



Decision and Reasons for Decision

Citation:	5GNOF4 and Queensland Health [2018] QICmr 1 (11 January 2018)
Application Number:	313433
Applicant:	5GNOF4
Respondent:	Queensland Health
Decision Date:	11 January 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - request for access to birth family information - shared personal information - privacy - high degree of sensitivity - whether disclosure would on balance be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Health (**QH**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information about her birth registration details appearing in medical certificates supplied to the former Sandgate Maternal and Child Welfare Home.
2. QH located three 'Cards of Admission to Sandgate Home' (**Admission Cards**)¹ and partially released them to the applicant, subject to the redaction of information relating to other individuals, including the persons named as parents and siblings in the Admission Cards.²
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review. During the review process, the applicant has made emotional submissions to OIC, emphasising her desire to find out her biological father's name, her birth registration details and her real parents' names.
4. For the reasons set out below, I have found that disclosure of the remaining information in the Admission Cards would, on balance, be contrary to the public interest and therefore, access to it may be refused under section 47(3)(b) of the RTI Act and section 67 of the IP Act.³

¹ Comprising four pages.

² QH issued a decision on 25 July 2017 purporting to refuse access to the redacted information under sections 47(3)(a) and (b) of the *Right to Information Act 2009* (Qld) (**RTI Act**). However, this decision was made five days outside the statutory timeframe and as such, a deemed refusal of access decision was taken to have been made, under section 66 of the IP Act.

³ Essentially, this affirms the deemed decision refusing access to information.

Reviewable decision

5. The decision under review is the decision deemed to have been made by QH, on the last day of the processing period, refusing access to information.⁴

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

7. The information in issue is that which has been redacted from the Admission Cards, including the names of persons recorded as the applicant's parents and siblings, health/medical information of those individuals and the parents' signatures.
8. Generally speaking, the information that has been released to the applicant in the Admission Cards is her own personal information, eg. date of birth, age at time of admission and recommended treatment/medication. However, there are some instances where health information pertaining to other individuals has been disclosed.⁵

Issue for determination

9. The issue to be determined is whether access to the information redacted from the Admission Cards may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.⁶

Relevant law

10. A person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.⁷ In addition, the IP Act is administered with a pro-disclosure bias requiring the disclosure of information unless it would be contrary to the public interest.⁸
11. Section 12 of the IP Act defines '*personal information*' 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.*'
12. This right of access is however, subject to other provisions of the IP Act and RTI Act, including the grounds for refusal of access.⁹ Relevantly, access may be refused to information where its disclosure would, on balance, be contrary to the public interest.¹⁰
13. The RTI Act provides that in deciding where the balance of the public interest lies, a decision-maker must:
 - 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

⁴ Under section 66 of the IP Act.

⁵ However, the identities of those individuals has been redacted.

⁶ Under sections 49 and 47(3)(b) of the RTI Act.

⁷ Section 40 of the IP Act.

⁸ Section 64 of the IP Act.

⁹ Section 67 of the IP Act and section 47 of the RTI Act.

¹⁰ Section 47(3)(b) of the RTI Act.

- decide whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.¹¹

Findings

14. No irrelevant factors arise in the circumstances of this case.
15. The applicant has expressed a right to know the information in the Admission Cards. She submits that the government should not be allowed to refuse her access to her family details and explains that she suffered from being placed in an institution after being taken away from her real parents.¹²
16. There is a strong public interest in people being able to access information that government holds about them.¹³ Given the nature of the information in the Admission Cards, I find that this factor applies in this case. It is apparent that the applicant was placed in the Children's Home at a very young age and is seeking to understand her family history. To the extent that the information in the Admission Cards may assist the applicant in gaining a more comprehensive understanding of her personal family situation, I consider this factor warrants significant weight.
17. The information in the Admission Cards is however, interwoven with that of others rather than being solely the applicant's personal information. The information appears in such a way that it cannot be separated and is properly characterised as 'mutual' or 'shared' personal information.¹⁴ As this information cannot be separated, the applicant's personal information cannot be released without also releasing the personal information of others. Accordingly, while I am satisfied that disclosure would reveal information which the applicant considers fundamental to her identity, such disclosure would also necessarily disclose the personal information of the persons named as her mother, father and siblings in the Admission Cards.
18. In considering the disclosure of shared personal information, safeguarding the personal information and privacy of other individuals are relevant factors favouring nondisclosure.¹⁵ The information in the Admission Cards relating to the other individuals concerns familial details, medical history and conditions, and other health information and I consider this falls at the higher end of the spectrum in terms of sensitivity.¹⁶ I am satisfied that disclosure of this information would cause a significant public interest harm and a high level of intrusion into the other individuals' privacy due to the inherently sensitive context in which it appears, ie. medical records associated with admission into a maternal and child welfare home. I am satisfied that substantial weight in favour of nondisclosure is warranted in this case.
19. There is no evidence before OIC to independently verify the accuracy of the information in the Admission Cards. During the review process, the applicant was encouraged to contact the Registry of Births, Deaths and Marriages to obtain a copy of her birth certificate. However, the applicant elected not to follow that process and therefore, OIC is not in possession of any evidence, other than the applicant's assertions, which could

