



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>Q47 and Cairns and Hinterland Hospital and Health Service [2022] QICmr 29 (9 June 2022)</i></b>
<b>Application Number:</b>	<b>315986</b>
<b>Applicant:</b>	<b>Q47</b>
<b>Respondent:</b>	<b>Cairns and Hinterland Hospital and Health Service</b>
<b>Decision Date:</b>	<b>9 June 2022</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - access to deceased partner's medical records - transparency and accountability of hospital - prejudice to right to privacy - public interest harm through disclosure of personal information - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 47(3)(b) of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Cairns and Hinterland Hospital and Health Service (**CHHHS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to the medical records of her deceased '*cultural de facto partner*<sup>2</sup> (**partner**) between 2001 to 2021.<sup>3</sup>
2. CHHHS located 7478 pages (**Medical Records**) and decided<sup>4</sup> to refuse access in full on the ground that disclosure would, on balance, be contrary to the public interest.<sup>5</sup>
3. The applicant applied<sup>6</sup> to the Office of the Information Commissioner (**OIC**) for external review of CHHHS's decision.
4. For the reasons set out below, I affirm CHHHS's decision and find that access to the Medical Records may be refused on the ground their disclosure would, on balance, be contrary to the public interest.

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<sup>1</sup> Applied to CHHHS on 19 February 2021 (made compliant 24 Feb 2021)

<sup>2</sup> As described in the application for external review dated 31 March 2021 and submission dated 27 May 2021.

<sup>3</sup> The applicant's partner passed away in December 2020.

<sup>4</sup> Decision dated 26 March 2021.

<sup>5</sup> Section 47(3)(b) and 49 of the RTI Act.

<sup>6</sup> External review application received on 31 March 2021.

## Background

5. The applicant's partner passed away in December 2020 while admitted to one of CHHHS's hospitals and, as I understand from CHHHS's submission,<sup>7</sup> the death is the subject of a Coronial investigation.<sup>8</sup>
6. The applicant stated that she is seeking access to the Medical Records in order 'to provide copies to the beneficiaries' of the estate, 'to organise opinions with the Coroner',<sup>9</sup> to 'help with family closure'<sup>10</sup> and 'to determine if [she] should take other legal action against the hospital.'<sup>11</sup>

## Reviewable decision

7. The decision under review is CHHHS's decision dated 26 March 2021.

## Information in issue

8. The information in issue comprises the Medical Records of the deceased. If the deceased were alive, the Medical Records would be considered his personal information.<sup>12</sup> The Medical Records also include personal information about other individuals, including the applicant, private individuals and healthcare practitioners.

## Issue for determination

9. The issue for determination is whether disclosure of the Medical Records would, on balance, be contrary to the public interest.<sup>13</sup>

## Evidence considered

10. Significant procedural steps taken during 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 in footnotes and the Appendix).
11. In reaching this decision, I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the applicant's right to seek and receive information.<sup>14</sup> 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 in the RTI Act.<sup>15</sup> I have acted in this way in making the decision, in accordance with section 58(1) of the HR Act.
12. Also, given concerns expressed in the applicant's submissions, I have had regard to the requirements of the *Disability Discrimination Act 1992* (Cth) (**DD Act**) and the *Racial Discrimination Act 1975* (Cth) (**RD Act**).<sup>16</sup>

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<sup>7</sup> Submission dated 13 April 2021.

<sup>8</sup> CHHHS's submissions dated 13 April 2021 indicates that the coronial investigation was ongoing as of that date and CHHHS advised that this had not changed as of 3 June 2022.

<sup>9</sup> External review application dated 31 March 2021.

<sup>10</sup> External review application dated 31 March 2021.

<sup>11</sup> Submissions dated 27 January 2022.

<sup>12</sup> Defined in section 12 of the *Information Privacy Act 2009* (Qld) (**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.' See also schedule 4, part 3, item 5(a) of the RTI Act.

<sup>13</sup> Section 47(3)(b) and 49 of the RTI Act.

<sup>14</sup> Section 21 of the HR Act.

<sup>15</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 at [111].

<sup>16</sup> In particular, sections 5 and 6 of the DD Act and sections 9 and 10 of the RD Act.

