OFFICE OF THE
Information Commissioner
QUEENSLAND

Decision and Reasons for Decision

Citation:	***R93 and Metro South Hospital and Health Service [2026] QICmr 126 (16 July 2026)***
Application Number:	**00022213**
Applicant:	**R93**
Respondent:	**Metro South Hospital and Health Service**
Decision Date:	**16 July 2026**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DISCLOSURE NOT IN CHILD'S BEST INTERESTS – application on behalf of child by parent for access to child's hospital records – child subject to long-term guardianship order until 18 years of age under *Child Protection Act 1999* (Qld) - whether disclosure would be contrary to the best interests of the child – section 47(3)(c) and 50 of the *Right to Information Act 2009* (Qld)**

DECISION

I vary[1] the reviewable decision of Metro South Hospital and Health Service (**Metro South HHS**) and find that access to the Information in Issue[2] may be refused on the ground that it comprises the child applicant's personal information, and disclosure would not be in the child's best interests.[3] This means that no further information is to be released to the applicant. My reasons for the decision follow.

[redacted]

A Rickard
Assistant Information Commissioner

Date: 16 July 2026

[1] Under section 110(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
[2] As defined in paragraph 5.
[3] I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

REASONS FOR DECISION

Background

1. This review relates to an access application to Metro South HHS. The application was made for a child by their parent.[4] For such applications, the applicant is taken to be the child, rather than the parent.[5]

2. The child was 14 years of age at the time of the access application. The parent applied[6] on behalf of the child to access:

> *A complete copy of all Metro South Hospital and Health Service medical records for **[child]**, from 1 January 2023 to 10 September 2025 (including all clinical records, administrative records, test results, specialist consultations, autism related records, medication records, care plans, internal and external communication relating to treatment and care).*

3. Metro South HHS decided[7] to refuse access to the requested information on the ground that disclosure would, on balance, be contrary to the public interest.

4. The parent applied[8] on behalf of the child to the Office of the Information Commissioner (**OIC**) for external review.

Information in issue

5. Metro South HHS located documents responsive to the access application (**Information in Issue**). While I cannot provide details about the Information in Issue it generally comprises medical records held by Metro South HHS about the child. The records concern observations about the child's physical health, mental health, treatment history, clinical observations, assessments and interactions with healthcare providers.

Issue for determination

6. The issue for determination on external review is whether access to the Information in Issue may be refused under section 47(3)(c) of the RTI Act on the ground it comprises the child's personal information, the disclosure of which would not be in the child's bests interests under section 50 of the RTI Act.

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[4] Section 25(1) of the RTI Act. In addition to the access application that is addressed in this decision, the parent made further access applications to Metro South HHS on behalf of their four other children, and access applications to another hospital and health service on behalf of all five children. These nine applications are each the subject of separate external reviews involving the relevant child applicant and agency.
[5] Section 25 and definition of 'applicant' in schedule 5 of the RTI Act.
[6] Access application became compliant on 23 September 2025.
[7] Decision dated 25 November 2025. This is the *reviewable decision* in this review. Despite having considered section 50 of the RTI Act, the decisions also undertook steps in section 49(3) of the RTI Act and concluded that access may be refused under section 47(3)(b), rather than section 47(3)(c) of the RTI Act.
[8] External review application dated 30 November 2025.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes).

8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information,[9] as well as rights relating to children.[10] I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.[11] I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Relevant law

9. Section 25 of the RTI Act provides that an access application may be made for a child by the child's parent, and defines parent as follows:

> ***parent***—
> *Parent, of a child, is any of the following persons—*
> *(a) the child's mother;*
> *(b) the child's father;*
> *(c) a person who exercises parental responsibility for the child, including a person who is granted guardianship of the child under the Child Protection Act 1999 or who otherwise exercises parental responsibility for the child under a decision or order of a federal court or a court of a State.*

10. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.[12] While the legislation is to be administered with a pro-disclosure bias,[13] the right of access is subject to certain limitations, including grounds for refusing access.[14]

