



Decision and Reasons for Decision

Citation:	<i>F69 and Metro South Hospital and Health Service [2024] QICmr 6 (16 February 2024)</i>
Application Number:	316032
Applicant:	F69
Respondent:	Metro South Hospital and Health Service
Decision Date:	16 February 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - request for applicant's medical records - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Metro South Hospital and Health Service (**MSHHS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to the following:¹

All information concerning [the applicant], dated between 1 January 2012 and 29 January 2021, in particular –

- *Persistent Pain Management Records ([named hospital] and [named clinic])*
- *Test Results (Metro South Health)*
- *Patient Liaison Office Records ([named hospital] and MSAMHS)*
- *CIMHA Records (Metro South Health)*
- *[named clinic] Records*
- *HIMS Records [named hospital] - Merge/Unmerge)*
- *MSH Central Referral Hub Records*
- *Any information associated with updating [the applicant's] name at [named hospital].*

2. MSHHS was unable to make a decision within the usual processing period for this application and requested further time to finalise the applicant's request. The applicant did not grant MSHHS further time to deal with the application, and instead applied to

¹ Following a telephone conference on 14 October 2020 facilitated by the Office of the Information Commissioner during an earlier external review, MSHHS wrote to the applicant on 30 October 2020 to confirm the scope agreed to. Several emails were exchanged between the applicant and MSHHS following this date to arrive at the above scope. On review, MSHHS provided an email from the applicant on 19 November 2020 confirming the above scope and apparently extending the timeframe of the request to 29 January 2021.

the Office of the Information Commissioner (**OIC**) for external review. Accordingly, MSHHS was taken to have made a deemed decision refusing access to the requested information,² and an external review was commenced by OIC to review that decision.

3. During the external review, MSHHS located 3,013 pages of information responsive to the access application and decided to disclose all these pages to the applicant subject to the refusal of information in parts of 12 pages.³
4. The applicant continued to seek external review on the basis that MSHHS had not located all the information that they requested.
5. For the reasons set out below. I set aside MSHHS's deemed decision and find that MSHHS has now undertaken all reasonable steps to identify documents in response to the scope of the applicant's request and access may be refused to any further information on the ground that it is nonexistent or unlocatable.⁴

Reviewable decision

6. The decision under review is MSHHS's deemed decision to refuse access to all information sought by the applicant.

Evidence considered

7. Significant procedural steps relating to the external review are set out in the Appendix to this decision.
8. The evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).
9. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), in particular the right of the applicant to seek and receive information.⁵ I consider that a decision-maker will, when observing and applying the IP Act and RTI Acts, be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act.⁶ I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act.⁷

² See section 55(3) of the IP Act, which provides that an agency may continue to consider the application and make a considered decision in relation to it only if – (a) the agency has asked the applicant for a further specified under subsection (1); and (b) the applicant has not refused the request; and (c) the agency has not received notice that the applicant has applied for review.

³ Section 67(1) of the IP Act provides an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**) were the document to be subject to an access application under that Act. MSHHS refused access to: six part-pages on the ground that the information comprised exempt information, in particular that the information would be privileged from production in a legal proceeding (LPP) pursuant to section 48 and schedule 3, section 7 of the RTI Act; and six part-pages on the ground that disclosure would, on balance, be contrary to the public interest, pursuant to section 47(3)(b) and schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁴ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

⁵ Section 21 of the HR Act.

⁶ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁷ I note the observations by Bell J on the interaction between equivalent pieces of Victorian legislation in *XYZ*, [573]: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*' I also note that OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (noting that Judicial Member McGill saw '*no reason to differ*' from our position).

