



## Decision and Reasons for Decision

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Citation:	<b><i>7WLB3 and Cairns and Hinterland Hospital and Health Service</i></b> [2014] QICmr 20 (13 May 2014)
Application Number:	311810
Applicant:	<b>7WLB3</b>
Respondent:	<b>Cairns and Hinterland Hospital and Health Service</b>
Third party:	<b>Department of Communities, Child Safety and Disability Services</b>
Decision Date:	13 May 2014
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION – application on behalf of child – infant medical records - whether disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law - whether information is exempt under schedule 3, section 10(1)(a) of the <i>Right to Information Act 2009</i> (Qld) - whether access to documents may be refused - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. A mother applied under the *Information Privacy Act 2009* (Qld) (**IP Act**) on behalf of her infant child to the Cairns and Hinterland Hospital and Health Service (**Health Service**) for the medical records of her child (**applicant**).<sup>1</sup>
2. The Health Service refused the applicant access to 471 pages on the basis that disclosure would not be in the child's best interests under sections 47(3)(c) and 50 of the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>2</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision.

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<sup>1</sup> The definition of 'applicant' in Schedule 5 and section 45(1) of the IP Act provides that where an application is made on behalf of a child, the child is taken to be the applicant.

<sup>2</sup> Section 67 of the IP Act states that an agency may refuse access to a document of the agency in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

4. During the course of the review, the Department of Communities, Child Safety and Disability Services (**Department**) was joined as a party to this review under section 102 of the IP Act.
5. For the reasons given below, the Health Service is entitled to refuse access to the information in issue on the basis that disclosure could reasonably be expected to prejudice an investigation into a contravention or possible contravention of the law.<sup>3</sup>

## Background

6. The mother does not currently have custody of her child. The child is under the care of the Department. Section 45(1) of the IP Act provides that a child's mother is a parent who may make an access application on behalf of the child. The section does not require the parent to have parental responsibility for the child. The IP Act also makes clear that in such circumstances the applicant is taken to be the child rather than the parent.<sup>4</sup>
7. Significant procedural steps relating to the application and external review are set out in the appendix.

## Reviewable decision

8. The decision under review is the Health Service's decision dated 24 October 2013 refusing access to the information in issue.

## Evidence considered

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

## Information in issue

10. The information in issue comprises 471 pages which I am precluded from discussing in detail<sup>5</sup> but generally comprise medical records accounting for the applicant's care at two separate hospitals within the Health Service from December 2012 to September 2013 (**Information in Issue**).

## Relevant law

11. Under the IP Act a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>6</sup> However, this right is subject to other provisions of the IP Act and RTI Act,<sup>7</sup> including the grounds on which access can be refused.
12. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.<sup>8</sup> Schedule 3 of the RTI Act specifies the type of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest.

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<sup>3</sup> Under sections 47(3)(a) and 48 and Schedule 3, section 10(1)(a) of the RTI Act.

<sup>4</sup> See section 45(1) note 2 and the definition of 'applicant' in Schedule 5 of the IP Act.

<sup>5</sup> Section 123(7) of the IP Act prohibits the Information Commissioner from including information that is claimed to be exempt in reasons for a decision on external review.

<sup>6</sup> Section 40 of the IP Act.

<sup>7</sup> Section 67(1) of the IP Act provides that access to a document may be refused on the same basis upon which access to a document could be refused under section 47 of the RTI Act.

<sup>8</sup> Section 47(3)(a) of the RTI Act.

13. Information is exempt from disclosure where its disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case.<sup>9</sup>

