Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Application Number: **310034**

Applicant: **DH6QO5**

Respondent: **Department of Health**

Decision Date: **11 May 2011**

Catchwords: **ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT– APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS – grounds on which access may be refused – section 47(3)(b) of the *Right to Information Act 2009* (Qld) – whether document comprises information the disclosure of which would, on balance be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld) – whether access to information can be refused under section 67(1) of the *Information Privacy Act 2009* (Qld)**

ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – NON-EXISTENT DOCUMENTS – UNLOCATABLE DOCUMENTS – applicant contends additional information should exist – whether there are reasonable grounds for agency to be satisfied that documents do not exist or are unlocatable – whether access to documents can be refused under section 67(1) of the *Information Privacy Act* (Qld) and section 47(3)(e) of the *Right to Information Act 2009* (Qld), on the grounds set out in section 52(1)(a) and section 52(1)(b) of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant applied on 26 November 2009 to the Department of Health[1] (**QH**) under the *Information Privacy Act 2009* (**IP Act**) for access to his medical records held by the Royal Brisbane and Women's Hospital (**RBWH**).[2]

2. QH identified 92 pages responding to the applicant's access application. QH gave the applicant access to 91 pages in full, and one page in part,[3] refusing access to a segment of information supplied by a third party, under section 67(1) of the IP Act, on the basis disclosure would, on balance, be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for review of QH's decision refusing access to this information. The applicant also contended that QH should have located more documents responding to his access applications,[4] principally, video and audio recordings made during a period of admission at RBWH.

4. I am satisfied access to the segment of information appearing on the relevant page of the applicant's health records can be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

5. I am also satisfied that additional documents requested by the applicant do not exist, and QH may therefore refuse access to them under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

Background

6. Significant procedural steps relating to the application and external review are set out in the Appendix. I should, however, note that by way of correspondence dated 24 March 2011, the applicant requested OIC 'stop work' on this external review, until OIC had provided applicant with further information including copies of all communications between the OIC and QH, and information as to 'delay' in progressing this review. The applicant repeated this request in correspondence dated 19 April 2011.

7. The procedure to be followed on an external review is a matter within the discretion of the Information Commissioner and delegates.[5] The applicant was, throughout the course of this review, provided with information (including correspondence from QH) where necessary to inform him and allow him to lodge information in response.

8. As to 'delay', the applicant was advised on several occasions that this external review was one of many dealt with during a period in which OIC experienced an unprecedented influx of external review applications.[6] His application was, as explained to him, one of many competing for the finite resources available to OIC for the purposes of resolving external reviews under both the IP and RTI Acts.

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[1] Known as Queensland Health.
[2] The applicant subsequently lodged a second access application dated 25 January 2010 for 'additional documents' he claimed were not identified by QH in his application dated 26 November 2009 (including the audio and video recordings). QH refused to deal with this application on the basis it was a repeat application for the same documents sought in his access application dated 26 November 2009 (under sections 62(3)(b)(i) and 62(3)(d)(i) of the IP Act), explaining in a decision dated 29 January 2010 there was no additional documentation beyond that identified in the decision dated 8 December 2009 under review. The applicant applied to the OIC for external review of this second QH decision. This later review was informally resolved on the basis the applicant's request for additional documentation would be dealt with in the external review the subject of this decision, as sufficiency of search issues.
[3] Relevantly numbered as 'IP Document No. 57'.
[4] See note 2.
[5] Section 108 of the IP Act.
[6] See for example letters from the OIC to the applicant dated 22 July 2010, 7 September 2010, 2 November 2010, 25 January 2011, 14 March and 23 March 2011.

9. By letters dated 28 March 2011 and 20 April 2011 OIC wrote to the applicant, explaining the matters set out above. The applicant was also advised that, in the absence of an unequivocal withdrawal of this application, work on this external review would continue. The application has not been withdrawn as at the date of this decision.

Decision under review

10. The decision under review is QH's decision dated 8 December 2009 to refuse the applicant access to part of a page of his RBWH medical records under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act, on the basis that disclosure of this information would, on balance, be contrary to the public interest under section 49 of the RTI Act.

Information in issue

11. The information in issue is the segment of information to which the applicant was refused access,[7] and the documents – principally, audio and visual recordings – the applicant says should exist.

