



Decision and Reasons for Decision

Citation:	N33 and Office of the Health Ombudsman [2026] QICmr 129 (23 July 2026)
Application Number:	00022120
Applicant:	N33
Respondent:	Office of the Health Ombudsman
Decision Date:	23 July 2026
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – application for documents about an investigation into a complaint made by the applicant including transcripts or recordings of interviews, submissions and information provided by individuals and entities to OHO – personal information of a donor – 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</i> (Qld)

DECISION

I affirm¹ the reviewable decision of Office of the Health Ombudsman (**OHO**) and find² that OHO was entitled to refuse access to the Information in Issue³ on the basis that disclosure would, on balance, be contrary to the public interest.

This means that no further information is to be released to the applicant. My reasons for the decision follow.



K Zaidiza
Acting Assistant Information Commissioner RTI
Date: 23 July 2026

¹ Under section 110(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

² I have made this decision as a delegate of the Information Commissioner under section 145 of the 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 RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's application was made after this change, the RTI Act **as in force after 1 July 2025** is the applicable legislation.

³ As defined in paragraph 10 below.

REASONS FOR DECISION

Background

1. The applicant applied⁴ to OHO under the RTI Act for access to all documents relating to the applicant's complaint.⁵
2. OHO conducted searches and located 11298 pages and 6 audio recordings. It decided⁶ to release 1740 pages⁷ and 1 audio recording and to refuse access to 8981 pages, 5 audio recordings and parts of 577 pages on the ground that disclosure of some of this information would be exempt or on balance, contrary to the public interest.
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of OHO's decision⁸ seeking access to specific documents to which access had been refused and requesting a recording of an interview or transcript that was not located and considered as part of OHO's decision.
4. In relation to the applicant's request for a record of interview / copy of a transcript which was not located, OIC conducted further enquiries and OHO advised that it '[d]id not interview [named doctor] and accordingly, there is no interview transcript or recording available'. OIC conveyed a preliminary view to the applicant⁹ that there are reasonable grounds to find that a record of interview with the named doctor does not exist and therefore access to such document may be refused on the basis that it is nonexistent under section 52 of the RTI Act. The applicant did not contest this view and as such OIC confirmed¹⁰ that it would no longer be an issue in this review.
5. On external review the applicant provided a list with the specific types of documents sought on external review (**narrowed scope**)¹¹ – particularly transcripts and/or recordings of interviews conducted by OHO as part of their investigation into the applicant's complaint, correspondence between medical practitioners and OHO, and information provided by named entities to OHO as part of its investigation.
6. OIC conveyed a preliminary view to the applicant¹² that OHO was entitled to refuse access to the Information in Issue. The applicant disagreed with this view and provided submissions in support of their view.¹³

⁴ Access application dated 30 December 2024.

⁵ The applicant agreed to exclude from the scope of the access application documents previously accessed under earlier RTI applications.

⁶ Decision dated 29 August 2025. This is the *reviewable decision* for the purposes of this matter.

⁷ Access to 340 pages was granted by inspection.

⁸ External review application dated 14 September 2025.

⁹ Letter dated 25 March 2026.

¹⁰ By email dated 2 July 2026.

¹¹ With the external review application dated 14 September 2025 and further submissions dated 8 January 2026.

¹² Letter dated 25 March 2026.

¹³ Submissions dated 23 April, 27 April and 2 May 2026.

7. Therefore, the issue for determination in this review is whether OHO was entitled to refuse access to the Information in Issue¹⁴ on the ground that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to seek and receive information.¹⁵ I consider a decision-maker will be ‘respecting, and acting compatibly with’ those rights, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Information in issue

10. As indicated in paragraph 5 above, on external review the applicant provided a list with the specific types of documents sought on external review (narrowed scope).¹⁷ This narrowed scope (**Information in Issue**) can generally be described as:
 - transcripts, recordings of interviews and documents required by and provided to OHO under section 228 of the *Health Ombudsman Act 2013* (**HO Act**) and records of correspondence between entities/individuals and OHO as part of the investigation (**Category A information**)
 - names of staff from a private sector business (**Category B information**); and
 - information about a donor (**Category C information**).

Relevant law

11. Under the RTI Act, an individual has a right to be given access to documents in the possession or under the control of an agency. While the legislation is to be administered with a pro-disclosure bias, the right of access is subject to certain limitations, including grounds for refusing access, as set out in the RTI Act.¹⁸ Relevantly, access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁹
12. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens.