## Applicant's submissions

13. The applicant made submissions throughout the external review,<sup>17</sup> some of which relate to public interest factors regarding disclosure of the Medical Records. Throughout the review, the applicant also raised concerns that the external review process did not accommodate her disability.<sup>18</sup> She also submitted that a decision adverse to her would amount to racial discrimination<sup>19</sup> and negligence.<sup>20</sup>
14. In consideration of the applicant's submissions regarding her disability, to ensure the applicant the opportunity to participate fully on external review, OIC allowed additional time, where requested, for the applicant to make submissions. The applicant was provided with opportunities to speak to staff of the Information Commissioner by phone. Correspondence was also provided to the applicant by email and by post at her request. Finally, the applicant was provided with a substantial extension of time as she received support from a community legal centre to make final written submissions. Accordingly, in conducting the external review process and making this decision, I am satisfied that OIC has been mindful of the applicant's requests in relation to her disability and accommodated them where reasonable to do so, consistent with the DD Act.
15. To the extent that the applicant's concerns relate to public interest factors regarding disclosure of information, and therefore to the issue for determination, I have considered these in applying the law as prescribed in the RTI Act and reaching my decision below. I have done so thoroughly and diligently. Furthermore, OIC has provided procedural fairness through granting requested extensions to enable the applicant to provide submissions and accepted verbal submissions.<sup>21</sup> Also, I am satisfied that OIC progressed the external review as expeditiously as possible.<sup>22</sup> In these circumstances, I cannot identify any reasonable basis for the applicant's position that a decision adverse to her amounts to negligence.
16. The applicant's submissions about racial discrimination are founded on the deceased being an Aboriginal man and her relationship with him. To the extent racial discrimination could possibly arise in the particular circumstances of this review, I would observe that I have in no aspect of this review acted so as to nullify, impair or otherwise limit the applicant's right to information under the RTI Act on the basis of race, colour, descent or national or ethnic origin. The applicant's right to information is not limited by any act/s of unlawful racial discrimination<sup>23</sup> by me – rather it is curtailed by virtue of a limitation in the RTI Act itself, as explained below.
17. In essence, the applicant's submissions relating to the issue for determination may be summarised as:
  - she had been appointed as *'Executor of [her partner's] affairs, [...] Enduring Power of Attorney and emotional and spiritual cultural assistant'*
  - it is in *'the PUBLIC INTEREST of concern for Executors to help with family closure to provide ALL DOCUMENTS relating to'* her partner

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<sup>17</sup> As outlined in the Appendix of this decision.

<sup>18</sup> External review application dated 31 March 2021 and submissions dated 26 May 2021 and 4 June 2021.

<sup>19</sup> Submissions dated 22 April 2021 and 26 May 2021.

<sup>20</sup> Submission dated 27 May 2021.

<sup>21</sup> The applicant was also provided an opportunity in our letter of 28 April 2021 to nominate a support person or representative for OIC to communicate with on external review. The option was not taken; however, the applicant did submit that she wanted OIC to engage a lawyer on her behalf in her submissions of 23 August 2021 and 3 September 2021. On these occasions, OIC advised the applicant that engaging a lawyer is a matter for her, and not a requirement to participate in the external review.

<sup>22</sup> Noting that this necessitated consideration of the 7478 pages comprising the Medical Records.

<sup>23</sup> Under the RD Act.

- nondisclosure of the Medical Records would ‘play’ on the applicant and other members of her partner’s family
- her partner was not estranged from his cultural family
- she had ‘*significant involvement in and knowledge of*’ her partner’s day to day medical care and, when she was unable to be present at hospital, she ‘*was kept apprised of*’ her partner’s ‘*condition and treatment*’ and this knowledge is a factor favouring disclosure of the Medical Records to her
- access to the Medical Records of her partner would assist ‘*to organise opinions with the Coroner*’
- she considers it necessary to read the hospital account of what occurred to her partner to inform her submission to the Coroner and ‘*to determine if [she] should take other legal action against the hospital*’; and
- any documents containing her personal information within the Medical Records should be released.

### Relevant law

18. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>24</sup> However, this right is subject to limitations in the RTI Act, including grounds for refusal of access.<sup>25</sup> One such ground is that access to documents may be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.<sup>26</sup> 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.<sup>27</sup>
19. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>28</sup>
- 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

#### **Irrelevant factors**

20. I have not identified, nor taken into account, any irrelevant factors in reaching my decision.

#### **Factors favouring disclosure**

21. A small portion of the Medical Records comprise the applicant’s personal information. This enlivens a public interest factor favouring disclosure.<sup>29</sup> There is a strong public interest in an individual having access to their personal information held by government.