Background

10. The external review application in this matter was received by OIC in April 2021 and since then, numerous communications have occurred between OIC and the applicant, and OIC and MSHHS, focussed on ensuring that MSHHS has taken all reasonable steps to identify the information requested by the applicant.
11. Throughout the review, the applicant raised concerns about how MSHHS maintains, accesses and ensures the accuracy of its records. The applicant raised significant concerns about the accuracy of MSHHS records. The applicant considered further documents existed and sought assurances from OIC that the medical records that existed in relation to the applicant were accurate and up to date, with respect to the applicant's demographics, allergies, diagnoses, treatments, conditions and any flags placed on the records. The applicant also raised concerns about the conduct of MSHHS officers and demonstrated a complete absence of trust in MSHHS.
12. In their most recent submissions to OIC⁸ the applicant reinforces that they require OIC to ensure their medical records are accurate and up to date, seek that I address the failings of MSHHS and the actions of a particular MSHHS decision maker are addressed. I am unable to address these concerns in this decision.
13. External review by the Information Commissioner⁹ is a merits review – that is an administrative reconsideration of the applicant's entitlement to access the information requested in the access application under the IP Act. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency under the IP Act.¹⁰ The power does not extend to addressing how an agency maintains its records or assuring the accuracy of the records kept.
14. It is also not within my role on external review to provide the applicant with assurances about the accuracy of their medical records, or to investigate and reach findings on the conduct of agency officers.
15. The one concern I share with the applicant in relation to information access obligations of MSHHS, is the time that was taken to provide the applicant with the requested records as well as the significant delays that occurred when MSHHS was requested by OIC to provide explanations for its search processes.
16. The scope of this application was arrived at following a telephone conference between the applicant and MSHHS facilitated by OIC as part of an earlier external review application. OIC received correspondence provided to MSHHS by the applicant on 19 November 2020 that confirmed the scope.
17. On 22 April 2021, approximately five months after confirming the scope, the applicant requested that OIC commence this external review as she had not received the information falling within the agreed above scope from MSHHS.
18. MSHHS has explained in submissions on external review that this delay was in part due to the fact that even after the scope appeared to be clarified with the applicant further correspondence was received from the applicant and their legal representative

⁸ Applicant email dated 12 February 2024

⁹ Or delegate.

¹⁰ Section 118(1)(b) of the IP Act.

that changed the search parameters again, and required clarification before searches could be appropriately directed. Specifically, MSHHS stated:¹¹

An email, co-authored by the applicant and her legal representative, was received on the 19 November 2020 had e-sticky notes attached (31 in total, which both clarified and expanded on the parameters of the scope). The decision maker deemed it necessary to take into consideration each note that required the possibility of further discussion with the applicant to proceed with searches.... A contributing factor was that MSH was advised by the applicant that she was on respite in January and February 2021 and not to be contacted. This unfortunately prevented the ability to clarify specific aspects to conduct full and adequate document searches.

19. Further to this MSHHS has also explained to OIC the complexities in it processing the type of request made by the applicant, and provided the following information about the steps it took to simplify the process of obtaining certain documents:¹²

Meeting the applicant's scope, once confirmed, required signification consultation with Clinical Information Systems Support Unit (CISSU) regarding the way the Auslab Audit History Specimen reports were produced. The CISSU officers tasked with this work were unfamiliar with the requirements of formal access applications. This meant that extensive involvement was undertaken by the decision maker with CISSU to ensure the requirements were met, which added to the delay. For example, initially, CISSU responded by providing screen shots or spreadsheets instead of reports and it took several months to resolve with CISSU. As discussed above, some of the documents within the scope of the applicant's access request were held in CISSU. CISSU is part of e-Health in the Department of Health and MSH wishes it to be noted that, in an effort to bring convenience to the applicant, we sought consent from the Department of Health to work on a set of documents that are in the possession of e-Health. This was an unorthodox way of processing an access application, however it was done so that the applicant did not have to apply separately to another organisation for records that MSH would likely be consulted on in any case.

20. MSHHS has acknowledged that delays occurred in the processing of the applicant's request, and I note the complexities in the scope of the request, as well as in the communications between MSHHS and the applicant, likely contributed to these delays.

21. Turning to the delays experienced by OIC on external review in receiving submissions from MSHHS, I note that on 8 September 2021, an email was sent by OIC to MSHHS requesting that the following be provided to OIC by 22 September 2021:¹³

- a copy of the documents located in response to the access application, clearly showing the information to which access was refused
- if relevant, a copy of any correspondence with consulted third parties; and
- a copy of any records of the searches conducted.

22. Submissions in response to this request were only received on 24 June 2022. MSHHS provided the requested search submissions, after expiry of various due dates, and extensions of time granted by OIC. On 31 August 2022, I wrote to MSHHS seeking further information regarding grounds for refusal of information and the searches conducted by MSHHS to locate documents. A response to this request was only received from MSHHS on 21 November 2022, after various communications between

¹¹ In a letter to OIC dated 24 October 2023.

¹² In a letter to OIC dated 24 October 2023.

