



Decision and Reasons for Decision

Citation:	<i>West Moreton Hospital and Health Service and Department of Education; 709KUI (Third Party) [2019] QICmr 16 (9 May 2019)</i>
Application Number:	314087
Applicant:	West Moreton Hospital and Health Service
Respondent:	Department of Education
Third Party:	709KUI
Decision Date:	9 May 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information about investigation of workplace complaint - personal information and privacy - whether disclosure would on balance be contrary to the public interest - section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The third party made an access application to the Office of Industrial Relations (**OIR**)¹ under the *Right to Information Act 2009* (Qld) (**RTI Act**) seeking information relating to an assessment of workplace bullying and harassment undertaken by the West Moreton Hospital and Health Service (**Health Service**).
2. OIR located 663 pages responding to the access application and consulted the Health Service about its proposed disclosure of information in 71 pages. The Health Service objected to disclosure of information in 18 pages.
3. OIR decided to grant access to most of the located information. In respect of the 18 Pages,² OIR decided to refuse access to four pages, and release four pages in full and 10 pages in part, contrary to the Health Service's objections.
4. The Health Service applied³ to the Office of the Information Commissioner (**OIC**) for external review of OIR's decision to disclose information contrary to its views.

¹ OIR joined the Department of Education in December 2017. Therefore, the Department of Education has been named as the respondent agency in this review as it is the agency currently responsible for the information in issue. See *Administrative Arrangements Order (No. 3) 2017*, accessible at <<https://www.qld.gov.au/about/how-government-works/government-responsibilities>>.

² OIR deferred access to the 18 Pages, however, its decision referred to access being deferred to 22 pages.

³ On 9 August 2019.

5. During external review, the third party was joined as a participant in the review.⁴
6. For the reasons set out below, I vary OIR's disclosure decision and find that access to a small amount of information that OIR had decided to disclose may be refused, as its disclosure would, on balance, be contrary to the public interest.

Background

7. The decision under review is OIR's decision to disclose information contrary to the Health Service's objections.
8. As the decision under review is a '*disclosure decision*'⁵ the Health Service bears the onus of establishing that a decision not to disclose information is justified,⁶ or that the Information Commissioner should give a decision adverse to the third party.⁷ On external review, the Health Service withdrew its objection to the disclosure of some information to which it initially objected to the disclosure of.
9. External review by the Information Commissioner is merits review, that is, an administrative reconsideration of a case.⁸ As such, the Information Commissioner⁹ can decide any matter in relation to an application that could, under the RTI Act, have been decided by the agency dealing with the application.¹⁰
10. Significant procedural steps relating to the external review are set out in the Appendix. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

11. The information in issue comprises 14 words which OIR had decided to release to the third party contrary to the Health Service's objections—these 14 words appear on seven of the 18 Pages which have been partially released to the third party.¹¹ I am limited in the extent to which I can describe the information in issue,¹² except to note that it is information that is about and identifies individuals other than the third party and:
 - 11 of the words appear in a chronology document¹³
 - two of the words appear on the first page of a complaints summary;¹⁴ and
 - one word appears in an internal OIR email.
12. The Health Service and OIR agree that access to these 14 words can be refused. The third party continues to seek access to these 14 words and therefore this comprises the information in issue in this external review.

⁴ Under section 89(3) of the RTI Act.

⁵ A '*disclosure decision*' is defined to include a decision to disclose information contrary to the views of a relevant third party obtained under section 37 of the RTI Act—section 87(3)(a) of the RTI Act.

⁶ Under section 87(2) of the RTI Act.

⁷ As the party seeking access to information.

⁸ This can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision.

⁹ Or delegate.

¹⁰ Section 105(1)(b) of the RTI Act.

¹¹ Being pages 151, 152, 153, 380, 397, 398 and 483.

¹² Under section 108(3) of the RTI Act, the Information Commissioner must not, in a decision on external review or in reasons for a decision on external review, include information that is claimed to be exempt information or contrary to the public interest information—in this matter, the Health Service claims the information in issue is contrary to the public interest information.

¹³ Which comprises pages 151-152 and is duplicated at pages 397-398.

¹⁴ Comprising page 153, which is duplicated at page 483.