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<sup>24</sup> Section 23(1)(a) of the RTI Act.

<sup>25</sup> The grounds for refusal of access are set out in section 47 of the RTI Act.

<sup>26</sup> Section 47(3)(b) of the RTI Act. Section 47(2)(a) of the RTI Act requires the grounds to be interpreted narrowly.

<sup>27</sup> 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.

<sup>28</sup> Section 49(3) of the RTI Act.

<sup>29</sup> Schedule 4, part 2, item 7 of the RTI Act.

Here, the applicant's information appears in the context of information provided to CHHHS regarding the healthcare for the deceased. The applicant's personal information is intertwined in such a way that it cannot be disclosed without disclosing the personal information of the deceased.<sup>30</sup> Given the context in which the applicant's personal information appears, I consider that moderate weight applies to this factor only in relation to the limited information that can be considered the applicant's personal information.

22. The applicant submitted that she is the deceased's '*cultural defacto partner*'.<sup>31</sup> Based on the information provided to me by the applicant, I accept that prior to the deceased's death, the applicant and the deceased were in a long term de facto relationship. As the deceased's de facto spouse, the applicant is an eligible family member<sup>32</sup> under the RTI Act, which raises a public interest factor favouring disclosure of the Medical Records. I afford this factor high weight.
23. I consider that having a complete picture of her partner's health and wellbeing, including details of the care provided to him when she could not be present, may be of benefit to the applicant in her endeavours to assist her partner's family with closure. This raises a public interest factor favouring disclosure.<sup>33</sup> However, while I acknowledge the applicant's position that the deceased was not estranged from his cultural family, I also note other information regarding the deceased and his immediate family as recorded within the Medical Records.<sup>34</sup> Taking into account both the applicant's submissions and the information in the Medical Records, I afford this factor moderate weight.
24. The applicant has raised concerns about the treatment provided by CHHHS to the deceased. I have therefore considered whether the accountability of CHHHS is advanced by disclosure<sup>35</sup> and accept the applicant's submissions that '*there is public interest in the accountability of public hospitals in the provision of medical care.*'<sup>36</sup> The Medical Records detail the care provided to the deceased over a significant period of time, including assessments, observations, and discussions between health staff and the deceased. Disclosure of the Medical Records would generally advance the transparency and accountability of CHHHS, contribute to positive and informed debate on important issues, and would inform the community of the Government's operations in its dealings with members of the community.
25. In considering the weight that should be afforded to these public interest factors, firstly, I note that the records comprise the day-to-day healthcare records of one individual. Release of these Medical Records, in themselves, would not inform the community in any great detail about CHHHS's treatment of patients generally nor would it indicate any systemic issues. I also note the current investigation by the Coroners Court into the manner and circumstances of the death of the deceased.<sup>37</sup> The Coroners Court has significant powers to investigate the circumstances of the deceased's death,<sup>38</sup> and may release further information to the applicant through its processes.<sup>39</sup> Given the independent review underway by the Coroners Court, and as the Medical Records are limited to the experiences and treatment of one individual, I afford moderate weight to these public interest factors in the specific circumstances of this matter.

<sup>30</sup> And is incapable of being severed from the personal information of the deceased.

<sup>31</sup> Email seeking external review dated 31 March 2021 and submission dated 27 May 2021.

<sup>32</sup> As defined in schedule 5 of the RTI Act.

<sup>33</sup> *OKP and Department of Communities* (Unreported, Queensland information Commissioner, 9 July 2009) at [82] – [84] which considered the public interest considerations under similar provisions in the now repealed *Freedom of Information Act 1992* (Qld).

<sup>34</sup> I am constrained from providing any detail in this regard by section 108(3) of the RTI Act.

<sup>35</sup> Schedule 4, part 2, item 1, 2 and 3 of the RTI Act.

<sup>36</sup> Submission dated 27 January 2022.

<sup>37</sup> Confirmed in CHHHS's submission dated 13 April 2021 and CHHHS advised that this had not changed as of 3 June 2022.

<sup>38</sup> Sections 7, 11, 16 and 45 of the *Coroners Act 2003* (Qld).

<sup>39</sup> Section 54 of the *Coroners Act 2003* (Qld).