¹³ Under section 113 of the IP Act, the Information Commissioner 'is entitled to full and free access at all reasonable times to the documents of the agency or Minister concerned, including documents protected by legal professional privilege' and, under section 109(1) of the IP Act, a participant in a review 'must comply in a timely way with a reasonable request made by the information commissioner for assistance in relation to the review.'

OIC and MSHHS, including a telephone conference and the issuing of a notice to produce documents by the Right to Information Commissioner.¹⁴

23. In summary MSHHS has explained that the delays in responding to OIC on external review are attributed to:¹⁵

- the applicant requesting that the most experienced and knowledgeable decision maker in this matter not deal with the matter
- difficulties in obtaining the required information from multiple different business units within the hospital; and
- the complexity and volume of the questions raised by the applicant in relation to the searches conducted.

24. Overall MSHHS stated that:¹⁶

MSH strives to meet [its information access] obligations along with complying in a timely way to a request made by the OIC. We apologise that we have not been able to meet that requirement on every occasion and have reviewed processes to bring improvements in an aim to prevent any recurrence.

25. During the course of external review both the Right to Information Commissioner and Information Commissioner directly raised concerns regarding timeliness in MSHHS responses with senior executive staff. I encourage MSHHS to continue to consider the need to ensure timeliness in the processing of requests and in responding to OIC's inquiries about external reviews.

26. I also observe that in this review, having acknowledged the above concerns regarding the delays in its handling of this request and in the interests of informally resolving the external review,¹⁷ upon request from the OIC, MSHHS agreed to meet with the applicant to provide an explanation as to how its records are maintained and explain the information that is available to a health practitioner when an individual first presents at hospital. MSHHS also offered to talk the applicant through the records released by them, and to provide assurances as to the accuracy of the applicant's current records. Unfortunately, the applicant did not accept the format of meeting offered by MSHHS and continues to seek external review of MSHHS's decision in this matter. Accordingly, I have progressed to finalise this external review by way of a formal, written decision.

Issues for determination

27. Despite the lengthy background to this decision, the issue for my determination here is straightforward. Put simply, the applicant does not accept that MSHHS has identified all of the information that they are seeking.

28. In such cases, I am required to consider whether MSHHS has undertaken all reasonable steps to locate documents responsive to the access application.

29. Access to some information released to the applicant during the external review was refused. During the external review, OIC conveyed a preliminary view to the applicant

¹⁴ Including a meeting with MSHHS on 14 September 2022, the service of a notice on MSHHS under section 116 of the IP Act on 27 October 2022 and a letter to MSHHS on 16 November 2022.

¹⁵ Letter to OIC dated 24 October 2023.

¹⁶ Letter to OIC dated 24 October 2023.

¹⁷ Section 103(1) of the IP Act requires the Information Commissioner to identify opportunities and processes for early resolution of a review.

in relation to this information, in particular that access may be refused to a small amount of information on:¹⁸

- six pages, as the information comprised the personal information of third parties and that on balance, disclosure of this information would be contrary to the public interest (**Third Party Personal Information**);¹⁹ and
- six pages, on the ground that the information comprises exempt information, namely the information is subject to legal professional privilege (**LPP Information**).²⁰

30. In relation to The Third-Party Personal Information, we explained that this information comprised the personal information of another patient, leave details of MSHHS staff and non-public facing contact details of MSHHS staff.²¹ The applicant submitted that they did not seek the contact details, names, emails, phone numbers of other individuals,²² however they did seek access to *'the basic info such as names of doctors etc, logical so we know that if needed the doctor is registered etc'*.²³ As the applicant has not contested the refusal of the Third-Party Personal Information and as noted above, it does not comprise the names of doctors, I have not considered this issue further in this decision.
31. In relation to the LPP Information, during the external review the applicant reduced the timeframe of the scope of their access application to 1 March 2014 to 3 September 2019.²⁴ The LPP Information falls outside of this timeframe and accordingly I have not considered this issue further in this decision.

Relevant law

32. Under section 40 of the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁵ However, this right is subject to limitations, including grounds for refusal of access.²⁶
33. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.²⁷ However, access may be refused where a document is nonexistent or unlocatable.²⁸

¹⁸ OIC's letter to the applicant dated 1 December 2022.

¹⁹ Pursuant to section 67(1) of the IP Act, section 47(3)(b), schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

²⁰ Pursuant to section 67(1) of the IP Act, section 48 and schedule 3, section 7 of the RTI Act. I note that in our preliminary view, we incorrectly referred to this information being comprised in the CIMHA file, when in actual fact the information is located in the Patient Liaison Office documents.