11. Access may be refused to information under section 47(3)(c) of the RTI Act where:

- the information is sought under an application made by or for a child
- the information sought comprises the child's personal information; and
- the disclosure of that information would not be in the child's best interests.[15]

12. When these three criteria are met, Parliament considers that disclosure would on balance be *contrary* to the public interest.[16]

13. Determining whether disclosure would not be in the *child's* best interests is not the same as determining whether disclosure would, on balance, be contrary to the *public*

[9] Section 21 of the HR Act.
[10] Sections 21(2), 25 and 26 of the HR Act.
[11] *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) 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 (as 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 DJ McGill SC saw '*no reason to differ*' from OIC's position).
[12] Section 23 of the RTI Act.
[13] Section 44 of the RTI Act.
[14] Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.
[15] As explained in section 50 of the RTI Act.
[16] Section 50(2) of the RTI Act.

interest. Accordingly, the steps for considering whether disclosure would be contrary to the public interest in section 49(3) are not relevant.

14. In *FLK*,[17] Judicial Member McGill confirmed the test in section 50(2) is to be determined objectively:

> *The question of whether disclosure of the information would or would not be in the best interests of the child is, I consider under s50(2) to be decided objectively, by reference to identifiable objective factors either advancing or damaging the interests of the child. Subsection (3), which applies where an access application has been made by a child personally, shows that the opinion of the child is not to be conclusive as to where the best interests of the child lie. That is consistent with the proposition that the test under subsection (2) is an objective one.*

15. The RTI Act provides limited guidance as to what is to be considered in deciding whether disclosure of information would not be in the child's best interests.[18]

16. The 'best interests of the child' principle is set out in the United Nations' Convention on the Rights of the Child (1989) (**Convention**),[19] and has since been applied in Australia in a number of legal contexts, particularly in family law[20] and administrative law.[21] Courts have considered that 'best interests' is a multi-faceted test and incorporates the wellbeing of the child, all factors which will affect the future of the child, the happiness of the child, immediate welfare as well as matters relevant to the child's healthy development. The concept includes not only material wealth or advantage but also emotional, spiritual and mental wellbeing.[22]

Findings

17. It is not in issue that the Information in Issue is sought under an application made by or for a child, nor that the Information in Issue comprises the child's personal information. The issue in contention is whether disclosure of the Information in Issue would not be in the child's best interests.[23]

The ability to make application on behalf of a child who is subject to a long-term guardianship order

18. The child is subject to child protection orders made by the Children's Court. Under these orders, the parent who made the application no longer has custody of the

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[17] *FLK v Information Commissioner* [2021] QCATA 46 at [8].

[18] Section 50(3) of the RTI Act provides that an agency must have regard to whether (a) the child has the capacity to understand the information and the context in which it was recorded and (b) make a mature judgement as to what might be in his or her best interests. However, this guidance is subject to an exception: *'unless the access application was made for the child'*, as is the case in this review.

[19] Ratified by Australia in December 1990. This Convention provides that the best interests of the child is a 'primary consideration' in decisions concerning children and defines 'children' as everyone under 18 years.

[20] For guidance, see section 60CC of the *Family Law Act 1975* (Cth). In the family law context, courts have recognised that the 'best interests of the child' is not a straightforward test - refer, for example, to *CDJ v VAJ* (1998) 197 CLR 172 at 219, where the High Court (in the majority judgment) noted that determining 'best interests' involved a '*discretionary judgement in respect of which judges can come to opposite but reasonable conclusions*'.

[21] *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273.

[22] United Nations Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, available at I.A.5; see also *Q95 and Legal Aid Queensland* [2019] QICmr 38 (6 September 2019) at [48].

[23] As explained in section 50 of the RTI Act.

child, and the chief executive of the Department of Families, Seniors, Disability Services and Child Safety (**Department**) has been granted long-term guardianship under the *Child Protection Act 1999* (Qld) (**CP Act**).[24]

19. The parent who has made the application on behalf of the child is one of the child's parents and therefore falls within the definition of parent noted at paragraph 9 above. This definition does not exclude such a parent from making an application on behalf of the child when the child is subject to a long-term guardianship order.