¹¹ Section 49 of the RTI Act.

¹² Inquiries conducted by OIC during the review did not reveal any evidence that the applicant had been adopted, thereby excluding the application of schedule 3, section 12 of the RTI Act and section 314 of the *Adoption Act 2009* (Qld).

¹³ Schedule 4, part 2, item 7 of the RTI Act.

¹⁴ The concept of 'shared' or 'mutual' personal information has previously been considered by the Information Commissioner in *E9IH9N and Metro South Hospital and Health Service* [2016] QICmr 18 (27 May 2016) (**E9IH9N**) at [37]-[39] and *RKE and Department of Child Safety* (Unreported, 31 January 2008) at [40]-[43].

¹⁵ Schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.

¹⁶ See *Wooding and Gold Coast Hospital and Health Service* [2014] QICmr 50 (16 December 2014) at [35]-[38] and *E9IH9N* at [39].

serve to verify the accuracy of the information in the Admission Cards and thereby, reduce the weight of the privacy nondisclosure factor, or the personal information harm factor.¹⁷

20. In balancing the relevant public interest factors in this case, I find that, in addition to the pro-disclosure bias prescribed by the IP Act, significant weight must be afforded to the applicant's entitlement to access her personal information in the Admission Cards. However, I must also take into account the substantial weight of the nondisclosure factors which serve to safeguard the personal information of other individuals and protect their privacy. In the circumstances of this case, I find that those nondisclosure factors are determinative against disclosure. Therefore, I find that disclosure of the information in the Admission Cards would, on balance, be contrary to the public interest.

DECISION

21. For the reasons set out above, I affirm the decision refusing access to information, under section 47(3)(b) of the RTI Act, and section 67 of the IP Act.
22. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 11 January 2018

¹⁷ See *RCD and Department of Child Safety* (Unreported, 21 January 2009) at [57] and *RCP and Department of Child Safety* (Unreported, 31 January 2008) at [85]. While these decisions were made under the repealed *Freedom of Information Act 1992* (Qld), I consider the reasoning remains relevant as they concern analogous concepts and legislative provisions.

APPENDIX

Significant procedural steps

Date	Event
2 August 2017	OIC received the external review application. OIC notified QH that the external review application had been received, made preliminary enquiries and requested various procedural documents.
18 August 2017	OIC received relevant procedural documents from QH.
24 August 2017	OIC requested further information from QH.
25 August 2017	OIC received the requested information from QH.
30 August 2017	OIC notified QH and the applicant that the external review application had been accepted and requested further information from QH.
13 September 2017	OIC spoke to the applicant and provided her with an update on the status of the review.
14 September 2017	OIC received submissions from the applicant.
19 September 2017	OIC issued a notice to the Department of Communities, Child Safety and Disability Services (Department) under section 116 of the IP Act.
21 September 2017	OIC clarified certain information with the Department pertaining to the notice issued under section 116 of the IP Act.
3 October 2017	OIC received the requested information from the Department.
23 October 2017	OIC provided QH with an update on the status of the review.
24 October 2017	OIC conveyed a preliminary view to the applicant that access to the information may be refused under section 47(3)(b) of the RTI Act.
26 October 2017	The applicant made oral submissions to OIC, contesting the preliminary view.
31 October 2017	OIC provided the applicant with an update on the status of the review.
16 November 2017	OIC requested additional information from the applicant.
17 November 2017	OIC received further submissions from the applicant.
7 December 2017	OIC provided the applicant with an update on the status of the review and received additional submissions.
8 December 2017	OIC clarified the status of the review with the applicant.