²¹ I also note this information comprises the email address of a Queensland Police Service employee.

²² Applicant's submissions in a meeting with OIC on 26 June 2023.

²³ Applicant's submission to OIC received on 10 July 2023.

²⁴ Applicant's submission to OIC received on 10 July 2023.

²⁵ 'Personal information' is defined in section 12 of the 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'*.

²⁶ Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

²⁷ Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6] that the RTI Act *'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents'* and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

²⁸ Sections 47(3)(e) and 52(1) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act.

34. To be satisfied that a document is nonexistent, an agency must rely on their particular knowledge and experience and have regard to a number of key factors which include:²⁹
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities³⁰
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
35. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
36. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors.³¹
37. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.³² However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.³³

Findings

38. The applicant has made a number of submissions listing categories of documents that they consider MSHHS has failed to locate, including for example records of presentations or appointments on specific dates, SPOT records – including psychological assessments, records relating to various surgeries, records from pain

²⁹ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020).

³⁰ Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

³¹ *Pryor* at [21].

³² Section 100(1) of the IP Act.

³³ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

management and the clinic named in the access application,³⁴ standard consent forms and ambulance hand overs.³⁵

39. In addition, the applicant also submits that when I consider the searches undertaken by MSHHS, I should also consider the complexity of the applicant's health matters and the record keeping obligations of hospital staff, as this would clearly suggest that more documents should have been located by MSHHS.³⁶
40. In a number of meetings and in written correspondence with the applicant, OIC provided the applicant with information as to where the missing records raised by them were located within the 3000+ pages located and released. As the information was released in batches to the applicant, MSHHS, upon request from OIC, re-released all the documents together to the applicant in May 2023. Once the documents were again released to the applicant, OIC met with the applicant to discuss the documents. During these meetings, I acknowledged that the way in which the documents were provided to the applicant may have confused the applicant and did not align with the applicant's expectations for how their medical records would be kept by MSHHS.
41. Overall, the meetings between OIC and the applicant, as well as the numerous emails exchanged between OIC and the applicant after re-release of information in May 2023, indicated that the applicant was not satisfied with the level of disclosure by MSHHS, and the applicant considered further documents must exist in relation to their medical records.
42. In reaching its position that no further documents existed and could not be located in response to the applicant's request, MSHHS relied on the searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents and provided information about the nature of the specific searches.³⁷ As MSHHS has relied on searches by its officers to demonstrate that all relevant documents have been located, the question for me to consider is whether MSHHS has taken '*all reasonable steps*' to locate the documents that the applicant considers to be missing, as opposed to whether MSHHS has taken all possible steps to locate documents responsive to the access application.³⁸
43. The information MSHHS provided about its searches shows that in processing the access application, MSHHS conducted searches of its:³⁹
 - Integrated electronic medical record (**ieMR**) - MSHHS stated that that Persistent Pain Management records, Patient Liaison Office records, MSH Central Referral Hub records and the records of the clinic referred to in the applicant's scope are recorded in ieMR
 - Hospital-Based Corporate Information System (**HBCIS**) database
 - Consumer Integrated Mental Health Application (**CIMHA**) database
 - eHealth and Auslab for the Full Audit Specimen History, list of tests performed and results
 - paper based records - MSHHS stated that the Spinal Outreach Team (**SPOT**) records are paper based; and

³⁴ Submissions made to OIC on 14 July 2021, 12 November 2021, 30 November 2021, 14 December 2021, 26 June 2023, 10 July 2023 and 12 February 2024.

³⁵ Applicant's submission in a meeting with OIC on 26 June 2023.

³⁶ Applicant's submission in a meeting with OIC on 26 June 2023.

³⁷ In *Webb* at [6], Judicial Member D J McGill SC stated that the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's search records for relevant documents*' and that ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for the relevant documents.

³⁸ *Webb* at [6].

³⁹ Received by OIC on 21 November 2022.