Issue for determination

13. During the review, a number of issues were resolved informally.¹⁵ The remaining issue to be determined is whether access to the information in issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Relevant law

14. Under the RTI Act, a person has a right to be given access to documents of government agencies.¹⁶ However, this right is subject to a number of exclusions and limitations, including grounds on which access may be refused. It is Parliament's intention that the refusal grounds are to be interpreted narrowly.¹⁷
15. One such ground of refusal is where disclosing information would, on balance, be contrary to the public interest.¹⁸ The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹⁹ and explains the steps that a decision-maker must take²⁰ in deciding the public interest as follows:
- 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
 - decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

Findings

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

Factors favouring disclosure

Applicant's personal information

17. A public interest factor favouring disclosure arises where information comprises the applicant's personal information.²¹
18. The third party submits that the chronology document is a legal document and the context in which the information in issue appears indicates it is referring to him. While I am restricted in the details I can reveal about information in issue,²² I am satisfied that the identity of the applicant is not apparent and cannot be reasonably ascertained from the limited information in issue, being 14 discrete words, and it is therefore not the personal information of the applicant. Accordingly, this factor favouring disclosure does not apply.

¹⁵ OIR and the Health Service accepted OIC's view that there was no basis under the RTI Act to refuse access to some of the information in the 18 Pages and that information was released to the third party. OIR also accepted OIC's view that disclosure of the information in issue would, on balance, be contrary to the public interest.

¹⁶ Section 23 of the RTI Act. The RTI Act is required to be administered with a pro-disclosure bias—section 44(4) of the RTI Act.

¹⁷ Section 47(2)(a) of the RTI Act.

¹⁸ Sections 47(3)(b) and 49 of the RTI Act.

¹⁹ 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, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

²⁰ Section 49(3) of the RTI Act.

²¹ Schedule 4, part 2, item 7 of the RTI Act. 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

²² Section 108(3) of the RTI Act.

Accountability and transparency

19. The RTI Act gives rise to public interest factors favouring disclosure where disclosing information could reasonably be expected to:
- enhance the Government's accountability²³
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by Government in its dealings with members of the community;²⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²⁵
20. There is a public interest in workplace investigations being conducted with a degree of transparency and accountability which is sufficient to afford the parties to such an investigation (and the public generally) with an understanding of the investigation process and its conclusions.
21. The third party was a complainant in the relevant investigation, which is now complete. As part of this application, the third party has been granted access to the majority of the information located by OIR in relation to this investigation. The disclosed information explains to the third party how the relevant complaints were assessed, the policies and legislation relevant to the investigation and the outcome of the investigation. Given the limited nature of the information in issue, I do not consider that its disclosure would further advance the accountability or transparency of OIR's complaint assessment and investigation processes in any meaningful way. Accordingly, while I consider that these factors favouring disclosure²⁶ may apply in the circumstances, I afford them low weight.

Incorrect, misleading or unfairly subjective information

22. The third party contends²⁷ that the chronology document should only list information relevant to him and disclosing the information in issue is required to ensure that the chronology document does refer only to him. A factor favouring disclosure will arise where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.²⁸ As I have noted above, the information in issue is the personal information of individuals other than the applicant and some of it appears in the chronology document. While the applicant may believe that the chronology document should not include information of this nature, this belief, of itself, does not give rise to this factor favouring disclosure. On the material before me, there is nothing which suggests that disclosing the information in issue to the third party would reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Accordingly, I consider that this factor favouring disclosure does not apply.

Fair treatment and procedural fairness

23. Public interest factors favouring disclosure will also arise where disclosing information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies²⁹ and contribute to the administration of

²³ Schedule 4, part 2, item 1 of the RTI Act.

²⁴ Schedule 4, part 2, item 3 of the RTI Act.

²⁵ Schedule 4, part 2, item 11 of the RTI Act.

²⁶ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²⁷ Submissions dated 24 February 2019.

²⁸ Schedule 4, part 2, item 12 of the RTI Act.

²⁹ Schedule 4, part 2, item 10 of the RTI Act.

justice generally, including procedural fairness.³⁰ The third party argues³¹ natural justice favours release of the information in issue to him because other parties have been privy to his information and he should have the same level of access.

24. In circumstances where most of the located information was released to the third party and the information in issue comprises a small amount of other individuals' personal information, I am not satisfied that disclosure of the information in issue would advance the third party's fair treatment in his dealings with OIR (and other government agencies and bodies), whether those dealings relate to the subject matter of the access application or other matters. I therefore consider the factor relating to advancing fair treatment does not apply in the circumstances of this review.
25. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations.³² In this matter, I am not satisfied that disclosure of the information in issue would contribute to procedural fairness for the third party, as the complainant, or any other individual.
26. Given the third party's submissions I have also considered whether disclosing the information in issue could reasonably be expected to contribute to the administration of justice for the third party.³³ In circumstances where most of the located information has been released to the third party, I am not satisfied that disclosure of the information in issue—being a small amount of other individuals' personal information—is required to enable the third party to evaluate whether a legal remedy against any particular individual or entity is available and worth pursuing or to pursue legal action against any particular individual or entity. On this basis, I do not consider that this factor favouring disclosure applies.