Evidence considered

12. In making this decision, I have considered the following:

- applicant's access application dated 11 October 2010, and later access application dated 25 January 2010;[8]
- QH's decisions dated 8 December 2009 and 29 January 2010;[9]
- applicant's external review application dated 18 December 2009, and written correspondence dated 21 March 2010, 27 April 2010, 29 June 2010, 12 November 2010, 30 January 2011, 24 March 2011 and 19 April 2011;
- written correspondence from QH dated 15 January 2010, 3 February 2010, 22 February 2010 and 10 June 2010;
- file notes of telephone conversations with QH officers, the applicant, and third parties;
- the information in issue;
- relevant provisions of the IP Act and RTI Act; and
- previous decisions of the Information Commissioner as referred to in these reasons.

Relevant law

13. Access must be given to a document unless it contains exempt information or its disclosure would, on balance, be contrary to the public interest.[10] Additionally, QH may refuse access where documents are nonexistent or unlocatable,[11] as detailed further below.

Contrary to the public interest

14. To decide whether disclosure of the relevant segment of information in issue would, on balance, be contrary to the public interest, I must, in accordance with section 49 of the RTI Act:

[7] Appearing, as noted, on IP document no. 57 of his medical records.
[8] See note 2.
[9] See note 2.
[10] Sections 64 (Pro disclosure bias) and 67 (Grounds on which access may be refused) of the IP Act and sections 47(3)(a) and (b) of the RTI Act.
[11] Section 47(3)(e) of the RTI Act.

- 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 disclosure of the information would, on balance, be contrary to the public interest.

Findings

15. No irrelevant factors arise in this case.

Factors favouring disclosure

16. I consider the following factors favouring disclosure arise in this case:

    - the public interest in ensuring public agencies such as QH operate transparently and accountably;[12]
    - the information in issue is the applicant's own personal information; and[13]
    - disclosure of the information could reasonably be expected to reveal the reason for decisions made during a period of hospital admission, and any background or contextual information that informed those decisions.[14]

17. There is a clear public interest in ensuring agencies such as QH operate accountably and transparently. I also accept that the information in issue comprises the applicant's personal information, giving rise to a public interest factor in favour of disclosure of this information to him. Further, it is arguable disclosure of the information could assist the applicant in understanding his health care treatment to some degree.

18. The applicant also contends that he requires access to the information in issue to assess its 'validity and accuracy' and consider whether it needs correction or amendment.[15] The information in issue was supplied by a third party source to a psychiatric registrar employed at the RBWH; having considered notes of consultations with both the named source of the information and the registrar who made the record,[16] I am not satisfied there are grounds on which to impugn the veracity of the information. Accordingly, I do not consider this submission gives rise to a public interest factor favouring disclosure.

Factors favouring non-disclosure

19. I have identified one factor favouring non-disclosure of the information in issue:

    - disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.[17]

20. The above factor is one of various provisions in the RTI Act that reflect Parliament's recognition that the right of access to government information contained in section 40 of the IP Act may need to be tempered in certain circumstances. In this case, such a circumstance can be broadly described as where disclosure of information could impair the free flow of information from the public to government. This important public interest is generally protected through ensuring the confidentiality of information, identity of source, or both. Whilst it will not always be possible for a government

[12] Schedule 4 part 2 item 1 of the RTI Act.
[13] Schedule 4 part 2 item 7 of the RTI Act.
[14] Schedule 4 part 2 item 11 of the RTI Act, effectively raised by the applicant in submissions that he requires access to the information in issue to assess treatment and medication decisions made during a period of hospital admission – see, for example, the applicant's letter dated 29 June 2010.
[15] Applicant's letter dated 29 June 2010.
[16] An OIC staff member consulted the source by telephone on 8 March 2011; the psychiatric registrar was consulted by telephone on 23 March 2011.
[17] Schedule 4 part 3 item 16 of the RTI Act.

agency to maintain such confidentiality,[18] it will generally be in the public interest that any confidentiality be preserved as far as is possible.

21. The relevant factor requires an agency to demonstrate that disclosure of information in issue could reasonably be expected to have a detrimental impact[19] on an agency's capacity to obtain information on a confidential basis in the future. Ordinarily, such prejudice will flow because the information in issue is itself confidential,[20] and its disclosure would therefore deter future potential sources from supplying information by undermining public confidence in an agency's ability to treat information with secrecy in appropriate circumstances.