¹⁴ As defined in paragraph 10 below.

¹⁵ Sections 21(2) and 25 of the HR Act.

¹⁶ *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]. I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): ‘... 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 FOI Act. I further note that OIC’s approach to the HR Act (as set out in this paragraph) was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member DJ McGill SC saw ‘no reason to differ’ from OIC’s position).

¹⁷ With the external review application dated 14 September 2026 and further submissions dated 8 January 2026.

¹⁸ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2) of the RTI Act.

¹⁹ Sections 47(3)(b) and 49 of the RTI Act.

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.²⁰

13. The RTI Act explains the steps that the decision-maker must take in deciding the public interest²¹ and identifies factors in schedule 4 that may be relevant to deciding the balance of the public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.

Submissions

14. The applicant's submissions discuss a range of issues associated with healthcare providers and assisted reproductive technology/treatment (**ART**) providers. In summary, the applicant submits:²²
 - the Information in Issue has not been accessible, and it is critical for the applicant's fulsome understanding about what caused the errors in their treatment and the subsequent injuries to their family
 - *'...[I]t is strongly in the public interest that this information be released so that informed decision-making for patients and for the ART industry as a whole can be made fully and transparently'*
 - disclosure of the requested information could assist inquiry into the conduct of the ART providers and health practitioners about whom they have concerns
 - *'...[T]he entirety of any information about donor [identified] has been completely redacted'*
 - *'...[G]iven the contested nature of the investigation; the existence of additional material obtained through other legal processes; and the absence of key evidentiary detail there is a strong public interest in access to the underlying material, including interview transcripts; internal communications; audit and compliance records; and evidentiary documents relied upon in forming conclusions. Without access to this material, meaningful scrutiny of the investigation and its outcomes is not possible'*
 - they have concerns about the outcome of OHO's investigation – specifically, they have *'obtained documents through separate legal processes which indicate that: relevant material existed that does not appear to have been before the Office of the Health Ombudsman during its investigation; and the investigation was conducted in circumstances involving contested engagement and limited cooperation by a key party'* and therefore, *'the existing information sufficiently explains the investigation outcome cannot be sustained'*.

Category A information

Irrelevant factors

²⁰ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²¹ Section 49(3) of the RTI Act.

²² External review application dated 14 September 2025, and submissions dated 08 January 2026, 27 April 2026 and 2 May 2026.

15. I have not taken any irrelevant public interest factors²³ into account in making this decision.

Factors favouring disclosure

16. The Category A information comprises compelled information including transcripts, recordings of interviews, information and documents provided by individuals and entities as requested from OHO as part of its investigation. It also comprises correspondence between individuals, entities and OHO for the purposes of the investigation.
17. Section 228 of the HO Act gives OHO the power to require a person to answer questions or produce documents during the course of an investigation. Under sections 229 and 229A of the HO Act, failure to give stated information, attend an interview to answer questions or produce documents is an offence under the Act and the person must comply unless the person has a *reasonable excuse* (if doing so might tend to incriminate the individual or expose them to a penalty).
18. In this matter, OHO Officers relied on section 228 of the HO Act to compel information from individuals and entities.
19. Given the OHO investigation relates to allegations and complaints made by the applicant about ART providers and their involvement with the applicant, some of the Category A Information contains the applicant's personal information.²⁴ I afford significant weight to this factor in favour of disclosure.
20. Generally, there is a strong public interest in the disclosure of government held information in order to promote openness and transparency in government and to enhance the government's accountability.²⁵ OHO must be accountable for the way in which it conducts its investigations under the legislation and how it handles complaints made by members of the public. I accept that there is a strong public interest in OHO handling complaints about health providers as transparently as possible, so that complainants and health providers who are subject to those investigations can be satisfied that the complaints have been assessed robustly, fairly and in accordance with professional standards and legislative requirements.
21. I acknowledge there is a public interest in OHO addressing complaints received about health providers in an accountable fashion, noting that the HO Act stipulates what notifications (and publications) are required in respect of the various investigation decisions it is empowered to make. While I consider that these public interest factors apply with respect to OHO in this case, I afford less weight to these factors given the information that has already been released to the applicant and the nature of the Category A Information. In considering the weight to be attributed to these factors, it is relevant that:

- OHO has assessed the evidence available throughout its investigation; and

²³ As set out in Schedule 4 Part 1 of the RTI Act.

²⁴ Schedule 4, part 2 item 7 of the RTI Act.

