclosure;
 - balance the relevant factors favouring disclosure and nondisclosure; and

²⁷ The phrase *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.

²⁸ Schedule 4 of the RTI Act – a non-exhaustive itemisation of potentially relevant considerations.

²⁹ Section 49(3) of the RTI Act.

- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Irrelevant factors

37. I have taken no irrelevant factors into account in making my decision.

Factors favouring nondisclosure - submissions of SCHHS and Ramsay

38. The public interest factors favouring nondisclosure of the information in issue relied upon by SCHHS and Ramsay are set out at paragraphs 11 and 12 above.

Personal information and privacy

39. In respect of the factors identified by SCHHS that relate to personal information and the protection of privacy interests, these factors no longer apply given that QNU has withdrawn its application for access to any identifying information. I therefore afford these factors no weight in the public interest balancing test.

Prejudice the management function of an agency [or the conduct of industrial relations by an agency]

40. SCHHS submitted that *'the organisation must have the ability to manage future changes and plan management changes confident in the knowledge that these changes may be discussed and planned without interference or comment from outside the Health Service.'*³⁰
41. In response, I advised SCHHS I was unsure of which entity 'the organisation' refers to. I am unable to identify information in issue that could reasonably be said to relate to the management of future changes or the planning of management changes by an agency, or how disclosure could prejudice such a function in any event. This public interest factor is usually directed towards prejudice to an agency's function of managing its staff, as is indicated by the words used in the second part of the factor. The information in issue concerns the discharge by Ramsay of its obligations under the Services Agreement. I do not accept that SCHHS's monitoring of Ramsay's compliance with its obligations can properly be regarded as a management function within the meaning of this public interest factor.
42. SCHHS did not provide any further submissions in support of the application of this factor during the course of the review.
43. On the information before me, I am not satisfied that this prejudice factor applies to the information in issue and I afford it no weight in the public interest balancing test.

Prejudice to Ramsay's business, commercial or financial affairs

44. The RTI Act recognises that:
- a factor favouring nondisclosure (a prejudice factor) will arise in circumstances where disclosure of the information in issue could reasonably be expected to prejudice the business, commercial or financial affairs of entities; and
 - disclosure could reasonably be expected to cause a public interest harm (a harm factor) if disclosing the information in issue:

³⁰ SCHHS submission provided under cover of letter dated 22 March 2016.

- would disclose information concerning the business, commercial or financial affairs of an agency or another person; and
 - could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.
45. These factors favouring nondisclosure are directed towards preventing unwarranted commercial disadvantage to:
- (i) persons who carry on commercial activity who supply information to government or about whom government collects information;
 - (ii) agencies which carry on commercial activities.
46. I accept that the bulk of the information in issue can properly be characterised as concerning Ramsay's business, commercial or financial affairs.
47. In most instances, the question of whether disclosure of information could reasonably be expected to cause the necessary prejudice³¹ or have the requisite adverse effect will turn on whether disclosure of the information is capable of causing competitive harm to an entity.³²
48. In its submissions relating to these factors, Ramsay argued that the information in issue is sensitive and its disclosure would:
- affect the commercial arrangements between Ramsay and other health sector companies and government entities, and inhibit Ramsay's ability to enter into future commercial arrangements;
 - damage Ramsay's reputation and therefore be valuable to Ramsay's competitors and/or customers by providing them with a 'commercial edge'.
49. I accept that the information in issue is sensitive and could be regarded as adverse to Ramsay's business as it comprises complaints about Ramsay's care at SCUPH, summaries of adverse patient outcomes, and notices regarding Ramsay's obligations under the Services Agreement.
50. However, I also note that QH's website indicates that the Sunshine Coast University Hospital will be completed in April 2017 at which time it is presumed the contractual arrangement between Ramsay and SCHHS will come to an end.
51. While I do not accept that disclosure of the information in issue could reasonably be expected to adversely affect current commercial arrangements in which Ramsay is a party, I consider it may be reasonable to expect that disclosure may damage Ramsay's reputation and potentially affect its ability to enter into future commercial arrangements for the provision of healthcare services.
52. I therefore afford these public interest factors favouring nondisclosure significant weight in the public interest balancing test.