22. A compounding factor will, as in this case, frequently be that the disclosure of the information itself will reveal or tend to reveal the identity of the source, further deterring future potential sources who might otherwise impart information on the understanding they may remain anonymous. OIC asked QH to consider disclosing the information in issue with the identity of the purported source deleted; QH did not accept this proposal, on the basis disclosure of any of the information would tend to identify the source, a position which, having reviewed the information, I accept.

23. In its decision, QH explained to the applicant the information in issue was provided by the source in confidence, for the purpose of the applicant's assessment and treatment.[21]

24. The named source of the information has also objected to disclosure. The source was not consulted until relatively late in the review process;[22] QH's earlier attempts to do so were unsuccessful. It should be noted that the source's recollection was vague and indefinite (which is understandable, given the passage of time). The source did, however, as noted object to disclosure based on the nature of the information in issue. This confirmed the approach taken by QH in deciding to withhold the information, and OIC in twice writing to the applicant[23] expressing the preliminary view that QH was entitled to do so.

25. Having carefully reviewed the information, I am satisfied it is confidential as against the applicant. I am also satisfied from my examination of the nature of the information, the context in which it appears and the circumstances in which it was communicated that it was supplied on the implicit mutual understanding it would be held confidentially.

26. In these circumstances, I consider disclosure could, therefore, reasonably be expected to prejudice QH's ability to obtain information of this kind in the future. As QH's decision noted:[24]

> *Release of the information could result in persons from whom such information is sought in the future having diminished faith in the system and refusing to cooperate resulting in a lowering of the service of care provided by the hospital.*

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[18] Where, for example, disclosure of information or identity of source is required for the purposes of enabling further investigation, for prosecution in open court, or for affording an individual procedural fairness.

[19] Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at paragraph 17 for a succinct exposition of the meaning of 'prejudice' as used throughout the RTI Act.

[20] Though this may not be strictly required on the formulation of this factor, which is framed in terms of future impact or prejudice exclusively (unlike, say schedule 3 item 8 of the RTI Act – information disclosure of which would found an action for breach of confidence – which by its very nature fixes on the confidential nature of the actual information in issue).

[21] QH decision dated 8 December 2009, page 5.

[22] See note 16. The applicant had advised he did not wish for the OIC or QH to contact the third party source of information (see for example correspondence dated 27 April 2010). In my view, however, it was necessary to do so for two reasons. Firstly, so as to properly evaluate the likelihood of the prejudice claimed by QH, and thus assess whether QH had discharged its onus under section 100(1) of the IP Act in refusing access. Secondly, so as to attempt to promote settlement of this aspect of the external review (in the applicant's favour, by potentially negotiating disclosure to him of the information), as I am obliged to do under section 103(1)(b) of the IP Act.

[23] By letters dated 12 April and 15 June 2010.

[24] QH decision dated 8 December 2009, page 5.

27. I agree with QH's contentions in this regard. I consider that in the circumstances of this case, disclosure of the kind of information in issue could, in the absence of the source's express agreement, reasonably be expected to inhibit QH's capacity to obtain like information in the future. I am satisfied this public interest factor arises for consideration in this case.

Balancing relevant public interest factors

28. Having identified and examined the public interest factors for and against disclosure, I consider that in the circumstances of this review:

- the public interest in disclosing to an applicant their personal information should be attributed moderate weight;
- the public interest in advancing QH's accountability and disclosing background or contextual information should each be attributed marginal weight;
- the public interest in ensuring QH may continue to obtain confidential information should be afforded significant weight.

29. In making this assessment, I accept the importance of ensuring agencies such as QH discharge their duties transparently and accountably. In this regard, however, I note that that the applicant has been given access to the bulk of his records, and has only been refused access to three lines of text appearing on one folio of 92 disclosed. I do not consider that disclosing the limited segment of information remaining in issue would significantly advance this public interest, and accord it only marginal weight.

30. Similarly, I note the applicant's submissions that he seeks access to the information so as, in part, to scrutinise the basis on which treatment decisions were made during a period of admission to the RBWH. Again, however, from my review of the material before me it is evident he has been given access to a substantial amount of information materially relevant to this issue. I do not consider disclosure of the information in issue would shed further light on this issue to any significant degree.

