



Decision and Reasons for Decision

Citation: *L45 and Gold Coast Hospital and Health Service [2022] QICmr 20 (7 April 2022)*

Application Number: 316258

Applicant: L45

Respondent: Gold Coast Hospital and Health Service

Decision Date: 7 April 2022

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for a report about a workplace incident - personal information of other individuals - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Gold Coast Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access a workplace report about an incident in which the applicant was injured.¹
2. The Health Service located a seven page document (**Report**) relevant to the application and decided to refuse access to certain information on three pages.² The Health Service also deleted irrelevant information on five pages of the Report before disclosing the remaining information to the applicant.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's decision to refuse access to 'sections relating to contributing factors'.³

¹ The applicant initially applied to the Health Service on 7 April 2021. Due to an administrative oversight, that application was not processed by the Health Service. After the Health Service notified the applicant of this on 2 June 2021, the applicant and the Health Service agreed that the applicant's request would be dealt with as a new access application. By letter dated 2 June 2021, the Health Service confirmed to the applicant that this new access application was received on 2 June 2021. In subsequent discussions with the Health Service, the applicant agreed he did not seek to access personal mobile numbers, names of certain staff and hyperlinks appearing with the Report.

² Decision dated 4 August 2021.

³ External review application dated 11 August 2021.

4. For the reasons set out below, I affirm the Health Service's decision and find that access may be refused to the information in issue in this review on the basis that its disclosure would, on balance, be contrary to the public interest.⁴

Reviewable decision

5. The decision under review is the Health Service's decision dated 4 August 2021.

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). The significant procedural steps taken during the external review are set out in the Appendix.
7. The applicant provided a number of submissions to OIC in support of his case.⁵ I have carefully reviewed those submissions and taken into account the parts of those submissions which are relevant to the issues for determination. The applicant also seeks to raise concerns beyond the jurisdiction of the Information Commissioner and which fall outside the scope of this review.⁶ In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issue for determination.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ 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 IP Act and RTI Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁹

Information and issue for determination

9. As noted above, the applicant applied for external review of the Health Service's decision to refuse access to information under the Report heading '*Contributing Factors*'.¹⁰ This refused information appears on two pages of the Report.¹¹
10. During the review, OIC conveyed preliminary views to the applicant¹² to explain the basis for the refusal of access.¹³ While the applicant initially confirmed he continued to

⁴ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

⁵ As set out in the Appendix.

⁶ For example, the applicant's submissions dated 20 October 2021 raised concerns about procedures at the Health Service site where the incident occurred, the content of the Report and the time taken to produce the Report.

⁷ Section 21 of the HR Act.

⁸ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁹ I also note the following observations made by Bell J in XYZ at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.

¹⁰ The Health Service also refused access to portions of information appearing under the Report headings '*Incident Summary*' and '*Incident Sequence*'.

¹¹ Being pages 4 and 5 of the Report.

¹² On 8 October 2021 and 19 October 2021.

¹³ As set out in the Appendix. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

seek access to the refused information about '*the contributing factors*',¹⁴ he also indicated he had '*many reasons*' for seeking the full report.¹⁵ I then conveyed a further preliminary view to the applicant¹⁶ to confirm that the only issue being considered in the review was the refusal of access to the information specified in the external review application.¹⁷ In response, the applicant confirmed that he continued to seek access to the refused information about '*the factors contributing to the incident*'.¹⁸

11. Accordingly:

- the information in issue is the undisclosed information appearing on two pages of the Report as items 1 and 2 under the heading '*Contributing Factors*' (**Information in Issue**); and
- the issue for determination in this review is whether access to the Information in Issue may be refused on the ground that disclosure would, on balance, be contrary to the public interest.

Relevant law

12. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent they contain the individual's personal information.¹⁹ However, this right is subject to limitations, including the grounds for refusal of access.²⁰
13. One refusal ground is where disclosing information would, on balance, be contrary to the public interest.²¹ The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.²²
14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²³
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Findings

15. While I am unable to describe the content of the Information in Issue in any detail,²⁴ I can confirm that it comprises the sensitive and highly personal information about individuals other than the applicant.

¹⁴ Submission dated 11 October 2021.

¹⁵ Submission dated 20 October 2021.

¹⁶ By email dated 2 November 2021.

