



Decision and Reasons for Decision

Citation:	<i>J52 and Metro North Hospital and Health Service [2026] QICmr 73 (13 May 2026)</i>
Application Number:	318781
Applicant:	J52
Respondent:	Metro North Hospital and Health Service
Decision Date:	13 May 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - deceased's medical records - personal information and privacy - eligible family member - - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

DECISION

1. I affirm¹ the reviewable decision of Metro North Hospital and Health Service (**MNHHS**) and find that access to the requested information may be refused under the *Right to Information Act 2009 (Qld)* (**RTI Act**) on the ground that its disclosure would, on balance, be contrary to the public interest.
2. My reasons for the decision follow.



R Moss
Principal Review Officer

Date: 13 May 2026

¹ Under section 110(1)(a) of the *Right to Information Act 2009 (Qld)* (**RTI Act**). On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the *Right to Information Act 2009 (Qld)* (**RTI Act**) and *Information Privacy Act 2009 (Qld)* (**IP Act**). As the applicant's application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts, which may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> respectively.

REASONS FOR DECISION

Summary

3. The applicant applied² to MNHHS under the RTI Act for access to his deceased brother's medical records.
4. MNHHS located 2264 responsive pages. It decided³ to refuse access to all pages on public interest grounds.
5. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for review of MNHHS's decision.

Background

6. The applicant seeks access to his late brother's medical records primarily in order to assess any possible genetic risk factors or disorders that may impact upon the health of direct family members, and to assist those individuals to take appropriate steps to protect their health. The applicant's brother was diagnosed with cancer and died in June 2025.

Reviewable decision

7. The decision under review is MNHHS's decision dated 24 June 2025.

Evidence considered

8. The evidence, submissions,⁵ legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).⁶

Information in issue

9. During the course of the review, MNHHS gave the applicant full or partial access to 38 pages from the deceased's medical record. The applicant continues to seek access to the remainder of the record.

Issue for determination

10. The issue for determination is whether access to the information remaining in issue in the medical record may be refused under the RTI Act because its disclosure would, on balance, be contrary to the public interest.

² Application dated 9 June 2025.

³ Decision dated 24 June 2025.

⁴ Application dated 11 July 2025.

⁵ In the applicant's external review application, and in emails on 19 December 2025, 11 February 2026, 18 February 2026, 1 March 2026, and 27 March 2026.

⁶ Generally, it is necessary that decision makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**). However, section 11(1) of the HR Act provides that '*[a]ll individuals in Queensland have human rights*' (my emphasis) and, given the applicant resides in a State other than Queensland, I have not had direct regard to the HR Act in this review. I have, of course, observed and respected the law prescribed in the RTI Act in making this decision. Where the HR Act applies, doing so is construed as 'respecting and acting compatibly with' the rights prescribed in the HR Act (*XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]). Accordingly, had it been necessary for me to have regard to the HR Act in this review, the requirements of section 58(1) of that Act would be satisfied, and the following observations of Bell J about the interaction between the Victorian analogues of Queensland's RTI Act and HR Act would apply: '*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*' (*XYZ* at [573]).

Relevant law

11. Under the RTI Act, a person has a right to be given access to documents of an agency.⁷ However, this right is subject to provisions of the RTI Act including the grounds on which access to documents may be refused.⁸ One of the grounds upon which access may be refused is where disclosure would, on balance, be contrary to the public interest.⁹
12. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹⁰
 - identify factors irrelevant to the public interest and disregard them¹¹
 - 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.
13. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case.

Submissions

14. In his application for external review,¹² the applicant provided some background to his brother's illness and submitted as follows regarding his application:

I do not wish to have access to any of [my brother's] "personal" information, invade his privacy other than to exclude or be informed about what may have implications for his immediate family as he had sanctioned to me when he was alive. I also see and understand that to understand this fully then access should be granted to his records to have a more complete picture of what has occurred here.