31. I also accept the public interest in ensuring individuals have access to their own personal information, particularly where that information concerns their health.

32. Weighing against these important public interests is the significant public interest in safeguarding the free flow of information from community to government. As the Acting Assistant Information Commissioner noted in *DTI and Department of Health*:[25]

> *… Government agencies such as Queensland Health discharge important functions on behalf of the community and in discharging those functions, they frequently rely on information provided by members of the community. As was stated in* Kinder and Department of Housing [(Unreported, Queensland Information Commissioner, 12 March 2002), at paragraph 31:
>
> > Those essential public interests include ensuring that government agencies do not suffer any unwarranted hindrance to their ability to perform their important functions for the benefit of the wider Queensland community, as a result of any unwarranted inhibition on the supply of information from citizens, on whose co-operation and assistance government agencies frequently depend.

33. QH's decision sets out concisely the adverse consequences that would flow from failure to protect this supply of information in appropriate cases:

[25] (Unreported, Queensland Information Commissioner, 24 April 2009) at paragraph 77.

> *Failure to ensure that information which is provided in confidence is used only for the purpose for which it was obtained would seriously hinder the Hospital in its future attempts to assess and treat persons referred to the Hospital for treatment.*[26]

34. In the circumstances of this case I consider the public interest in ensuring agencies such as QH can continue to obtain confidential information without impediment should be preferred to the public interest in disclosing to a person their own personal information, and to the other public interest factors favouring disclosure identified in paragraph 16.

35. In support of his case for access to the information, the applicant submits that there is '*no party who is entitled to provide secret information to the RBWH*.'[27] As noted in paragraph 20, however, the right of access to information contained in section 40 of the IP Act is not absolute. This right is subject to the Act – that is, it is tempered by various provisions[28] reflecting the legislature's recognition that, in certain circumstances, disclosure of information may, on balance, be contrary to the public interest and that accordingly, an agency may legitimately refuse access to such information. For the reasons explained above, I consider that this is such a case.

36. Having carefully balanced each of the relevant factors identified above, I am satisfied that disclosure of the relevant segment of information in issue would be contrary to the public interest.

Nonexistent/unlocatable documents

37. As noted in paragraph 13, section 47(3)(e) of the RTI Act allows an agency to refuse access to documents where those documents are nonexistent or unlocatable, as mentioned in section 52 of the RTI Act. Section 52(1) of the RTI Act relevantly provides:

> ***52 Document nonexistent or unlocatable***
>
> *(1) For section 47(3)(e), a document is nonexistent or unlocatable if—*
>
> *(a) the agency or Minister dealing with the application for access is satisfied the document does not exist; or*
>
> …
>
> *(b) the agency or Minister dealing with the application for access is satisfied—*
>
> *(i) the document has been or should be in the agency's or Minister's possession; and*
>
> *(ii) all reasonable steps have been taken to find the document but the document can not be found.*

38. In this case, QH contends that certain documents sought by the applicant do not exist. QH acknowledges that other documents sought by the applicant – video recordings comprising CCTV footage requested by the applicant – likely did exist (and thus have been in QH's possession) but have since been recorded over and can therefore not

[26] QH decision dated 8 December 2009, page 5. See also the text from the QH decision cited at paragraph 26 above for further elaboration of the detrimental consequences that would flow from disclosure.
[27] Applicant's submissions dated 24 March 2011.
[28] Contained in the RTI Act – see section 67 of the IP Act.

now be located.[29] Accordingly, the grounds for refusing access to documents as set out in both section 52(1)(a) and (b) of the RTI Act are relevant in this case.

39. The principles that apply when refusing access to nonexistent and unlocatable documents were detailed in *PDE and the University of Queensland.*[30]

> *… [T]he FOI Act [equivalent of section 52] address[es] two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) and carry out all reasonable steps to find the document before refusing access*

40. In *PDE*, the Information Commissioner stated that, in order to be satisfied that documents are nonexistent, agencies must rely on their particular knowledge and experience and have regard to various key factors including:

- administrative arrangements of government;
- structure of the agency;
- functions and responsibilities of the agency;
- practices and procedures of the agency (including but not limited to its information management approach);
- other factors reasonably inferred from information supplied by the applicant including nature and age of the requested documents and nature of the government activity the request relates to.