³¹ Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [16].

³² See *CNI* case at [89].

Prejudice SCHHS's ability to obtain confidential information

53. Ramsay argues that disclosure of the information in issue could reasonably be expected to:
- cause a public interest harm as the information consists of information of a confidential nature that was communicated in confidence and its disclosure could reasonably be expected to prejudice the future supply of information of this type; and
 - prejudice an agency's ability to obtain confidential information.
54. During the course of the review, SCHHS confirmed that some information in issue was required to be provided by Ramsay to QH under legislation, quite apart from Ramsay's reporting obligations under the Services Agreement. SCHHS advised that sentinel events are 'reportable events' prescribed under section 29 of the *Hospital and Health Board Regulation 2012* (Qld). Section 29 provides a list of clinical events that must be reported by hospitals and health facilities.
55. In addition, under section 144 of the *Private Health Facilities Act 1999* (Qld), private health facility licensees must provide reports (adverse data outcome reports) to the chief health officer in the approved form and at certain times prescribed by a regulation.
56. This type of information is required to be provided to QH under legislation in order to assist QH to discharge its statutory obligations to monitor the quality of health services being provided to the public.³³ As such, I do not consider that there is any basis for arguing that disclosure of this information in this review would prejudice its future supply to QH or prejudice QH's ability to obtain such information.
57. I also note the comments made by the Information Commissioner in *Sexton Trading and South Coast Regional Health Authority*³⁴ regarding whether it is reasonable to expect that the future supply to government of information will be prejudiced in situations where entities must supply the information under contractual arrangements and if they are to receive some benefit from government.
58. Ramsay submits that if the information in issue were to be disclosed under the RTI Act, the detail and scope of the information provided by third parties would diminish. It argues that third parties would consider disclosing only information that satisfied the minimum requirements; or would heavily censor the information they provide; or would only provide information under cover of confidentiality deeds.
59. I do not accept that there is a reasonable basis for expecting this to occur. Ramsay has specific obligations under the Services Agreement to supply SCHHS with information in connection with its provision of public health care services at SCUPH. There is no evidence before me to suggest that Ramsay has provided additional information over and above that which it is required to supply and which it could lawfully refuse to supply in the future. In any event, government agencies are able to specify the type of information they require from a third party in return for granting that third party a benefit. In situations where a third party will not obtain a benefit from government (under a contractual arrangement or otherwise) if they do not supply that information, it is not reasonable to expect that a substantial number would refuse to do so.

³³ See the *Hospital and Health Boards Act 2011* (Qld).

³⁴ (1995) 3 QAR 132 at pp.136-137.

60. As regards confidentiality deeds, I have already observed that any such arrangements will be subject to a public interest exception that recognises the legitimate interest that the public has in scrutinising the agreements that the government enters into on the public's behalf and which are funded from the public purse. Moreover, any agreement that sought to contract out of the statutory right to government information that is conferred by the RTI Act³⁵ would be unenforceable on public policy grounds.
61. On the information before me, I am not satisfied that these factors apply to the information in issue and I afford them no weight in the public interest balancing test.

Factors favouring disclosure

62. SCHHS recognised the following public interest factors favouring disclosure:
- disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability;³⁶
 - disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest;³⁷
 - disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.³⁸
63. Ramsay did not identify any public interest factors favouring disclosure. It argued that the information in issue is merely documentation generated and required by the internal machinery of a commercial contract between Ramsay and SCHHS and, that when properly characterised as such, *'there is no factual basis to conclude that factors favouring disclosure should be afforded significant weight'*.³⁹
64. I disagree with Ramsay's contention. The fact that the information in issue was generated pursuant to the Services Agreement does not detract from the nature of the information or the public interest factors that favour its disclosure. For the reasons explained above in the context of the discussion above regarding the public interest exception to obligations of confidence, I find that each of the public interest factors favouring disclosure identified above is deserving of significant weight in the public interest balancing test.
65. As noted, Ramsay entered into a contract to provide public health services on behalf of SCHHS and was paid out of public funds. There is a strong public interest in examining the manner and standard by which those health services were discharged on behalf of the public, and in the accountability of SCHHS for monitoring Ramsay's performance and Ramsay's compliance with its obligations under the Services Agreement. The matter of provision of public health services is of significant interest to the public. Where the government contracts out its public health service obligations to a third party, it is accountable for that decision and for ensuring that the services are provided to an acceptable standard. I consider that disclosure of the information in issue would promote open discussion of, and contribute to positive and informed debate about:
- QH's decision to enter into a contract with Ramsay whereby Ramsay provided public health services on QH's behalf;
 - Ramsay's compliance with its obligations under the contract;