To add a further dimension onto the situation, [my brother] passed rather quickly. I am reasonably certain that he had anticipated being present for another few months, even as indicated by his medical management team to him. So in some ways this has not allowed for him to fully express his wishes in a manner that would be favourable for our request, which I am sure would have happened.

[My brother] was a very private person but also was conscious and cognisant of what was occurring with his health. He was quite adamant that from a family perspective that some good should come of his situation and the indication that he was given was that there was a potential of a familial predisposition. He mentioned that there was confirmation by medical staff of genetic testing, mention of BRCA gene potentially contributing to his illness and that we as a family should know if this was the case. Part of his medication/protocol involved chemotherapy along with some customised therapy - genetic?- on a two week/one week regime.

...

⁷ Section 23 of the RTI Act.

⁸ Section 47 of the RTI Act.

⁹ Sections 47(3)(b) and 49 of the RTI Act. The 'public interest' '...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

¹⁰ Section 49(3) of the RTI Act.

¹¹ No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making this decision.

¹² Dated 11 July 2025.

My situation:

I am [name]'s older brother.

I was his Power of Attorney.

I live interstate - Victoria. He lived in Qld and was hospitalised in Queensland. I attended the hospital on the last 2 weekends of [my brother's] life and during this time had minimal dialogue as far as the aetiology of [my brother's] condition along with the clear diagnosis and treatments that were being undertaken. The case study outlined in the refusal letter In X19 and Metro South Hospital and Health Service [2020] QICmr 12 would appear to me more relevant than the cited case of Swales and the Department of Health.

My reasoning for this is that the same as in X19 I was living interstate to my brother and had only been informed of his condition and the severity of it in April 2025 and had minimal involvement in [my brother's] day to day care. During May and then the start of June 2025 I then increased communication with [my brother] - not the hospital in support of [my brother] emotionally.

...

The reason for my appeal is as follows:

I am concerned that there was a diagnosed BRCA genetic condition that predisposed [my brother] to the type of cancer that he had. [My brother and a close friend] had this confirmed verbally to them at the time of his treatment, however, nothing has been provided that gives me confidence that this was a contributing factor or not. In discussing this with the hospital nothing has been provided that clearly clarifies aetiology or even the precise cancer primary/secondary.

...

The reason for asking for the records was twofold. Firstly, I do not have the confidence or the belief that the records have been sufficiently looked at to either include or exclude information that may be pertinent to [my brother's] situation and also to me as immediate family. Secondly, the information provided at the time of his illness seems to contradict what was verbally told to [my brother] and this has a significant impact on the surviving members of his family.

15. As noted at paragraph 9 above, MNHHS gave the applicant access to parts of the deceased's medical record during the course of the review. MNHHS accepted that there was a public interest in the applicant being given access to those parts of the record that would assist the applicant and other immediate family members to seek medical assessment of any genetic risks or predisposition to the cancer with which the applicant's brother had been diagnosed. The information in the medical record that was disclosed to the applicant on the basis that it was potentially relevant to such an assessment was identified by MNHHS in response to a request for information that MNHHS received from The Peter MacCallum Cancer Centre (**Centre**). It appears that the applicant or members of his family consulted the Centre (which is a cancer research, education and treatment centre located in Victoria) about the possibility of the Centre undertaking a familial cancer risk assessment. The Centre compiled a list of information that it considered would assist this assessment to take place¹³ and sent it to MNHHS (with the family's consent). MNHHS then identified any information contained in the deceased's medical record that responded to the Centre's request and released it to the applicant (wholly or partially).¹⁴ It consisted of information such as the discharge summary, letters from various specialists, and some reports.¹⁵

¹³ This included any cardiac MRIs, ECHO reports, histopathology and any correspondence on the patient's cancer, genetic/genomic testing results.

¹⁴ MNHHS refused access to those parts of the documents that did not relate strictly to the deceased's cancer diagnosis, including other unrelated health concerns and social factors.

¹⁵ MNHHS confirmed that the medical record did not contain some of the information identified by the Centre, including any genetic/genomic testing results.