20. The parent submitted that:

> *Section 25 expressly provides that a parent may apply for access to their child's personal information. A long-term guardianship order under the Child Protection Act 1999 does not extinguish this entitlement. Nothing in the RTI Act requires a parent to obtain "Litigation Guardian consent" or Child Safety approval before requesting hospital clinical records.*[25]

21. While section 25 of the RTI Act gives a parent the ability to make an access application on behalf of a child, it does not confer an automatic entitlement to access information. As for any access application, an application by a parent on behalf of their child is subject to exceptions and limitations as set out in the RTI Act, including the ground for refusing access regarding the child's best interests.

Whether disclosure would not be in the child's best interests

22. Medical information is amongst the most sensitive categories of personal information recognised under the RTI Act. The Information in Issue concerns the child directly and is properly categorised as the child's personal information.

23. The parent has submitted that, as a parent of the child, they should be granted access to this information.[26]

24. Section 50(2) of the RTI Act requires consideration of whether disclosure of information would be in the best interests of the *child*. This is separate and distinct from the interests of the *parent* applying to access the information on their behalf.

Inconsistency with guardianship

25. In considering the child's best interests, I have had regard to the fact that the child was not in the parent's custody or under their guardianship at the time the access application was made, and continues to be subject to a long-term guardianship order under the CP Act.

26. This order grants guardianship to the Department until the child reaches 18 years of age.[27] According to section 13 of the CP Act, under a guardianship order:

> … *the chief executive* [of the Department]… *has*—

[24] Email from Metro South HHS dated 8 April 2026.
[25] Email from applicant dated 30 November 2025; see also email from applicant dated 27 May 2026.
[26] Email from applicant dated 27 May 2026.
[27] See definition of *long-term guardianship* in schedule 5 of the CP Act.

(a) the right to have the child's daily care; and
(b) the right and responsibility to make decisions about the child's daily care; and
(c) all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, wellbeing and development of the child.

27. I acknowledge that, given the parent's relationship to the child, the parent is inherently well placed to have a perspective on the best interests of the child that warrants due and careful consideration. I also acknowledge the parent's interest in the welfare of their child evident from their submissions.

28. However, the effect of the long-term guardianship order has shifted the guardianship that would have otherwise vested in the parent to the Department. Accordingly, while the parent remains able to make an application on behalf of the child under the RTI Act, I find that disclosing the Information in Issue to the parent on the child's behalf would, in general terms, be inconsistent with the granting of guardianship to the Department. Further, I consider that disclosure could reasonably be expected to impact the Department's ability to exercise its rights and meet its responsibilities under the guardianship order.

29. The parent's submissions contend that, despite the granting of the guardianship order, they continue to have residual rights regarding the child which justify or support provision of the Information in Issue to them.[28] There is, however, nothing before me to suggest that the child protection orders made regarding the child address any rights or responsibilities which could be considered to fall within this concept of residual rights. There is also nothing before me to indicate that any such rights may arise under the CP Act or have been recognised at common law. It follows that there is no evidence before me that the child protection orders reserve the specific residual right the parent claims to hold – that is, a right concerning knowledge of and/or ongoing involvement in the child's medical treatment. Regardless, the best interests of the child rather than the rights of their parent form the basis of these considerations.

Enabling scrutiny

30. In response to a preliminary view from OIC,[29] which concluded that all Information in Issue may be refused under section 47(3)(c) of the RTI Act, the parent submitted that:

> *Respectfully, a complete refusal of access appears disproportionate in circumstances where concerns already exist regarding the accuracy and continuity of medical information affecting the children.*
>
> *Ultimately, the children's best interests are best served not by insulation from scrutiny, but by accurate information, accountable decision-making, clinically appropriate treatment and transparency capable of withstanding independent review.*

[28] Above at footnote 25.
[29] Preliminary view dated 1 May 2026.