²⁵ Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

- OHO has provided the applicant with outcome advice and reasons for its decision in relation to their complaint.

22. The applicant has submitted:²⁶

'Withholding information critical to our fulsome understanding about what caused the errors in our treatment and the subsequent injuries to our family also represents the withholding of that information from the many patients who have suffered similar injuries by this health provider and therefore the public. Indeed public harm will be caused by the continued withholding of this information, both to patients and the public.'

23. Significant systemic issues in practices regarding ART providers were identified which resulted in an investigation conducted by OHO under section 81 of the HO Act and an outcome report dated 28 June 2024. This report is publicly available. I acknowledge the applicant's submissions that they have been adversely affected and therefore they made a further complaint. OHO conducted its investigation into such complaint, identified issues and concerns and provided recommendations for action.
24. I consider the disclosures by OHO (not only throughout the investigation process but in the documents released pursuant to OHO's decision under review) have significantly discharged these public interest factors, taking into account the level of detail regarding the investigation and decision-making process which has been provided to the applicant. While disclosure of the Category A information would provide the applicant with a more complete picture of the information obtained by OHO, I do not consider that its disclosure would further advance OHO's accountability and transparency in any significant way, as it comprises information provided by third parties to OHO, and it does not reveal actions taken by OHO as part of the investigation. Given these considerations, I consider that these factors carry low weight in favour of disclosure.
25. The applicant's complaint was made in connection with practices relating to ART providers. In this context, I have also considered whether disclosure of the Category A Information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.²⁷
26. While disclosure of the Category A information may, to some extent, contribute to informed public debate about an important issue, namely the practices of ART providers, I afford this factor favouring disclosure low weight in the circumstances of this review. In reaching this view, I note that there has already been a public inquiry into the practices of the ART industry, which resulted in the publication of a report containing findings, recommendations and proposed actions aimed at addressing identified issues. Accordingly, there is already a significant amount of publicly available information that informs public debate on this issue. I also note that the applicant has been provided with considerable information concerning the OHO's investigation into their complaint. In these circumstances, I am not satisfied that disclosure of the Category A information would make a significant additional

²⁶ With external review application dated 14 September 2025.

²⁷ Schedule 4, part 2, item 2 of the RTI Act.

contribution to public understanding or debate beyond that already achieved. Accordingly, I afford this public interest factor favouring disclosure low weight.

27. The applicant raised concerns about the conduct and administration of the ART providers and health practitioners and submits that disclosure of the Category A Information could assist inquiry into the conduct of the health practitioners. I have therefore also considered whether disclosing Category A Information would allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official or reveal that an agency or official has engaged in misconduct.²⁸
28. In this regard I note that whilst OHO 's investigation into the applicant's complaint has identified and made recommendations to the entities involved that will be monitored and to this extent, Category A Information may assist inquiry into the conduct of the ART providers to some extent, however there is nothing before me to indicate that the OHO officers were engaging in misconduct, improper or unlawful conduct or that there are any deficiencies in their conduct. I also note that in any event, the applicant may raise any concerns they may have about deficiencies in the conduct of relevant staff with relevant integrity bodies without accessing the Category A Information. For these reasons, I afford these factors favouring disclosure low weight.
29. I have also considered whether disclosing the Category A Information could contribute to the administration of justice for the applicant.²⁹ When assessing this factor, I must consider whether:
 - the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the Category A Information would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.³⁰
30. I recognise that the applicant has been adversely affected and is dissatisfied with OHO's investigation outcome. The evidence before me indicates that it is arguable that a legal wrong may have been perpetrated against the applicant and that the evaluation or pursuit of a remedy might be facilitated by the disclosure of the Category A Information to some extent. However, noting the information already available to the applicant including recommendations provided to the ART providers and the publicly available information, I do not consider that the Category A Information is required for the applicant to pursue a legal remedy or evaluate whether a remedy (legal or otherwise) is available or worth pursuing. The applicant is not precluded from pursuing other avenues of legal redress by not having access to the Category A Information. Consequently, I afford this factor low weight.
31. The applicant has also submitted:

²⁸ Schedule 4, part 2, items 5 and 6 of the RTI Act.

²⁹ Schedule 4, part 3, item 17 of the RTI Act.

³⁰ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *IOS3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

'We do, however, believe (as stated above) that it is consistent with natural justice that the transcripts of interviews of witnesses be released to us. In fact in the face is a government decision that has not provided scientifically proven suppositions it would definitely "reveal the reason for a government decision and any background or contextual information that informed the decision.'