16. Following release of this information, however, the applicant continued to raise issues about the refused information. He submitted that he was the executor of his brother's estate and argued that this gave him an enhanced right of access to his brother's complete medical record. He also queried the existence of any records relevant to his brother's diagnosis earlier than March 2025.
17. These issues were raised with MNHHS which responded as follows:¹⁶
 - the medical treatment the subject of the application commenced in March/April 2025 and all information listed by the Centre that was contained in the medical record had been disclosed to the applicant; and
 - the purpose of the application was stated to be for *'future family health history'* and there was nothing to indicate that access to the complete medical record was required for the administration of deceased's estate.
18. By letter dated 4 March 2026, OIC communicated a preliminary view to the applicant that access to the remainder of the medical record could be refused under the RTI Act because its disclosure would, on balance, be contrary to the public interest.
19. In his submission in response,¹⁷ the applicant argued that the public interest factors favouring disclosure had been given insufficient weight:
 - the released information does not necessarily provide a complete understanding of clinical progression, underlying conditions, or any factors that may have relevance to hereditary or familial health risks: medical professionals rely on a patient's full medical history and treatment records when assessing possible hereditary conditions or familial risk
 - the applicant had actively supported his brother upon learning of his illness and was appointed as his brother's executor and statutory health attorney: this indicates *'a clear level of trust and intention that I act on his behalf in important matters, including those concerning his health and personal affairs'*
 - privacy interests are significantly reduced where the individual is deceased, the request is made by an immediate family member, and the purpose of the request relates to the health of other family members
 - while MNHHS has indicated that the remaining records largely relate to 'day-to-day care and treatment', clinicians reviewing cases retrospectively often rely on treatment notes, medication records, and clinical observations to identify patterns or underlying factors that may not be evident from summary reports alone; and
 - partial disclosure, or limited disclosure to treating medical practitioners, should be considered so that the applicant can have confidence that material has been properly excluded.
20. The applicant also posed a series of questions to which he sought answers, including raising concerns about the management of his brother's medical care and his medication regime; and querying whether his brother was misdiagnosed. The applicant considered that, aside from *'the main familial concern'*, aspects of his brother's diagnosis and care should be better understood.

¹⁶ Email of 13 February 2026.

¹⁷ Email of 27 March 2026.

Findings

Factors favouring disclosure

21. The relevant factors favouring disclosure of the remainder of the medical record are as follows:
- 1) the applicant is an eligible family member and the information would have been the deceased's personal information when they were alive¹⁸
 - 2) promotion of the social well-being of the community;¹⁹ and
 - 3) promotion of open discussion of public affairs and enhancement of the Government's accountability.²⁰
22. Where the applicant seeking access to a deceased person's information is an eligible family member of the deceased, two public interest factors become relevant: a factor favouring disclosure²¹ and a factor favouring non-disclosure.²²
23. Disclosing information under this factor enhances the public interest in the eligible family member being provided with information about the deceased's health and wellbeing. However, the weight given to this factor will vary depending on the circumstances, for example:
- the extent to which the eligible family member was in contact with and/or had a relationship with the deceased
 - the nature and sensitivity of the information; and
 - the extent to which the information is or may be known to the applicant.
24. In his external review application, the applicant acknowledged that his brother was a private person. He also acknowledged that, due to living interstate, he was not closely involved in his brother's day-to-day life, or his medical treatment. The applicant was advised of his brother's illness in April 2025 and stated that he visited his brother twice in hospital prior to his death. The applicant also stated that he had not been provided with specific information about his brother's diagnosis by the hospital or by the medical team treating his brother.
25. The applicant asserts that, although his knowledge of the details of his brother's illness was limited and he was not closely involved in his brother's care or treatment, he supported him from April 2025, including visiting him in hospital. He was also appointed by his brother as executor of his brother's estate, and statutory health attorney. The applicant argues that these factors indicate that his brother trusted him and intended for him to act on his behalf in important matters, including those concerning his health and personal affairs. The applicant considers that he enjoyed a close relationship with his brother: *'We regularly kept in contact but did not live in each other's back pockets'*.
26. As noted above, MNHHS acknowledges that the applicant was nominated as statutory health attorney, but submits that the deceased at no stage lost capacity prior to his death and that this authority was therefore not relied upon. In terms of the applicant being an

¹⁸ Schedule 4, part 2, item 9 of the RTI Act. Section 12 of the IP Act defines 'personal information' for the purpose of the RTI 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'.