> *Where there is evidence that medical narratives affecting children may have evolved, been corrected, or incompletely conveyed through child protection processes, transparency and informed scrutiny become protective safeguards – not threats to the children's welfare.*

31. These submissions are advanced from the position of the parent and out of concern for the wellbeing of the child. In short, they contend that disclosure of the Information in Issue is in the child's best interests, because disclosure to the parent will enable 'informed scrutiny' by the parent – which in turn will enable the parent to ensure accurate medical records, accountable decision making regarding the child and appropriate medical treatment of them.

32. As noted above, the issue being considered is whether disclosure of the Information in Issue would not be in the best interests of the child. To the extent that the parent has concerns about out of date, incorrect or incomplete medical information regarding the child, such concerns do not, of themselves, establish that disclosure of the child's sensitive medical information to the parent is in the child's best interests. While the parent may have genuine concerns regarding the child's health and medical care, those concerns can be communicated to the Department, which, as the child's guardian, is responsible for making decisions about the child's medical treatment and welfare, and the Department can consider the concerns and determine any action, if required. I am not, on the material before me, persuaded that the parent's scrutiny of the child's medical records, and any resulting attempts the parent may make to effect changes to those records or review medical decisions and treatment, would be in the child's best interests.

Impacting trust and compromising care

33. Health records are inherently sensitive. As such, an age appropriate degree of privacy and confidentiality regarding the child's medical treatment is conducive to the therapeutic relationship between a child patient and their healthcare providers, and best positions healthcare providers to safeguard and promote the child's physical and emotional wellbeing.

34. In *Bradford*,[30] President Curtis noted that, if there are child protection issues, disclosure of information that undermines the relationship between the child and the agency charged with the protection of children may not be in the child's best interests as follows:

> *Where a child is in care …, it is in the best interests of the child that it should be able to be open with those in whom it has confidence about its relationships with its parents. The confidence might be destroyed if the information concerned went back to a parent, especially if the parent were to take some disciplinary action against the child.*

35. The Information Commissioner has also previously recognised that it would not be in a child's best interests to disclose information where that disclosure may impact the child's trust in a child protection agency, or which may result in damage to the relationship between the child and the agency.[31]

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[30] *Bradford and Director of Family Services; Commissioner, Australian Federal Police* (1998) 52 ALD at [459].
[31] *2YSV6N and the Department of Communities, Child Safety and Disability Services* [2014] QICmr 25 (5 June 2014) at [45].

36. In the circumstances of this matter, the agency is Metro South HHS, not the Department responsible for child protection, and the recorded information involves healthcare providers rather than child protection officers. However, in the same way that a relationship of confidence and openness with child protection officers has been recognised as in a child's best interests, I consider that such a relationship with hospital staff is also in a child's best interests, given their role in treating child patients, and thereby promoting their health, wellbeing and welfare.

37. Therefore, consistent with the abovementioned cases regarding circumstances involving child protection concerns, I am satisfied that disclosure of the Information in Issue could reasonably be expected to undermine the child's relationship of trust with healthcare providers, with consequent impact on the child's ongoing healthcare. I consider that this would affect not only the child's relationship with Metro South HHS staff, but also their willingness to trust and provide information to other hospitals and health services in the future.

38. Furthermore, I note there could be broader implications if a child's trust in government agencies and adults responsible for their care, including potentially staff of the Department which acts as the child's guardian, is compromised. Safeguarding the child's willingness to engage with essential support systems is paramount to the child's ongoing safety and care.

Privacy

39. The privacy interests of the child are also engaged by the requested information.

40. Medical information is inherently private. Having carefully examined the Information in Issue, I am satisfied that the medical records capture sensitive information that would ordinarily be expected to remain confidential between the child patient and their healthcare providers, subject to age appropriate involvement of the person exercising parental responsibility, that is the child's guardian.