- Health Informatics Unit HIMS to obtain a Patient Master Index (**PMI**) report.
44. MSHHS estimated that more than 200 hours has been spent responding to the access application, including performing searches and providing explanations and feedback.⁴⁰ This is, of course, a significant amount of time, and in some cases where such time is required to process and application an agency may refuse to deal with the application on the basis of it being a substantial and unreasonable diversion of its resources⁴¹ - however over the period in question, MSHHS did not raise this ground and therefore OIC was not alerted to the possibility of its application
 45. Having considered these searches in the context of the access application, there is nothing in the material before me which calls into question either the efficacy of the searches or the accuracy of the search records provided to OIC by MSHHS. Accordingly, I accept MSHHS's submissions in relation to its search efforts and enquiries.
 46. In addition, although the applicant has submitted that there are documents missing from the 3000+ pages of medical records identified by MSHHS, having carefully assessed the information that has been located and disclosed to the applicant, to the best of my understanding, I am satisfied that this information has been disclosed to the applicant, albeit in a different format or place in the records to that anticipated by the applicant.
 47. I also note that there was some delay in MSHHS disclosing the requested information to the applicant, and in providing search submissions to OIC on external review. The records were also provided to the applicant and OIC in parts that did not correspond with how the applicant's request for records was ordered. For this reason, I acknowledge the applicant's concern that further documents relevant to their request may yet to be identified by MSHHS.
 48. After I received MSHHS's search submissions, and MSHHS's response to the types of the documents the applicant considered missing, several meetings and communications occurred between the applicant and OIC over a period of 12 months. These meetings and communications sought to understand the applicant's concerns further, provide the applicant with the opportunity to make submissions, and to identify opportunities for resolution of the review. Having considered the information exchanged during those meetings with the applicant, I am satisfied that while the applicant considers further records may exist within the scope of their request, I am unable to identify any further searches or enquiries that MSHHS could reasonably conduct.
 49. Based on my consideration of the entirety of the searches conducted by MSHHS and the information before me, I consider that MSHHS has conducted comprehensive and appropriately targeted searches of relevant record keeping systems for information responsive to the access application. Accordingly, I am satisfied that MSHHS has taken all reasonable steps to locate relevant documents and that access may be refused to any further documents on the basis that they do not exist or cannot be located.⁴²

DECISION

⁴⁰ Search certificate from MSHHS dated 9 November 2022.

⁴¹ Pursuant to section 60 of the IP Act.

⁴² Under section 47(3)(e) and 52(1) of the RTI Act.

50. For the reasons set out above, I vary MSHHS's deemed decision and find that MSHHS has undertaken all reasonable searches to locate documents responsive to the access application. Accordingly, access may be refused to any further information on the ground that it is nonexistent or unlocatable.⁴³

⁴³ Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

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

S Martin
A/Right to Information Commissioner

Date: 16 February 2024

APPENDIX

Significant procedural steps

Date	Event
22 April 2021	OIC received the external review application.
23 April 2021	OIC requested initial information and documents from MSHHS.
30 April 2021	OIC advised the applicant the external review had been accepted.
5 May 2021	MSHHS provided some initial information.
6 May 2021	OIC requested MSHHS provide the outstanding initial documents.
10 May 2021	The applicant requested OIC contact and also provided correspondence received from MSHHS.
11 May 2021	OIC requested MSHHS provide the outstanding initial documents and advised the external review had been accepted. OIC provided a response to the applicant.
14 May 2021	OIC received the outstanding initial documents from MSHHS. OIC provided an update to the applicant.
17 May 2021	OIC advised the applicant of the dates that MSHHS had stated that it would release particular information.
21 May 2021	MSHHS advised OIC that the release of information would be delayed by one week for each proposed date referred to in its email of 14 May 2021.
24 May 2021	OIC received advice from the applicant that the expected release of information did not occur. In response, OIC advised applicant of the delayed timeframe outlined by MSHHS. OIC requested MSHHS information be released by an updated deadline.
31 May 2021	OIC received advice from the applicant that MSHHS had not released the information by the required deadline.
1 June 2021	OIC contacted MSHHS and requested the information be released by 4pm. OIC updated the applicant about its communication with MSHHS.
2 June 2021	OIC received advice from the applicant that MSHHS had not released the information by the required deadline. OIC contacted MSHHS to follow-up the delay in releasing documents and updated the applicant about the steps taken.
4 June 2021	OIC contacted MSHHS to follow up the delay and provided an update to the applicant. MSHHS released some of the requested information to the applicant.
11 June 2021	OIC received advice from the applicant that the remainder of requested information had not been released by the set deadline. OIC and the applicant received advice from MSHHS that some of the remaining requested information had been released.