## Findings

### ***Does the Information in Issue comprise exempt information?***

14. I have carefully assessed the Information in Issue in conjunction with the submissions made by the parties to the review.
15. As explained in paragraph [6], the applicant in this matter is the child rather than its mother. In summary, the applicant submits that access should be granted to the requested medical records as the applicant has been removed from the care of its mother and its mother contends that she has not been provided with sufficient evidence about why this occurred. The applicant's mother also submits that she is acting in the best interests of the applicant by seeking the relevant medical records.<sup>10</sup>
16. The submissions made on behalf of the applicant by its mother go towards public interest arguments that may favour disclosure of the Information in Issue. In this external review, however, I am not required to assess whether the balance of the public interest favours disclosure<sup>11</sup> if the legal requirements of the exemption provision set out above are met.
17. By letter dated 7 March 2014 the Health Service indicated to OIC that there was a relevant ongoing Queensland Police Service (**QPS**) investigation and that disclosure of the Information in Issue could possibly prejudice that investigation.
18. By letter dated 11 April 2014 the Department provided details of an ongoing investigation that is being conducted by the QPS in relation to a possible contravention of the law and submitted that disclosure of the Information in Issue would prejudice that investigation.
19. I have considered the Information in Issue and I am satisfied that the documents are relevant to the ongoing QPS investigation of a contravention or possible contravention of the law. This investigation has not yet been finalised.<sup>12</sup>
20. In the circumstances of this particular case, including the nature of the investigation which I am unable to detail,<sup>13</sup> I am satisfied that if the Information in Issue were to be released prior to the finalisation of the investigation process, the investigation of the relevant matter could reasonably be expected to be prejudiced.
21. As I am satisfied that the Information in Issue meets the relevant legal test for exempt information,<sup>14</sup> I have not taken into account the applicant's submissions.<sup>15</sup> While I have carefully assessed these submissions and acknowledge the importance and sensitivity of issues attaching to this external review to the applicant's mother, the submissions

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<sup>9</sup> Sections 47(3)(a) and 48 and schedule 3, section 10(1)(a) of the RTI Act.

<sup>10</sup> I have assessed the submissions made on behalf of the applicant by its mother dated 2 May 2014, 11 December 2013 and in the external review application dated 18 November 2013.

<sup>11</sup> As set out in sections 47(3)(b) and 49 of the RTI Act.

<sup>12</sup> As confirmed in an email from the Department dated 5 May 2014 and in a phone discussion between OIC and the Department on 9 May 2014.

<sup>13</sup> Section 123(7), outlined above at note 2, prevents me from describing the nature of the investigation in these reasons as it would be tantamount to disclosing the information claimed to be exempt.

<sup>14</sup> Under schedule 3, section 10(1)(a) of the RTI Act.

<sup>15</sup> As summarised in paragraph 15 above.

are not relevant to my consideration of whether the relevant requirements for exempt information are met.

22. Accordingly, the Information in Issue is exempt from disclosure under schedule 3, section 10(1)(a) of the RTI Act and access may therefore be refused to it under section 47(3)(a) of the RTI Act.

## **DECISION**

23. I vary the Health Service's decision and find that access to the Information in Issue may be refused on the basis that it is exempt from disclosure under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(a) of the RTI Act.
24. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

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**Assistant Information Commissioner Lynch**

**Date: 13 May 2014**

## APPENDIX

### Significant procedural steps

Date	Event
9 September 2013	The Health Service received the applicant's access application.
24 October 2013	The Health Service issued its decision to the access applicant.
18 November 2013	The applicant applied to OIC for external review of the Health Service's decision dated 24 October 2013.
19 November 2013	OIC requested that the Health Service provide OIC with a number of procedural documents.
26 November 2013	OIC received the requested information from the Health Service.
27 November 2013	OIC requested that the Health Service provide OIC with copies of all documents responding to the access application.
6 December 2013	OIC notified the applicant and the Health Service it had accepted the application for external review of the Health Service's decision dated 24 October 2013.
11 December 2013	OIC received submissions from the applicant.
19 December 2013	The Health Service provided OIC with copies of the requested documents.
22 January 2014	OIC requested that the Health Service provide OIC with further information in relation to the external review.
7 March 2013	The Department applied to be joined as a party in the external review under section 102 of the IP Act. The Health Service provided OIC with the requested further information.
20 March 2013	The Department was joined as a party in the external review. OIC provided the applicant with an update on the external review.
7 April 2014	The Department made oral submissions to OIC.
11 April 2014	The Department provided OIC with written submissions.
14 April 2014	OIC sought further information from the Department.
23 April 2014	OIC wrote to the applicant conveying a preliminary view that access to the documents in issue could be refused on the basis that disclosure could reasonably be expected to prejudice an ongoing investigation into the possible contravention of the law, and inviting the applicant to provide submissions.
28 April 2014	OIC notified the Health Service of its preliminary view.
5 May 2014	The applicant provided submissions in response to the preliminary view. The Department provided OIC with information relevant to the ongoing investigation.
9 May 2014	The Department confirmed with OIC that the relevant investigation was not finalised.