41. A child's right to privacy is recognised in the Convention.[32] Australian courts accept that children reach varying levels of autonomy and independence prior to turning 18 years of age and that a right to privacy, whilst generally low for a young child in relation to their parent, will strengthen as the child's understanding and maturity grows.[33]

42. The Family Court has recognised the right of children with sufficient maturity and understanding to form their own views and to express those views in all matters affecting them. Those views are then given due weight in accordance with the age and maturity of the child.[34]

[32] See, for example, Article 16 of the Convention.
[33] *Marion's case (Secretary, Department of Health and Community Services v JWB and another* (1992) 175 CLR 218 (***Marion's case***) at [19] referring to *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112 (***Gillick***); see also *AZ4Z4W and the Department of Communities, Child Safety and Disability Services* [2014] QICmr 26 (5 June 2014) at [34].
[34] These issues are discussed in *Gillick*, as cited in *Marion's case*.

43. The Information Commissioner has previously observed[35] that where a parent is acting on behalf of their child, the practical effect of disclosure of information is that the information will be disclosed to the parent; however, the child can expect a right to privacy to some extent, even as against the parent.

44. I find that the child's privacy interests weigh heavily in this review, having regard to the sensitive nature of the Information in Issue and ongoing long-term guardianship order for the child.

45. There is no evidence before me to suggest that the child has given consent for their parent to seek information on their behalf or expressed any interest in sharing the relevant information with their parent. Accordingly, the practical effect of disclosure of the Information in Issue would be that the parent will access the child's sensitive medical information, without the child's knowledge or consent.

46. I have had regard to the fact that the child was 14 years of age at the time the access application was made by their parent on their behalf. There is no evidence before me about the child's maturity and whether they possess the understanding necessary to make decisions independently regarding access to their personal information. Indeed, I note that obtaining such evidence could, of itself, pose a level of detriment to the child's best interests.

47. However, I also note that, generally, as a child grows older, their level of autonomy and independence also grows. Consistent with this, the sphere of their privacy interests also expands, and a parent or guardian's access to their medical records becomes more limited without their express consent.

48. For an applicant who is presently 14 or 15 years old, general reference to their fairly established and gradually expanding sphere of privacy is, in my opinion, sufficient to conclude that the amount of privacy that they may reasonably expect as against a parent regarding their medical records is relatively significant. In the circumstances of this review, this right is elevated further, as against the parent, given they are no longer the child's guardian, and therefore no longer in a position where they have continuing but gradually declining parental responsibility with respect to the child's medical treatment as the child matures.

49. Accordingly, I am satisfied that the child can expect a significant right to privacy from their parent regarding their medical records. I therefore consider that disclosure of the Information in Issue to the child's parent without the consent of the child would have a significantly negative effect on the welfare interests of the child as it would prejudice the privacy rights of that child.

The prior release of information

50. The parent submitted that Metro South HHS had released some information in response to a separate access application made by them on behalf of another of their children – and therefore the information sought on behalf of the child whose application is the subject of this review should also be disclosed.

[35] *49RYXV and Department of Communities, Child Safety and Disability Services* [2014] QICmr 23 (5 June 2014) at [41]-[42].

51. While I accept that the release raised by the parent occurred, each decision must be made on the facts of that individual matter on external review. The release of information carries little weight in determining whether disclosure would not be in the child's best interests in the circumstances of the present external review.

Conclusion

52. As noted at paragraph 16 above, determining the child's best interests is a multi-faceted test and incorporates the child's immediate and future wellbeing, welfare, happiness and development. As set out above, I have considered the nature of the Information in Issue and the impact of its disclosure on the Department's rights and responsibilities under the guardianship order, the parent's ability to scrutinise and question medical decisions and treatment, the provision of therapeutic and other care to the child, and the extent of privacy reasonably due to the child.

53. Having carefully taken these matters into account, I am satisfied that disclosure of the Information in Issue would not be in the child's best interests. I therefore conclude that the Information in Issue comprises information that, according to section 50(2) of the RTI Act, Parliament considers would, on balance be contrary to the public interest. I therefore find that access to the Information in Issue may be refused under section 47(3)(c) of the RTI Act.

54. The above are the reasons for my decision set out at page 1.