32. Given this submission, I have also considered the factor favouring disclosure regarding fair treatment and procedural fairness.³¹ While I understand the reasons why the applicant wishes to access the Category A Information, the procedural fairness component of natural justice does not require an agency to give each party to a review/investigation equal access to all information available to it. Rather, it is about giving a person sufficient information to enable them to understand it and be given sufficient time to respond to it. In this case, OHO's investigation concerned complaints made about others and involved concerns raised by the applicant. The applicant was afforded the opportunity to participate in the investigation and their concerns were incorporated. The applicant had the opportunity to provide information (supporting their concerns) as part of OHO's investigation and has also received a summary of the outcomes and recommendations made by OHO. I therefore consider this factor does not apply.
33. I have also considered whether release of the Category A Information, particularly transcripts of interviews, would favour the public interest in revealing incorrect, misleading or unfairly subjective information.³² Category A Information includes compelled statements obtained from persons interviewed by OHO. Such information is, by its very nature, the opinions and versions of events expressed by relevant individuals, which are shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not mean that the Category A Information is necessarily misleading or unfairly subjective. For these reasons I afford this factor low to no weight.
34. I have carefully considered the remaining factors favouring disclosure listed in schedule 4, part 2, of the RTI, and factors favouring disclosure more generally, given the factors listed in schedule 4 are not exhaustive.

Factors favouring nondisclosure

35. The RTI Act recognises nondisclosure factors will arise where disclosing information could reasonably be expected to:
 - prejudice the protection of an individual's right to privacy³³
 - cause a public interest harm if it would disclose personal information of a person³⁴
 - prejudice the flow of information to law enforcement or regulatory agencies;³⁵ and

³¹ Schedule 4, Part 2 item 16 of the RTI Act.

³² Schedule 4, part 2, item 12 of the RTI Act.

³³ Schedule 4, part 3, item 3 of the RTI Act.

³⁴ Schedule 4, part 4, item 6(1) of the RTI Act.

³⁵ Schedule 4, part 3, item 13 of the RTI Act.

- prejudice an agency's ability to obtain confidential information.³⁶
36. The Category A Information comprises information received, obtained and prepared for the OHO investigation. It comprises interviews made by witnesses and therefore comprises the personal information of these individuals. Each such interview comprises the individual's opinions, recollections of events, personal considerations regarding the issues raised in the applicant's complaint and a timeline of events. It intrinsically comprises the personal information of such individuals. Given the nature of the Category A Information, and the context in which it appears – particularly in the compulsory circumstances how such information was provided to OHO – its disclosure outside of the investigation process and under the RTI Act would be an unwarranted intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant.
 37. The Category A Information also comprises correspondence between OHO and individuals to make arrangements for interviews and/or discuss other aspects of OHO investigation. It comprises the personal information of another individuals and includes their dealings with OHO in relation to the interviews and investigation.
 38. Further, I am able to confirm that, where the Category A Information is the personal information of the applicant, it is intertwined with the personal information of other individuals in a way that it is not possible to separate the applicant's personal information from the personal information of those other individuals. In these circumstances, I consider that releasing the applicant's personal information would necessarily disclose the personal information of other individuals and could reasonably be expected to prejudice the protection of those individuals' right to privacy and cause a public interest harm. Accordingly, I afford the privacy factor and the harm factor substantial weight.
 39. The RTI Act also recognises that a factor favouring nondisclosure will arise where disclosure of the information could reasonably be expected to prejudice OHO's ability to obtain confidential information.³⁷ The Category A Information was prepared by individuals and entities in response to a Notice under section 228 of the HO Act with the understanding that such information remained confidential and was to be considered only by OHO for the purposes of their investigations.
 40. Disclosing information of this kind would undermine public confidence in OHO's ability to treat information with confidentiality in such investigative circumstances. This in turn could reasonably be expected to damage the ability of OHO to effectively address and investigate incidents, having a detrimental effect to OHO's functions.
 41. Likewise, in relation to information provided to OHO by entities, such information has been provided to OHO as part of its investigation and it has been compelled and provided with the understanding that it will be treated confidentially and only for the purposes of the investigation. Unwarranted disclosures under the RTI Act would undermine and negatively impact the confidentiality relating to the OHO's

³⁶ Schedule 4, part 3, item 16 of the RTI Act.