Date	Event
30 June 2021	OIC and the applicant received advice from MSHHS that there had been another delay in releasing the remaining requested information.
9 July 2021	OIC and the applicant received advice from MSHHS of the expected date for release of remaining requested information.
14 July 2021	OIC received a submission from the applicant regarding the released information. OIC and the applicant received advice from MSHHS that a technical issue would delay the release of the remaining requested information.
22 July 2021	OIC received advice from MSHHS that the remaining requested information had been released to applicant. OIC received a submission from the applicant that the release of information had been inadequate.
9 August 2021	OIC contacted the applicant requiring more information about their submissions.
8 September 2021	OIC advised the applicant that the external review had been put on hold until 19 October 2021. OIC requested MSHHS provide the remaining unreleased information to OIC to progress the review.
7 October 2021	OIC advised MSHHS that the requested information had not been provided to OIC and requested release by 15 October 2021.
8 November 2021	OIC advised the applicant that the external review had been further suspended until 30 November 2021. OIC received advice from the applicant that they would not be ready to recommence proceedings until mid-December 2021. OIC advised MSHHS that information had still not been provided and required it be produced by 30 November 2021 or a formal notice would be issued under section 116 of the IP Act.
30 November 2021	OIC received a submission from the applicant.
2 December 2021	OIC sent correspondence to the applicant addressing the applicant's concern about OIC having access to their personal information and clarifying that OIC needed to obtain the relevant documents from MSHHS to conduct the review.
14 December 2021	OIC received further information from the applicant.
31 December 2021	OIC received a request from the applicant for an update on the review.
7 January 2022	OIC advised the applicant that staff were on leave and OIC would respond to the applicant's correspondence within the next two weeks.
17 January 2022	OIC received a request from the applicant for an update on the review.

Date	Event
18 January 2022	OIC sent correspondence to the applicant clarifying OIC's jurisdiction and explaining the applicant had still not responded to confirm they wish to proceed with the review, which would involve OIC having access to the applicant's medical records.
20 January 2022	OIC received confirmation from the applicant that they wished to proceed with the external review.
24 and 25 January 2022	OIC received some questions from the applicant regarding the external review process, which they requested be answered before they would agree to proceed with the external review process.
3 March 2022	OIC provided the applicant with answers to the questions raised.
16 March 2022	OIC received advice from the applicant that they did not consider that their questions were adequately answered, but formally confirmed they wished to proceed with the external review.
24 March 2022	OIC advised MSHHS that requested information had not been provided and requested it be done so by 7 April 2022.
13 April 2022	MSHHS requested an extension of time to provide the requested information.
14 April 2022	OIC approved MSHHS's request for extension of time to 22 April 2022.
26 April 2022	OIC received some of the requested documents from MSHHS.
28 April 2022	OIC advised MSHHS that a copy of the record of searches conducted was missing and required it be provided as soon as possible.
3 May 2022	OIC advised the applicant that most of the requested information had been received from MSHHS, with the exception of the record of searches conducted.
5 May 2022	OIC issued MSHHS with a Notice to Produce information under section 116 of the IP Act.
10 May 2022	OIC received a request for an extension of time to provide the record of searches conducted.
11 May 2022	OIC approved an extension of time until 18 May 2022. OIC advised MSHHS that this would be the final extension.
17 June 2022	OIC advised MSHHS it had failed to respond to the formal Notice to Produce information. OIC wrote to the CEO of MSHHS to raise concerns regarding MSHHS's RTI performance.
24 June 2022	OIC received the requested record of searches from MSHHS.
27 June 2022	OIC received a response from the CEO of MSHHS.
8 July 2022	OIC received a request for an update on the progress of the external review from the applicant.
12 July 2022	OIC provided the applicant with an update.