¹⁹ *OKP and Department of Communities* (Unreported, Queensland Information Commissioner, 9 July 2009).

²⁰ Schedule 4, part 2, item 1 of the RTI Act.

²¹ Schedule 4, part 2, item 9 of the RTI Act.

²² Schedule 4, part 3, item 5 of the RTI Act.

executor of his brother's estate, MNHHS noted that the applicant had not sought to argue that access to the medical records was required in order to administer the estate.

27. I acknowledge the applicant's submissions regarding his relationship with his brother. I accept that the circumstances that the applicant has raised indicate that, despite living in different states, the applicant and his brother were in contact with each other and that the applicant's brother contacted the applicant to inform him of his diagnosis. I also accept that, despite living interstate, the applicant did his best to support his brother in the short period before his death.
28. However, I also acknowledge the nature and sensitivity of the information in issue. A medical record contains information of an inherently highly personal, and highly sensitive, nature.
29. While the applicant's brother may have shared with the applicant the basic details of his illness as he was aware of them, a medical record necessarily contains detailed information about all aspects of a patient's physical and emotional health and wellbeing. This can range from daily observation charts while an inpatient, to notes of discussions about treatments and rehabilitation options. Often, information about inter-personal relationships, living arrangements, and emotional and psychological wellness is recorded, as it pertains to the patient's overall health and wellbeing. A high degree of privacy naturally attaches to information of this nature. There is nothing to indicate that this type of information, such as is contained in the medical record, is known to the applicant.
30. Taking all of these considerations into account, I afford moderate weight to factor 1). It remains the fact that, although no doubt concerned for his brother, the applicant was not in the position of being closely involved in his brother's care or having detailed knowledge of his brother's health concerns.
31. In respect of factor 2), the Information Commissioner has recognised that there is a public interest in the social well-being of the community, which includes the ability of its members to improve their health. As noted above, this was stated to be the primary reason for the applicant's request to access his brother's medical records – so as to enable the applicant and other family members to take any necessary steps to seek professional medical advice and undergo any necessary testing in order to protect their own health.
32. However, as noted at paragraph 15 above, medical information that was considered necessary to enable the applicant and immediate family members to undertake a medical assessment of their cancer risk was identified by experts in the cancer research field and, to the extent that it was contained in the deceased's medical record, it was released to the applicant. As a result, I consider that the public interest in promoting social well-being has largely been discharged by disclosure of this information. There is nothing before OIC to indicate that the medical experts with whom the applicant or his family consulted have raised concerns about missing or incomplete information, or requested any additional records or test results, etc. It appears that the applicant seeks access to the remainder of his brother's medical record so that he can satisfy himself that all relevant information has been released. However, as MNHHS has submitted (and as is supported by OIC's review of the record), the remaining information does not appear to relate to any causative analysis of the cancer diagnosis. The public interest does not weigh in favour of disclosure of sensitive medical information simply to allow an applicant to satisfy themselves about the contents. It is the independent role of the Information Commissioner, in conducting an external review under the RTI Act, to examine the

requested information and to decide whether access to it should be given by applying the relevant legislative principles, and by taking into account all relevant considerations.²³