41. The RTI Act is silent as to how an agency is to satisfy itself that documents do not exist when relying on section 52(1)(a). When proper consideration is given to the key factors identified at paragraph 40, and a conclusion reached that the documents do not exist, it may not be necessary for an agency to conduct searches.[31]

42. As to unlocatable documents, for an agency to be entitled to refuse access under section 47(3)(e) of the RTI Act on the ground set out in section 52(1)(b), it is necessary to ask the following questions:

- are there reasonable grounds for the agency to be satisfied that additional documents exist (or existed), to the extent that they have been or should be in its possession; and
- has the agency taken all reasonable steps to find the additional documents sought.

General queries

43. The applicant's principal 'missing documents' contentions are that QH should hold or have access to audio and video recordings of time he spent in attendance at the RBWH. I will address these shortly. He has also, however, raised questions in relation to the information actually disclosed to him by QH.[32]

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[29] QH submissions dated 10 June 2010.
[30] (Unreported, Queensland Information Commissioner, 9 February 2009), a decision which concerned section 28A of the FOI Act, replicated in section 52(1) of the RTI Act.
[31] See *PDE*. The Information Commissioner further noted in this decision that where searches are used to justify a decision that documents do not exist, the agency must take all reasonable steps to locate the documents.
[32] The applicant's submissions in this regard also appear to raise issues he has with his admission to and treatment at the RBWH. Issues as to health quality and care are not matters I have the jurisdiction to consider in an external review conducted under Part 9 of the IP Act.

44. A number of these queries have essentially been requests for assistance in interpreting his medical records. The right of access contained in the IP and RTI Acts is not a right to obtain answers to questions,[33] and nor, by extension, does it impose obligations on agencies to interpret or explain documents disclosed to an applicant. Nevertheless, the Acts are not intended to discourage agencies from helping applicants to obtain the information they desire, and QH has indeed endeavoured to assist the applicant during the course of this review.[34]

45. Despite these efforts, the applicant still has questions regarding his records, some of which may arguably be interpreted as contentions additional documents exist which QH has not identified and dealt with. For example, he states that on review of his records he cannot not see any '*evidence of reports or otherwise from a consultant psychiatrist*'.[35] Document numbers 32-35, 48-58 and 61-64 of his record, however, clearly evidence the involvement, advice and progress reporting of two psychiatrists who assessed the applicant, a doctor referred to by QH as a 'consultant psychiatrist',[36] and a psychiatric registrar.

46. Similarly, the applicant claims his records contain:

> *no evidence or any material referring to the alleged change of status from "recommendation for Assessment" to an involuntary order. The reasons for the alteration of status are not detailed in any documents provided by the RBWH.*[37]

47. Documents 30-35 of his record, however, evidence the involuntary assessment and treatment process to which the applicant was subjected in accordance with the regime prescribed in the *Mental Health Act 2000*, over dates in August 2009.[38] The first phase of this process – assessment – was initiated by and is recorded in a 'Recommendation for Assessment' form dated 10 August 2009 executed by an authorised mental health practitioner (documents 30-31). This triggered assessment by an authorised doctor, relevantly recorded in an 'Involuntary Treatment Order' dated 14 August 2009 (documents 32-33). This document expressly sets out the authorised doctor's reasons for assessing the applicant as requiring involuntary treatment.

48. Having reviewed:

- the applicant's remaining queries;
- the information supplied by QH; and
- the contents of the medical records disclosed to the applicant,

I am satisfied that his queries either seek information set out in his medical records as disclosed to him, or otherwise comprise questions QH is not obliged to answer under the information access provisions of the IP Act. Accordingly, for the sake of completeness, I record my finding that there are reasonable grounds for QH to be satisfied no further documents of this kind exist in accordance with section 52(1)(a) of the RTI Act, and access may therefore be refused in accordance with section 47(3)(e) of the RTI Act and section 67(1) of the IP Act.

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[33] *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557, at paragraph 30.
[34] In particular, by way of letter dated 22 February 2010 and QH's relatively extensive submission dated 10 June 2010.
[35] Applicant's submission dated 29 June 2010.
[36] QH submission dated 10 June 2010. The relevant documents comprise a prescribed form Involuntary Treatment Order (including the consultant psychiatrist's second examination of the applicant – documents 32-33), the psychiatric registrar's Treatment Plan (34-35), psychiatric registrar's progress notes (48-58) and consultant psychiatrist's progress notes (61-64).
[37] Applicant's letter to OIC dated 29 June 2010.
[38] Factsheets prepared by QH detailing the involuntary assessment and treatment process under the *Mental Health Act 2000* can be accessed at http://www.health.qld.gov.au/mha2000/factsheets.asp.