³⁷ Schedule 4, part 3, item 13 of the RTI Act.

communications with third parties from whom OHO has requested or compelled the provision of relevant information to assist in their investigation. I therefore give this factor favouring non-disclosure significant weight.

42. The applicant has raised concerns regarding the outcome of OHO's investigation because, in the applicant's views, OHO was not provided with all the relevant material to properly conduct their investigation. The applicant has stated that they have *'obtained documents through separate legal processes which indicate that:*

relevant material existed that does not appear to have been before the Office of the Health Ombudsman during its investigation; and the investigation was conducted in circumstances involving contested engagement and limited cooperation by a key party' and therefore, 'the existing information sufficiently explains the investigation outcome cannot be sustained'.³⁸

43. Whilst I acknowledge the applicant's concerns regarding OHO's investigation, I note that the remedy the applicant is seeking – which I understand to be contesting the outcome of OHO's investigation – is not one that can be achieved through an external review under the RTI Act. As noted in paragraph 24 above, I do not consider that the Category A information will significantly advance any greater level of accountability of OHO in respect of its investigation.

Balancing test

44. Considering the weighting given to the factors favouring versus the factors not favouring disclosure, I find that disclosure of the Category A Information would, on balance, be contrary to the public interest and access to it may be refused.

Category B Information

45. The Category B Information comprises personal information of private sector employees.³⁹ A private sector employee's name and their engagement with a private sector business, comprises the individual's personal information and attracts a certain level of privacy. I acknowledge that there are instances in which the privacy of information about a private sector employee is reduced – for example, where the individual's name, title and/or contact details are accessible through the business website, or other readily accessible means, this would reduce the privacy attaching to the information. On the evidence available to me, the information is not publicly available or otherwise readily accessible to the public.
46. As such, there is a degree of intrusion into the private sector employee's personal sphere which warrants consideration of the privacy factor favouring nondisclosure and the personal information harm factor. In the context of this matter, I am satisfied that the interest in safeguarding the private sector employees' personal information in this case carries significant weight in favour of nondisclosure.

³⁸ Submissions dated 27 April 2026 and 2 May 2026.

³⁹ I have not taken any irrelevant public interest factors into account.

47. I have given consideration to whether there are factors favouring disclosure of this information. I find that the factors favouring disclosure mentioned above in relation to the Category A Information do not apply as the disclosure of the Category B Information would not advance accountability and transparency of OHO, nor provide background information of OHO's decision. I have also considered whether disclosure of Category B Information would contribute to informed public debate about an important issue. However, to the extent this information is purely the personal information of individuals, I find that this factor does not apply.
48. I therefore conclude that the factors not favouring disclosure on balance outweigh the factors favouring and the Category B Information can be refused under the RTI Act.

Category C Information

49. The Category C Information comprises personal information about a donor.⁴⁰ In this regard, the applicant has submitted that '[T]he entirety of any information about donor ... has been completely redacted'.
50. As indicated above, OHO must be transparent and accountable about how it deals with complaints. I consider the information which OHO has disclosed to the applicant during the review allows for accountability and transparency of how OHO dealt with the complaint.⁴¹ Due to the nature of the Category C Information, I do not consider that its disclosure would further advance accountability and transparency to any significant degree. Accordingly, I afford these factors no weight in favour of disclosure.
51. The RTI Act seeks to safeguard other individuals' right to privacy and recognises a public interest harm in disclosing the personal information of other individuals.⁴² I consider that the weight to be given to protecting personal information and privacy relating to an identified donor is significant. This information is the personal information of the donor and the interference in the donor's private sphere is high.
52. In reaching this conclusion I have also had regard to the fact that OHO has provided the applicant with the outcome of their investigation relating to the identified donor and therefore some of the donor's information would be known to the applicant. In that context, I do not consider that further disclosure of highly personal information would be warranted or reduce the weight to given to these nondisclosure factors. This is specifically so noting that there can be no restriction on the use, dissemination or republication of information when it is disclosed under the RTI Act.⁴³
53. On balance, I am satisfied that the factors favouring nondisclosure outweigh the pro-disclosure factors. I find that access to the Category C Information may be

⁴⁰ I have not taken any irrelevant public interest factors into account.

⁴¹ Schedule 4, part 2, item 1 of the RTI Act.

⁴² Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

⁴³ *FLK v Information Commissioner* [2021] QCATA 46 at [17].

refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Conclusion

54. The above are the reasons for my decision set out at page 1.