26. The applicant's submissions raise general concerns about the care provided by CHHHS to the deceased. Accordingly, I have considered whether disclosure of the Medical Records could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official; or reveal or substantiate that an agency or official has engaged in misconduct, or negligent, improper or unlawful conduct.<sup>40</sup> In order for these (and any) public interest factors to be enlivened, the expectation must be reasonably based, neither irrational, absurd or ridiculous,<sup>41</sup> nor merely a possibility.<sup>42</sup>
27. Given the wording of the first of the two conduct factors mentioned above ('... *could reasonably be expected to allow or assist inquiry into possible deficiencies ...*'), the threshold to enliven this factor is low. While I am unable to disclose the information in issue in this review<sup>43</sup> I accept that disclosure of the Medical Records may assist inquiry into certain parts of the deceased's care and am therefore satisfied that this factor is enlivened. However, the current Coronial process into the deceased's death significantly reduces the weight of this factor. Further, there is no direct evidence before me to suggest that there were any deficiencies in CHHHS's provision of health care to the deceased. For these reasons, I afford moderate weight to this factor.<sup>44</sup>
28. Notwithstanding the applicant's general assertion, there is no evidence in any of the material before me of any misconduct, or negligent, improper or unlawful conduct by any of the healthcare providers who treated the deceased. Consequently, I am satisfied the second of the two conduct factors mentioned above<sup>45</sup> does not apply to disclosure of the Medical Records.
29. The applicant submitted that she sought access to the Medical Records '*to determine if [she] should take other legal action against the hospital*'.<sup>46</sup> Disclosure of third party personal information could reasonably be expected to contribute to the administration of justice for an applicant<sup>47</sup> if the criteria in *Willsford and Brisbane City Council*<sup>48</sup> are satisfied. Crucially, establishing the applicability of the *Willsford* criteria does not serve as a determinative factor, but simply one factor that must be weighed and balanced against any factors favouring nondisclosure.<sup>49</sup> The criteria are cumulative, and are as follows:<sup>50</sup>
- i) loss or damage or some kind of wrong had been suffered in respect of which a remedy was, or might be, available under the law
  - ii) the applicant had a reasonable basis for seeking to pursue the remedy; and
  - iii) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy was available, or worth pursuing.
30. In respect of the first element, while I acknowledge that the applicant has suffered a significant loss by the death of her partner, she does not specify the particular legal remedy she seeks to pursue. For this reason, it is unclear to me whether the first limb of the test above is satisfied. I also note that the applicant has not provided any supporting

<sup>40</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>41</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

<sup>42</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 at [44]; *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154] – [160].

<sup>43</sup> Section 108(3) of the RTI Act.

<sup>44</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>45</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>46</sup> Submission dated 27 January 2022.

<sup>47</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>48</sup> (1996) 3 QAR 368 (*Willsford*).

<sup>49</sup> *Willsford* at [18].

<sup>50</sup> *Willsford* at [16] – [18].

evidence or advice regarding any claim she may make. Should the applicant seek to initiate any personal legal action against CHHS, she may commence the claim based on the information that she currently has. Having considered the Medical Records, it is also unclear to me how disclosure of this information would assist the applicant to evaluate whether a remedy was available or worth pursuing. In this regard, I note that the Coronial investigation will consider these matters and may provide the applicant with further information that will enable her to evaluate legal action. Accordingly, I consider low weight applies with respect to this public interest factor.

31. Having considered the remaining factors set out in Schedule 4 of the RTI Act, I have not identified any further factors telling in favour of disclosure.

### **Factors favouring nondisclosure**

32. In making this decision, I have considered the Medical Records. As I must ensure nondisclosure of information claimed to be contrary to the public interest information, I am limited in what I can explain in my reasons below.<sup>51</sup>
33. The eligible family member public interest factor mentioned at paragraph 22 raises a converse public interest factor favouring nondisclosure of the Medical Records.<sup>52</sup> I am satisfied that the Medical Records would, if the deceased were alive, comprise his personal information; the applicant is an eligible family member and disclosure of the Medical Records could reasonably be expected to impact on the deceased's privacy if the deceased were alive. The weight of this factor favouring nondisclosure is determined by an assessment of the impact on a deceased's privacy as if they were alive.<sup>53</sup>
34. Previous decisions of the Information Commissioner have identified elements to consider when assessing the weight of the privacy that should be afforded to deceased medical records in the particular circumstances of each case.<sup>54</sup> These elements include evidence of involvement in care, extent of knowledge of medical history or incident, and evidence of special dependence or relationship.<sup>55</sup>
35. The applicant has made submissions regarding her close relationship with the deceased and her involvement in, and knowledge of, his medical care.<sup>56</sup> Having considered these submissions alongside the Medical Records, I do not accept that the level of the applicant's involvement in the care of the deceased, and the extent of the applicant's knowledge in relation to the deceased's health and medical care, support any reduction in the weight of the privacy factors. I acknowledge that there is evidence, in the information in issue, that the applicant had significant knowledge and involvement in the deceased's admissions and treatments. I must also, however, take into account the deceased's wishes regarding his personal information as recorded within the Medical Records.<sup>57</sup>
36. Taking into account the information in the Medical Records, the applicant's submissions, and the healthcare rights of the deceased when he was alive, including the right to have