³⁵ Subject to other provisions of the RTI Act, including grounds on which access may be refused.

³⁶ Schedule 2, part 2, item 1 of the RTI Act.

³⁷ Schedule 4, part 2, item 2 of the RTI Act.

³⁸ Schedule 4, part 2, item 11 of the RTI Act.

³⁹ Ramsay's submissions dated 29 August 2016 at page 7.

- the standard of public health care provided by Ramsay;
- the monitoring by QH/SCHHS of the standard and quality of health care provided by Ramsay; and
- government policy regarding the outsourcing of public health services to private providers, and the accountability of government in that regard.

Balancing the public interest

66. I afford significant weight to the public interest in protecting Ramsay's business, commercial and financial affairs from prejudice or adverse effect. However, I also afford significant weight to each of the public interest factors identified above that favour disclosure of the information in issue.
67. After balancing those competing factors, I find that disclosure of the information in issue would, on balance, be in the public interest.

DECISION

68. I set aside the decision under review. In substitution for it, I decide that there are no grounds upon which access to the information in issue may be refused under the RTI Act.
69. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Clare Smith
Right to Information Commissioner
Date: 23 February 2017

APPENDIX

Significant procedural steps during the external review

Date	Event
1 March 2016	Office of the Information Commissioner (OIC) received an application for external review from Queensland Nurses' Union (QNU).
7 March 2016	Sunshine Coast Hospital and Health Service (SCHHS) provided relevant processing documents and correspondence.
14 March 2016	OIC advised SCHHS that the date of SCHHS's deemed refusal of access was 11 December 2015. OIC requested copies of the information in issue; a submission on disclosure from SCHHS; and copies of any third party consultation correspondence.
23 March 2016	OIC received the requested information from SCHHS. SCHHS advised that it did not object to the disclosure of one page, but otherwise objected to the release of all other information in issue, either in whole or in part.
20 April 2016	OIC expressed an oral preliminary view to lawyers for Ramsay Health Care (Ramsay) regarding disclosure of the information in issue.
15 July 2016	Ramsay advised that it continued to object to disclosure of the information in issue.
27 July 2016	QNU advised that it withdrew its application for access to any identifying information contained in the information in issue, and any information relating to the treatment of private patients.
1 August 2016	OIC expressed a written preliminary view to both SCHHS and Ramsay regarding disclosure of the information in issue. OIC provided fresh copies of the information in issue, marked up to show the information in respect of which QNU had withdrawn its application for access,
29 August 2016	Ramsay provided further written submissions in support of nondisclosure of the information in issue.
1 September 2016	SCHHS advised that it maintained its initial position objecting to disclosure of the bulk of the information in issue, and had no further submissions to make. OIC requested that SCHHS clarify any statutory obligation that Ramsay had to supply the information in issue.
10 October 2016	SCHHS provided the requested information.
24 October 2016	OIC expressed a further preliminary view to Ramsay regarding disclosure of the information in issue.
11 November 2016	Ramsay advised that it withdrew its objection to the disclosure of one page, but otherwise maintained its objection to disclosure.
17 November 2016	OIC requested that SCHHS make arrangements to give QNU access to one page of information in respect of which neither SCHHS nor Ramsay objected to disclosure.
8 December 2016	QNU advised that it continued to seek access to all information remaining in issue and was not prepared to make any further concessions.