¹⁷ In particular, I confirmed that information the Health Service deleted as irrelevant under 88 of the IP Act was not being considered.

¹⁸ Submissions dated 15 November 2021.

¹⁹ Section 40 of the IP Act.

²⁰ The grounds on which access can be refused are set out in section 47 of the RTI Act.

²¹ Sections 47(3)(b) and 49 of the RTI Act.

²² However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²³ Section 49(3) of the RTI Act.

²⁴ Section 121(3) of the IP Act which relevantly requires the Information Commissioner not to disclose information that is exempt or claimed to be contrary to the public interest information in a decision or reasons for a decision.

16. The applicant has provided limited submissions in support of his request for disclosure of the Information in Issue, generally contending that disclosing this information is in the public interest. More specifically, the applicant submitted that he needs to know the contributing factors to the incident to assess '*whether any liability exists*'²⁵ and '*prevent this happening again*'.²⁶

Irrelevant factors

17. I have not taken any irrelevant factors into account in making my decision.

Factors favouring disclosure

18. The RTI Act recognises that factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- enhance the government's accountability²⁷
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community²⁸
 - allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of the Health Service or its officers²⁹
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁰
 - reveal the reason for a government decision and any background or contextual information that informed the decision³¹
 - reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant³²
 - reveal health risks or measures relating to public health and safety;³³ and
 - contribute to the administration of justice, generally or for a person.³⁴
19. The Health Service must be transparent and accountable about how it deals with reported staff injuries. The parts of the Report which have been disclosed by the Health Services include the information which was collected for the purpose of the incident investigation, the identified '*root cause of the incident*' and the recommended remedial actions. That disclosed information also confirms that the applicant participated in the investigation process. I consider this disclosed information has substantially advanced the Health Service's accountability and transparency. I acknowledge that disclosure of the Information in Issue would provide the applicant with a more complete picture of the matters which were considered in determining the incident root cause and the recommended remedial actions. However, given the limited nature of the Information in Issue, I do not consider its disclosure would further advance the accountability and transparency of the Health Service in any significant way. On that basis, I afford low weight to these factors favouring disclosure.³⁵

²⁵ External review application. In submissions dated 20 October 2021, the applicant indicated he sought this information to '*ascertain if there is liability*'.

²⁶ Submissions dated 11 October 2021. The applicant made a similar argument in his submissions dated 20 October 2021 and 15 November 2021.

²⁷ Schedule 4, part 2, item 1 of the RTI Act.

²⁸ Schedule 4, part 2, item 3 of the RTI Act.

²⁹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

³⁰ Schedule 4, part 2, item 10 of the RTI Act.

³¹ Schedule 4, part 2, item 11 of the RTI Act.

³² Schedule 4, part 2, item 12 of the RTI Act.

³³ Schedule 4, part 2, item 14 of the RTI Act.

³⁴ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³⁵ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

20. Having carefully considered the Information in Issue (together with the applicant's submissions and the information which has been released to the applicant), there is nothing before me which suggests that the Information in Issue is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Although the applicant contends the Health Service has '*tried to minimise the severity of [the] incident*³⁶, I am also satisfied that there is nothing within this particular Information in Issue which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. On this basis, I do not consider these factors favouring disclosure apply.³⁷
21. The applicant asserts that disclosure is required to '*help protect both patients and staff*'.³⁸ As noted above, the information which has been disclosed to the applicant contains the identified root cause of the incident and the recommended remedial actions. Taking into account the limited and highly personal nature of the Information in Issue, it is unclear how disclosing this information could be expected to reveal health risks or measures relating to public health and safety. Accordingly, to the extent this factor³⁹ applies, I afford it only low weight.
22. In determining whether the disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant, I must consider whether:⁴⁰
 - the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
23. The Report relates to an incident in which the applicant was injured and the applicant has indicated he wishes to assess whether liability exists. Although there may be a remedy available to the applicant, there is no evidence before me to indicate that disclosure of the Information in Issue is required to enable the applicant to evaluate or pursue an available remedy. Taking the nature of the Information in Issue into account, I consider that, to the extent this factor favouring disclosure⁴¹ applies, it deserves only low weight.
24. I do not consider that the notions of fair treatment and procedural fairness in this case entitle the applicant to access the Information in Issue. As noted above, the applicant participated in the investigation process and the information which has been disclosed by the Health Service identifies the information which was collected for the purpose of the investigation, the root cause of the incident and the recommended remedial actions. Although the applicant has raised general fairness considerations,⁴² he has not enunciated how disclosure of this particular Information in Issue would contribute to his fair treatment or procedural fairness. In these circumstances, and taking the nature of the Information in Issue into account, I am not satisfied that there is a reasonable expectation its disclosure would, in any meaningful way, advance the

³⁶ Submissions dated 20 October 2021.