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<sup>51</sup> Section 108(3) of the RTI Act.

<sup>52</sup> Schedule 4, part 3, item 5 of the RTI Act.

<sup>53</sup> *X19 and Metro South Hospital and Health Service* [2020] QICmr 12 (26 February 2020) (**X19**) at [38].

<sup>54</sup> *Summers and Cairns District Health Service; Hintz (Third Party)* (1997) QAR 479at [19]; *Lowe and Department of Health* (Unreported, Queensland Information Commissioner, 25 November 2010) at [14].

<sup>55</sup> *WEU27L and Mackay Hospital and Health Service* [2017] QICmr 44 at [26] (**WEU27L**); *X19* at [27].

<sup>56</sup> Submission dated 27 January 2022.

<sup>57</sup> I am constrained from providing any detail in this regard by section 108(3) of the RTI Act.

his personal privacy respected,<sup>58</sup> I afford significant weight to this factor favouring nondisclosure.<sup>59</sup>

37. I have also noted that disclosure of the Medical Records could reasonably be expected to cause a public interest harm 'if disclosure would disclose personal information of a person, whether living or dead'.<sup>60</sup> Clearly, disclosure of the Medical Records would disclose the personal information of the deceased, and this public interest harm factor applies.
38. Some of the information in the Medical Records comprises the thoughts, beliefs, feelings and opinions of the deceased about himself and others<sup>61</sup> as well as medical opinions of his health. The delivery of comprehensive and effective healthcare depends on a patient's full and frank disclosure, and patients are much less likely to disclose information if they know it may be disclosed to someone else,<sup>62</sup> including their closest family members. I consider that this type of personal information, being an individual's healthcare records, can be considered some of the most sensitive information held by a government agency. I am satisfied that the public interest harm resulting from disclosure of such personal information through a process where there is no further limit on its use and dissemination is of great significance.<sup>63</sup> Accordingly, I afford the highest weight to this public interest harm factor favouring nondisclosure.

### **Balancing the public interest**

39. I have applied the pro-disclosure bias intended by Parliament<sup>64</sup> and with respect to the factors weighting in favour of disclosure, I find that the applicant's personal information factor raises a factor that carries moderate weight regarding small portions of the Medical Records<sup>65</sup> and, with respect to the Medical Records as a whole:
- the eligible family member factor<sup>66</sup> attracts high weight
  - factors regarding accountability, transparency and allowing inquiry into possible deficiencies of care and contributing to the social wellbeing of the community<sup>67</sup> carry moderate weight
  - the administration of justice for a person factor, as considered in *Willsford*, carries low weight.
40. Balancing against all the above factors is the significant weight I have attributed to both the nondisclosure factor that protects the privacy of the deceased, where the applicant is an eligible family member, and the public interest harm factor regarding the deceased's personal information. Both these factors weigh heavily in favour of nondisclosure of the Medical Records.<sup>68</sup>
41. On balance, I am satisfied that the significant weights of the two nondisclosure factors outweigh the disclosure factors.<sup>69</sup> While there are other processes available to the applicant both through the Coroner and the Courts that may provide further insight into

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<sup>58</sup> The Australian Charter of Healthcare Rights, by the Australian Commission on Safety and Quality in Health Care.

<sup>59</sup> Schedule 4, part 3, item 5 of the RTI Act.

<sup>60</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>61</sup> *WEU27L* at [32] – [33].

<sup>62</sup> *X19* at [31] – [32].

<sup>63</sup> *James and Queensland Police Service* [2018] QICmr 8 (22 February 2018) at [23] – [24]; *Cherry and Department of Justice and Attorney-General* [2021] QICmr 26 (4 June 2021) at [39]; *I6XD0H and Department of Community Safety* (Information Commissioner Qld, Decision No 310820, 26 Jun 2012) at [20]-[22].