33. For these reasons, I afford low weight factor 2).
34. Turning to factor 3), and as noted at paragraph 14 above, the primary reason for the applicant's request to access his brother's medical record was for family health reasons. However, following receipt of OIC's preliminary view letter on 4 March 2026, and as noted at paragraph 20 above, the applicant raised more general concerns about his brother's medical treatment, including querying whether there was a missed or delayed diagnosis and whether '*appropriate diagnostic and treatment protocols were followed*'. He also questioned his brother's pain medication regime.²⁴
35. The Information Commissioner has recognised that there is a legitimate public interest in enhancing the accountability of public hospitals for the provision of medical services in accordance with proper professional standards, and for timely and cost-effective service delivery. However, it has also been recognised that when one attempts to apply that public interest as a consideration favouring disclosure of the medical records of a particular individual (other than the applicant for access), there is an immediate collision with the public interest in protecting the privacy and confidentiality of an individual's medical records. The Information Commissioner has expressed the view that the former will not ordinarily outweigh the latter, unless there is a particularly strong public interest in accountability to be served by disclosure, for example, by exposing unsatisfactory or negligent performance, and enabling remedial and/or compensatory action to be taken.²⁵
36. Having reviewed the medical record, I am not persuaded that disclosure of the information contained in it would advance the transparency and accountability of MNHHS to such an extent as to outweigh the strong public interest in protecting the privacy and confidentiality of the medical record. I acknowledge the concerns raised by the applicant, however, I am not satisfied on the basis of the information before me that disclosure of the medical record could reasonably be expected to, for example, expose unsatisfactory or negligent performance by the hospital in question, or potentially give rise to remedial and/or compensatory action to be taken in respect of the medical treatment provided to the applicant's brother. In terms of the questions posed by the applicant about aspects of his brother's medical care, it is open to the applicant to contact the hospital directly in order to discuss and to seek clarification of those concerns.
37. For these reasons, I afford low weight to factor 3).

Factors favouring nondisclosure

38. The information remaining in issue in the medical record mainly comprises details of the day-to-day care and treatment provided to the applicant's brother, and includes information about various health conditions unrelated to his cancer diagnosis, observation and medication charts, and occupational health reports.
39. The RTI Act recognises that a public interest harm will occur if personal information²⁶ (of living and deceased persons) is disclosed.²⁷ The information remaining in issue is the

²³ *BGC (Australia) Pty Ltd v Fremantle Port Authority* (2003) 28 WAR 187 at [16].

²⁴ The information access regime established by the RTI Act gives a right of access to documents of an agency. It does not permit an applicant to ask questions of an agency.

²⁵ *Summers and Cairns District Health Service (Department of Health); Hintz (Third Party)* (1997) 3 QAR 479 (**Summers**).

²⁶ Defined in schedule 5 of the RTI Act and 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.*'

²⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

medical information of an individual other than the applicant for access and is, by its very nature, highly sensitive. I afford significant weight to the public interest harm factor relating to protecting the personal information of other individuals.

40. I am further satisfied that the information in issue relates to a person who has died, and:

- the information would, if the person were alive, be personal information of that person
- the applicant is an eligible family member of the person; and
- the disclosure of the information could reasonably be expected, if the person were alive, to impact on the person's privacy.²⁸

41. This nondisclosure factor is the converse factor to the eligible family member disclosure factor discussed above. The weight of this factor is determined by an assessment of the impact to the deceased's privacy if they were alive.²⁹ Medical records are inherently sensitive and private in nature, and disclosure of this type of information to another person would usually represent a significant breach of a person's privacy. This is particularly so when account is taken of the fact that there are no restrictions upon what a person may do with information that is released to them under the RTI Act.³⁰

42. In his submission on 27 March 2026, the applicant acknowledged the sensitivity of medical information:

I acknowledge that medical information is inherently sensitive and that protecting personal privacy is an important public interest consideration. However, in the present circumstances:

- *the individual concerned is deceased;*
- *the request is made by an immediate family member; and*
- *the purpose of the request relates to the health of other family members.*

In these circumstances, the privacy interests at issue are significantly reduced compared with disclosure involving a living individual. The RTI framework itself recognises that disclosure to eligible family members may be appropriate in certain circumstances.