Audio and video recordings

49. The applicant requested access to:

> *Verbal recordings and video/image recording from the two nurses who escorted me to the RBWH and relating to the time while I was in the RBWH hospital, including the interviews, phone calls, general security footage and observational footage and any other visual and audio footage of which I may be included in at the RBWH….*[39]

50. QH has explained that no audio or visual footage exists in relation to the applicant. QH's decision letter dated 29 January 2010[40] noted no audio or visual recordings had been made of the applicant's interviews with RBWH staff, or of his telephone conversations during his RBWH admission.

51. It was further explained in that decision letter that CCTV footage is automatically era sed on a weekly basis, unless required to be preserved for official purposes. The QH decision maker had made inquiries regarding the dates of the applicant's admission, which disclosed that no footage for that period remained in existence.

52. QH confirmed the above explanations in a letter dated 22 February 2010:

> *…no audio or visual recordings have ever been made of any of* [the applicant's] *interviews, or incoming/outgoing telephone calls. Video footage from closed circuit security cameras in the RBWH Emergency Department and Mental Health Unit are recycled (reused) on a weekly basis. Video footage is only retained where a security incident has occurred, for further investigation or legal reasons. No such incidents involving* [the applicant] *took place, and thus any relevant tapes on which he may have been recorded would have been taped over in accordance with standard practice.*[41]

53. In submissions dated 10 June 2010, QH further explained that an example of a 'security incident' meriting retention of CCTV footage would ordinarily comprise an incident where injury had occurred to a patient or visitor, or where property had been stolen.

54. The applicant does not accept QH's explanations.

55. As to possible audio recordings, the applicant asserted his understanding that QH doctors have 'recording devices'.[42] In response, QH advised that apart from clinical training situations where a patient's prior consent has been obtained in writing, '*clinical staff do not carry or use recording devices for the purpose of recording interactions with patients*.'[43]

56. I accept QH's explanation in this regard, and on this basis I am satisfied no audio recordings were created. I am therefore satisfied that there are reasonable grounds for QH to be satisfied that the audio recordings sought by the applicant do not exist within the meaning of section 52(1)(a) of the RTI Act, and that access may therefore be refused to these documents in accordance with section 47(3)(e) of the RTI Act and section 67(1) of the IP Act.

57. The issue of the CCTV footage requires, as noted in paragraph 38, a consideration of the application of section 52(1)(b) of the RTI Act. Considering the first question set out

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[39] This request was contained in the applicant's second access application dated 25 January 2010. As noted (see note 2 above), both the applicant and QH agreed to the sufficiency of search issues raised in that application and resultant external review being dealt with in this review.
[40] See note 2.
[41] See also QH submissions dated 10 June 2010, which relevantly noted that any recordings featuring the applicant 'would have been routinely taped over in accordance with departmental policy'.
[42] Applicant's submissions dated 27 April 2010.
[43] QH submissions dated 10 June 2010.

in paragraph 42 above, there are reasonable grounds to be satisfied that CCTV footage has, in the words of section 52(1)(b), been in QH's possession – the 29 January 2010 decision and QH's submissions in this review acknowledge CCTV systems monitor the RBWH.

58. It then becomes necessary to consider whether QH has taken all reasonable steps to locate the recordings. QH's 29 January 2010 decision notes inquiries were made in an attempt to locate such footage. No footage covering relevant dates could be located, for the reason that such footage would have been erased (and thus effectively destroyed), in accordance with the weekly recording cycle noted in paragraph 52. In these circumstances I consider that QH has taken all reasonable steps to locate the CCTV footage.

59. The applicant contends, however, that such footage should have been preserved. The applicant states that he was at a relevant time talking to representatives of Legal Aid Queensland, when he was interrupted by a nurse and escorted to the RBWH Mental Health Unit. The applicant argues that this comprised a 'security issue' warranting retention of relevant footage.