Date	Event
31 August 2022	OIC contacted MSHHS regarding some outstanding issues and requested that it respond to the applicant's sufficiency of search concerns.
14 September 2022	OIC met with MSHHS and approved an extension of time request for further information requested. OIC provided an update to the applicant.
30 September	OIC received a further extension of time request from MSHHS to provide the requested information.
4 October 2022	OIC approved the extension of time request.
14 October 2022	OIC received a further extension of time request from MSHHS to provide the requested information.
17 October 2022	OIC approved the extension of time request.
19 October 2022	OIC received a further extension of time request from MSHHS to provide the requested information.
27 October 2022	OIC provided MSHHS with a Notice to Produce information under section 116 of the IP Act.
15 November 2022	OIC received an acknowledgment from MSHHS of the formal Notice to Produce information and a request for an extension of time.
16 November 2022	OIC advised MSHHS of the failure to comply with the Notice to Produce and required information be provided by 21 November 2022. OIC provided an update to applicant.
21 November 2022	OIC received the information requested in the Notice to Produce from MSHHS.
1 December 2022	OIC conveyed a preliminary view to the applicant. OIC provided an update to MSHHS.
22 December 2022	OIC received a request from the applicant for a six-month extension of time to provide a submission.
23 January 2023	OIC contacted the applicant and approved an extension until 28 April 2023 and summarised OIC's preliminary view conveyed in the letter dated 1 December 2022.
24 January 2023	OIC provided an update to MSHHS.
10 March 2023	OIC spoke with the applicant by phone about the review.
11 April 2023 and 4 May 2023	OIC met with the applicant to discuss the external review. The applicant requested a change of review officer and raised additional formal complaints with OIC.
11 May 2023	OIC requested MSHHS provide previously released information to the applicant on a CD and provided an update to the applicant.
15 May 2023	OIC received confirmation from MSHHS that the released information would be put on CD and the applicant could attend to collect in person.

Date	Event
19 May 2023	OIC arranged a time to discuss the external review with MSHHS.
23 May 2023	OIC contacted the applicant to ask if the CD of released information had been provided.
7 June 2023	OIC spoke with the applicant by phone about the review.
26 June 2023	OIC met with the applicant to discuss the external review.
27 June 2023	OIC provided an update to MSHHS.
30 June 2023	OIC provided the applicant with a written summary of their oral submissions.
10 July 2023	OIC received a written response from the applicant, which contained some amendments to the written submission provided by OIC on 30 June 2023.
27 July 2023	OIC suggested an informal resolution proposal to MSHHS.
31 July 2023	OIC provided an update to the applicant.
9 August 2023	OIC requested MSHHS provide an update in relation to the informal resolution proposal by 23 August 2023.
10 August 2023	OIC received an update from MSHHS and advised the Executive Director of Medical Services may wish to speak with OIC regarding the matter.
22 August 2023	OIC confirmed receipt of MSHHS's 10 August 2023 update.
28 August 2023	OIC wrote to MSHHS and outlined the next steps in the review (including the informal resolution proposal) and invited a response. OIC also advised that if the matter proceeded to a formal decision, then MSHHS's delays and failure to comply with formal Notices to Produce information would be reflected in the decision and invited MSHHS to provide a final submission on this point.
30 August 2023	OIC received an alternative informal resolution proposal from MSHHS.
12 September 2023	OIC received a request for an extension of time to provide a final submission from MSHHS.
15 September 2023	OIC requested MSHHS provide final submission by 21 September 2023.
25 September 2023	OIC provided an update to the applicant.
29 September 2023	OIC received a further request for an extension of time to provide a final submission from MSHHS. OIC advised the applicant of MSHHS's informal resolution proposal and invited the applicant to arrange a time to discuss this option further with OIC.
9 October 2023	OIC advised MSHHS that the applicant had not responded to the informal resolution proposal and the matter would proceed to a formal decision.
26 October 2023	OIC received a final submission from MSHHS.
7 November 2023	OIC received an update from the applicant.

Date	Event
8 November 2023	OIC provided an update to the applicant.
16 November 2023	OIC followed up its email with the applicant.
20 November 2023	OIC discussed the external review with the applicant and provided an update to MSHHS.
23 November 2023	OIC discussed the informal resolution proposal with MSHHS.
27 November 2023	OIC provided the applicant with an update on the informal resolution proposal.
28 November 2023	OIC called the applicant to discuss the informal resolution proposal and wrote to MSHHS to clarify the proposal.
29 November 2023	OIC discussed the informal resolution proposal with MSHHS.
30 November 2023	OIC received an email from MSHHS in relation to the informal resolution proposal.
7 December 2023	OIC emailed MSHHS in relation to the informal resolution proposal.
14 December 2023	OIC discussed the informal resolution proposal with the applicant and provided an update to MSHHS.
18 December 2023	OIC received an email from the applicant in relation to the informal resolution proposal and OIC provided a response.
21 December 2023 and 19 January 2024	OIC received emails from MSHHS about the informal resolution proposal.
19 January 2024	OIC emailed MSHHS in relation to the informal resolution proposal.
22 January 2024	OIC discussed the informal resolution proposal with MSHHS and received a confirmation email from MSHHS.
31 January 2024	OIC emailed the applicant.
12 February 2024	OIC received further submissions from the applicant.