Importantly, the records would not be disclosed publicly but would be used solely to enable informed medical advice for family members.

43. As noted, the information contained in the medical record that was identified as relevant to an assessment of family health risks has already been disclosed to the applicant by MNHHS. And while the applicant submits that the medical record would not be disclosed for purposes other than family members undertaking health risk assessments, as noted above at paragraph 41, it must nevertheless be recognised that there are no restrictions upon what a person may do with information that is disclosed to them under the RTI Act, including the possibility of further dissemination.

²⁸ Schedule 4, part 3, item 5 of the RTI Act. The concept of 'privacy' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others: *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [27], paraphrasing the Australian Law Reform Commission's definition of the concept in *For your information: Australian Privacy Law and Practice* Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

²⁹ *X19 and Metro South Hospital and Health Service* [2020] QICmr 12 (26 February 2020) at [38] (**X19**).

³⁰ As Judicial Member McGill SC of QCAT observed '*... the effect of the... [IP Act] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. 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.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17].

44. Previous decisions of the Information Commissioner have identified the following elements to consider whether the privacy is reduced in the particular circumstances of each case:³¹
- evidence of involvement in care
 - extent of knowledge of medical history or incident; and
 - evidence of special dependence or relationship.
45. As noted above at paragraphs 24 and 25, the applicant was not involved in his brother's care and had only limited knowledge of his brother's diagnosis and medical history. In terms of their relationship, the applicant submitted that the fact that he was appointed by his brother as executor of his brother's estate, and statutory health attorney, was evidence of the closeness of the relationship and indicated that the applicant's brother trusted the applicant to act in his best interests. I acknowledge those factors, however, I am not satisfied that they can be considered to have special relevance when considering the impact upon the privacy interests of the applicant's brother of releasing his sensitive medical information under the RTI Act. I do not understand that access to the medical records is required in order for the applicant to administer his brother's estate or, for, example, to take any legal action on behalf of his brother or his estate. In terms of being appointed as his brother's statutory health attorney, this would have permitted the applicant to make medical decisions for his brother were his brother to lack capacity. As that did not occur, the relevant powers were not exercised. Again, I am not satisfied that, in those circumstances, this can be considered as evidence of a special relationship such that it would significantly reduce the weight to be afforded to the public interest in protecting the privacy interests of the applicant's brother under the RTI Act.
46. Consequently, I find that, were he alive, the impact on the privacy of the applicant's brother of disclosing the information remaining in issue in the medical record would be significant. I afford correspondingly significant weight to this public interest factor.
47. In addition, it is important to note that disclosure of a deceased person's sensitive personal information can reasonably be expected to cause a public interest harm for more than its impact on the deceased's privacy. Its release can also reduce the public's confidence in public systems and a reduction in effective and efficient public services where those systems and services rely on full and frank disclosure of pertinent information by members of the public.³² The risk in disclosing personal information of the type in issue in this review is that patients would no longer engage in an open and frank relationship with health care providers if they felt that information they provided would be disclosed to others under the RTI Act where there are no restrictions upon further dissemination. This lack of candour may compromise their own health, and the ability of the health care system to provide proper care effectively and efficiently. I afford significant weight to the public interest in protecting the flow of information to public hospitals in this regard, and the associated public interest in protecting the efficient and effective functioning of the public health system.

Balancing the public interest

48. For the reasons explained above, and after balancing the competing public interest factors, I find that the factors favouring nondisclosure outweigh those favouring disclosure. As such, access to the information remaining in issue in the deceased's

³¹ *Summers* at [19], which considered equivalent provisions in the now-repealed *Freedom of Information Act 1992* (Qld) and applied in *Lowe and Department of Health* (Unreported, Queensland Information Commissioner, 25 November 2010) at [14].

³² See X19 for a discussion about the impact specifically on the public health system.

medical record may be refused because its disclosure would, on balance, be contrary to the public interest.

Conclusion

49. The above are the reasons for my decision set out at paragraph 1.
50. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner under section 145 of the RTI Act.