60. Whilst I acknowledge the applicant's perception of events, there is nothing in the material before me to suggest his experience at the RBWH was of such a nature as to require CCTV footage of his attendance to be preserved. There was on my understanding no injury to any person, and no evidence of theft or any other untoward incidents.

61. Accordingly, I am satisfied that while relevant CCTV video footage may have existed in QH's possession, QH has taken all reasonable steps to locate the documents comprising this footage. The footage is unlocatable for the purposes of section 52(1)(b) of the RTI Act, for the reason that the footage has been recorded over and no longer exists. QH is therefore entitled to refuse access to the CCTV footage under section 47(3)(e) of the RTI Act and section 67(1) of the IP Act.

DECISION

62. I vary the decision under review by finding:

- QH is entitled to refuse access to the segment of information appearing on IP document no. 57 of his medical record under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act, on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act; and
- access can be refused to the additional documents sought under section 67(1) of the IP Act, and sections 47(3)(e) and 52(1)(a) or 52(1)(b) of the RTI Act, on the basis that these documents do not exist or are unlocatable.

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

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Clare Smith
Right to Information Commissioner

Date: 11 May 2011

APPENDIX

Significant procedural steps

Date	Event
26 November 2009	The applicant applies under the IP Act to QH for access to his medical records held by the RBWH.
8 December 2009	QH decides to disclose bulk of medical records to applicant. QH refuses access to part of one document, on the basis disclosure of this information would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
18 December 2009	The applicant applies to OIC for external review of the QH decision (review no. 310034).
15 January 2010	QH provides OIC with copies of documents relating to the application.
18 January 2010	OIC informs the applicant and QH the external review application has been accepted for review.
25 January 2010	The applicant lodges a further application with QH for access to additional documentation from the RBWH. By letter dated 29 January 2010, QH refuses to deal with this application under section 62(3)(b)(i) and (d)(i) of the IP Act, on the basis it comprises a repeat application for the same documents sought in the applicant's 26 November 2009 application and dealt with in QH's decision dated 8 December 2009. On 8 February 2010 the applicant applies to the OIC for external review of this later QH decision (review no. 310096). The applicant and QH subsequently agree that the request for additional documentation the subject of the 25 January 2010 access application be dealt with as sufficiency of search issues in external review no. 310034. External review no. 310096 is informally resolved on this basis.
3 February 2010	QH provides OIC with a copy of the information in issue, ie the document to which access had been refused in part. OIC inquires of QH (via telephone – confirmed in writing 11 February 2010) whether QH agreeable to disclosure of information in issue with third party identifying particulars deleted.
25 February 2010	QH provides OIC with submissions regarding sufficiency of search issues raised by the applicant's request for additional documents and a complete copy of the applicant's medical record.
5 March 2010	QH advises OIC QH does not agree to partial disclosure of information in issue.
16 March 2010	OIC provides telephone advice to the applicant that QH is not agreeable to partial disclosure of information in issue. OIC further conveys QH advice as to sufficiency of search issues.
21 March 2010	The applicant provides written submissions in support of his case for access to the information in issue.
12 April 2010	OIC conveys written preliminary view to the applicant that there are reasonable grounds for QH to be satisfied no further documents exist, and that disclosure of the information in issue would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
27 April 2010	The applicant advises he does not accept the OIC's preliminary view and provides written submissions in support of his case for access and that further documents should exist in QH's possession or under its control.
4 May 2010	OIC writes to QH providing a copy of the applicant's submissions and requesting QH's response.

10 June 2010	QH provides further submissions in reply.
15 June 2010	OIC forwards QH submissions to the applicant and confirms preliminary view conveyed 12 April 2010.
29 June 2010	The applicant maintains rejection of OIC preliminary view and provides further written submissions.
12 November 2010 and 30 January 2011	The applicant provides further written submissions in support of his case.
8 March 2011	OIC undertakes telephone consultation with named source regarding information in issue.
23 March 2011	OIC undertakes telephone consultation with psychiatric registrar.
24 March 2011	Applicant writes to OIC requesting OIC stop action on his external review application.
28 March 2011	OIC writes to applicant explaining action on external review will continue, absent unequivocal withdrawal by applicant of external review application.
19 April 2011	Applicant writes to OIC requesting OIC stop action on external review application.
20 April 2011	OIC advises action on external review will continue.