<sup>64</sup> Section 44 of the RTI Act.

<sup>65</sup> Schedule 4, part 2, item 7 and 17 of the RTI Act.

<sup>66</sup> Schedule 4, part 2, item 9 of the RTI Act.

<sup>67</sup> Schedule 4, part 2, items 1, 2, 3 and 5 of the RTI Act.

<sup>68</sup> Schedule 4, part 3, item 5; and schedule 4, part 4, section 6 of the RTI Act.

<sup>69</sup> Section 49 of the RTI Act.



the accountability of CHHHS, and avenues for the applicant to pursue the administration of justice, once the sensitive personal information of the deceased is released through this process, there are no further limits on how this information can be used or distributed.<sup>70</sup> I consider that the public interest harm that results from the disclosure of an individual's sensitive Medical Records, is significant and determinative in this case. As I consider the nondisclosure factors carry greater weight in the specific circumstances of this case, I am satisfied that disclosure of the Medical Records would, on balance, be contrary to the public interest and access may be refused.<sup>71</sup>

## DECISION

42. I affirm the decision under review. I find that access to the Medical Records may be refused under section 47(3)(b) and section 49 of the RTI Act as disclosure of this information would, on balance, be contrary to the public interest.
43. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**A Rickard**  
**Acting Right to Information Commissioner**

**Date: 9 June 2022**

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<sup>70</sup> Noting his Honour's comments that '*There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination*' – see *FLK v Information Commissioner* [2021] QCATA 46 at [17] per McGill J. His Honour's comments relate to the IP Act but I am satisfied the RTI Act similarly has no provisions regarding restrictions on the use or dissemination of information received under the Act.

<sup>71</sup> Section 47(3)(b) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
31 March 2021	OIC received the applicant's external review application.
1 April 2021	OIC notified CHHHS that the application for external review had been received and requested procedural documents.
7 April 2021	OIC notified the applicant that the application for external review had been received.
13 April 2021	OIC received the requested procedural documents and a submission from CHHHS.
22 April 2021	OIC received verbal submissions from the applicant.
28 April 2021	OIC notified the applicant and CHHHS that the application for external review had been accepted and requested a copy of the information in issue from CHHHS.
14 May 2021	OIC received the information in issue from CHHHS.
26 May 2021	OIC received verbal submissions from the applicant. OIC wrote to the applicant about the external review.
27 May 2021	OIC received verbal submissions from the applicant. OIC wrote to the applicant about the external review.
4 June 2021	OIC received emailed submissions from the applicant's email address purportedly made by a third party on her behalf.
8 June 2021	OIC informed the applicant that OIC was unable to open the documents that were linked to the emailed submission dated 4 June 2021 and asked for the documents to be provided in an alternative format.
10 August 2021	OIC conveyed a written preliminary view to applicant.
23 August 2021	OIC received verbal submissions from the applicant and granted an extension for the applicant to provide written submissions.
24 August 2021	OIC wrote to the applicant confirming the extension to provide written submissions had been granted.
3 September 2021	OIC received verbal submissions from the applicant.
3 November 2021	OIC received correspondence from a community legal centre on behalf of the applicant.
4 November 2021	OIC wrote to the community legal centre requesting a signed authority from the applicant authorising OIC to engage with them regarding the external review.
30 November 2021	Having not received a signed authority, OIC wrote to the applicant enclosing an authority for her to sign should she wish OIC to engage with the community legal centre on her behalf. OIC also wrote to the community legal centre about our correspondence to the applicant.

Date	Event
10 December 2021	OIC received correspondence from the community legal centre advising they were engaging with the applicant regarding provision of a signed authority.
13 December 2021	OIC received the applicant's signed authority authorising OIC to engage with the community legal centre on her behalf.
16 December 2021	OIC provided the community legal centre with a copy of requested procedural documents and granted an extension to provide submissions on behalf of the applicant to OIC's preliminary view.
30 January 2022	OIC received emailed submissions from the applicant which attached a letter dated 27 January 2022 signed by the applicant but prepared by the community legal centre on her behalf.
2 February 2022	OIC wrote to the applicant about the external review.
22 February 2022	OIC received emailed submissions from the applicant.
27 February 2022	OIC received emailed submissions from the applicant.
3 June 2022	OIC received a verbal submission from CHHHS regarding the status of the coronial investigation.