Other factors

27. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations in favour of disclosing the information in issue. Taking into consideration the nature of the information in issue, I cannot see how its disclosure could, for example, contribute to a debate on important issues or matters of serious interest,³⁴ ensure the effective oversight of expenditure of public funds³⁵ or contribute to the enforcement of the criminal law.³⁶

Factors favouring nondisclosure

Personal information and privacy

28. A public interest factor favouring nondisclosure will arise under the RTI Act where disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy.³⁷ The RTI Act also recognises that disclosing information could reasonably be expected to cause a public interest harm where it would disclose personal information of a person, whether living or dead.³⁸

³⁰ Schedule 4, part 2, item 16 the RTI Act.

³¹ Submissions dated 24 February 2019.

³² *Williams and Queensland Police Service* [2017] QICmr 28 (4 August 2017) at [53].

³³ Schedule 4, part 2, item 17 of the RTI Act. The relevant requirements for the application of this public interest factor have been identified in *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

³⁴ Schedule 4, part 2, item 2 of the RTI Act.

³⁵ Schedule 4, part 2, item 4 of the RTI Act.

³⁶ Schedule 4, part 2, item 18 of the RTI Act.

³⁷ Schedule 4, part 3, item 3 of the RTI Act.

³⁸ Schedule 4, part 4, section 6(1) of the RTI Act.

29. The Health Service submits³⁹ that disclosure of the information in issue could reasonably be expected to prejudice the privacy of individuals other than the third party.
30. As the identities of individuals other than the applicant are apparent or can reasonably be ascertained from the information in issue, I am satisfied that this information is the personal information of those individuals and its disclosure could reasonably be expected to prejudice the protection of their right to privacy and cause a public interest harm. Although I am unable to describe the information in issue,⁴⁰ I am satisfied that it is sensitive in nature, does not comprise the routine work information of public servants and it appears in the context of a workplace investigation. For this reason, I consider that disclosing the information in issue would be a significant intrusion into the privacy of these individuals. I also consider that the extent of the harm that could be anticipated from disclosing this personal information under the RTI Act would be significant. Accordingly, I afford these prejudice and harm factors favouring nondisclosure significant weight.

Balancing the public interest

31. In making a determination as to whether the disclosure of the information in issue would, on balance, be contrary to the public interest I have considered the submissions of each of the parties to this review and the relevant public interest factors set out above. My decision is also informed by the very limited nature of the information in issue, being 14 words.
32. In this case, as the information in issue is limited to third party personal information and given the substantial amount of information already provided to the third party in relation to the relevant investigations and outcomes, I am satisfied that the significant weight afforded to the nondisclosure factors relating to protection of personal information and privacy⁴¹ outweighs the minimal weight that can be attributed to the factors favouring disclosure.⁴² Accordingly, I consider that disclosing the information in issue would, on balance, be contrary to the public interest.

DECISION

33. For the reasons set out above, I vary OIR's decision and find that access to the information in issue may be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Shiv Martin
A/Assistant Information Commissioner

Date: 9 May 2019

³⁹ Submissions dated 4 February 2019.

⁴⁰ By virtue of the requirements in section 108(3) of the RTI Act.

⁴¹ Schedule 4, part 3, item 3 and schedule 4, part 4, item 6(1) of the RTI Act.

⁴² Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
9 August 2018	OIC received the application for external review.
28 August 2018	OIC notified the Health Service and OIR that the external review application had been accepted. OIC asked OIR to provide information.
29 August 2018	OIC received the requested information from OIR.
11-12 October 2018	OIC asked OIR to provide further information and received the requested information from OIR.
30 November 2018	OIC provided an update to the third party.
17 December 2018	OIC conveyed a preliminary view to OIR.
25 January 2019	OIC conveyed a preliminary view to the Health Service.
31 January 2019	OIC provided an update to the third party.
4 February 2019	OIC received the Health Service's submissions.
15 February 2019	OIC conveyed a further preliminary view to OIR. OIC conveyed a preliminary view to the third party.
24 February 2019	OIC received the third party's submissions.
11 March 2019	OIC provided an update to the third party.
19 March 2019	OIC provided a further update to the third party.