³⁷ Schedule 4, part 2, items 5, 6 and 12 of the RTI Act.

³⁸ Submissions dated 20 October 2021.

³⁹ Schedule 4, part 2, item 14 of the RTI Act.

⁴⁰ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

⁴¹ Schedule 4, part 2, item 17 of the RTI Act.

⁴² For example, in his submissions dated 20 October 2021, the applicant raised concern that his input to the Report was ignored.

applicant's fair treatment or contribute to the general administration of justice, including procedural fairness. On this basis, I consider that, to the extent these factors apply,⁴³ they attract only low weight due to the nature of the Information in Issue.

25. I have carefully considered all other factors listed in schedule 4, part 2 of the RTI Act and can identify no other public interest considerations which favour disclosure of the Information in Issue.⁴⁴

Factors favouring nondisclosure

26. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁴⁵ and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy will favour nondisclosure.⁴⁶
27. I have reviewed the Information in Issue and I am satisfied that it comprises the personal information of individuals other than the applicant. This information is of a highly sensitive and personal nature. Given this, I am satisfied that its disclosure would be a significant intrusion into the privacy of these individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to these factors which favour nondisclosure.⁴⁷ I acknowledge that as a result of his involvement in incident and its subsequent investigation the applicant may know some of this information. However, taking into account the sensitive nature and context of the Information in Issue, I do not consider this reduces the weight of these nondisclosure factors, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.

Balancing the public interest

28. I have taken into account that the IP Act is to be administered with a pro-disclosure bias.⁴⁸
29. For the reasons set out above, I am satisfied the considerations related to the protection of the personal information and privacy of other individuals warrant significant weight in favour of nondisclosure of the Information in Issue.
30. On the other hand, I have identified a number of factors which favour disclosure of the Information in Issue (including those relating to the Health Service's transparency and accountability; fair treatment; health and safety; and the administration of justice). However, taking into account the nature of the Information in Issue, I have afforded these factors only low weight.

⁴³ Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴⁴ Given the nature of the Information I cannot see how its disclosure could, for example, contribute to a positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure effective oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); or contribute to the maintenance of peace and order (schedule 4, part 2, item 15 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

⁴⁵ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁶ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

⁴⁷ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁴⁸ Section 64 of the IP Act.

31. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on this basis.⁴⁹

DECISION

32. For the reasons set out below, I affirm⁵⁰ the Health Service's decision and find that access may be refused to the Information in Issue on the basis that its disclosure would, on balance, be contrary to the public interest.

T Lake
Acting Assistant Information Commissioner

Date: 7 April 2022

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

⁵⁰ As a delegate of the Information Commissioner, under section 139 of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
11 August 2021	OIC received the external review application.
20 August 2021	OIC notified the applicant and the Health Service the application for external review had been accepted and requested information from the Health Service.
26 August 2021	OIC received the requested information from the Health Service.
8 October 2021	OIC conveyed a preliminary view to the applicant concerning the refusal of access to the ' <i>contributing factors</i> ' information and asked the applicant to confirm if he wished to continue with the review.
11 October 2021	OIC received the applicant's confirmation that he continued to seek access to the ' <i>contributing factors</i> ' information.
19 October 2021	OIC conveyed a further preliminary view to applicant and invited the applicant to provide submissions if he did not accept the preliminary view.
20 October 2021	OIC received the applicant's submissions in which he indicated he sought the full Report.
2 November 2021	OIC confirmed to the applicant that information which the Health Service deleted as irrelevant was not being considered on external review. OIC also conveyed a further preliminary view about the refused information and invited the applicant to provide submissions if he maintained his disagreement with the preliminary view.
15 November 2021	OIC received the applicant's further submissions.