



Decision and Reasons for Decision

Citation:	<i>TSO08G and Metro South Hospital and Health Service [2015] QICmr 20 (24 August 2015)</i>
Application Number:	312404
Applicant:	TSO08G
Respondent:	Metro South Hospital and Health Service
Decision Date:	24 August 2015
Catchwords:	ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – medical records – information provided by other individuals during applicant’s medical treatment – 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> – whether access may be refused under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Metro South Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to a complete copy of his medical records held by the Princess Alexandra Hospital (**PA Hospital**).
2. The Health Service located 465 pages of which it granted the applicant full access to 426 pages, and refused access to 6 pages in full and 33 pages in part on the basis that these pages contained either:
 - exempt information, which if disclosed would found an action for breach of confidence; or
 - information which would, on balance, be contrary to the public interest to disclose.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service’s decision.
4. The Health Service’s decision is varied on external review on the basis that all the information to which the applicant was refused access comprises information which would, on balance, be contrary to the public interest to disclose.

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

6. The decision under review is the Health Service's decision dated 20 February 2015.

Information in issue

7. The Information in Issue comprises 6 pages in full and 33 pages in part. It is contained on the applicant's medical records and comprises information provided to the PA Hospital by individuals other than the applicant which relates to the private aspects of their lives and/or their interactions with the applicant.¹

Evidence considered

8. The evidence, submissions, legislation and other materials I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Applicant submissions

9. The applicant has made extensive submissions in this review.² In his submissions, the applicant provides sensitive, personal information regarding his past and current health issues, and his family relationships. Of primary concern to the applicant is the prescription of a particular drug that he believes has had a significant and ongoing detrimental effect on his health and wellbeing. The applicant is concerned to understand why doctors prescribed the drug to him. He believes that false information about him and his state of health may have been provided to medical staff by family members that resulted in the drug being prescribed. The applicant has also indicated to OIC that his current health problems caused by the drug affect his ability to understand the issues in this review and to make submissions in response.³
10. In his submission dated 7 July 2015, the applicant referred to previous external reviews involving him and asked that I read and consider all of the letters he had written in those matters. While I have carefully considered the correspondence and submissions provided by the applicant in this external review, I do not consider it reasonable to review all correspondence received from the applicant in previous external reviews. In this external review, the applicant was provided with an OIC guideline that explained that submissions on external review must be detailed and complete.⁴ I do not consider that a general reference to all other previous communications to OIC is sufficiently detailed or complete to be properly considered as a submission in this external review.
11. I have, however, given careful consideration to the extensive submissions made by the applicant in this review and, to the extent that they are relevant to my assessment of the issues in this review, I have addressed them in my findings below.

¹ Section 121(3) of the IP Act.

² Applicant submissions received by post on 17 March 2015, 24 March 2015, 9 April 2015, 10 April 2015, 29 April 2015, 22 May 2015, 27 May 2015, 2 June 2015, 10 June 2015, 7 July 2015, 14 July 2015 and 21 July 2015; by phone on 20 July 2015; by fax on 21 July 2015; and during lengthy telephone discussions with OIC on 23 June 2015.

³ The applicant brought this to OIC's attention in a letter received by OIC on 9 April 2015. During this review, OIC has written to the applicant several times and spoken with the applicant by phone on 23 June 2015 to clearly explain the issues for determination in this review.

⁴ As an enclosure to OIC's letter to applicant dated 26 March 2015.

Relevant law

12. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information. However, this right is subject to limitations, including grounds for refusal of access.⁵ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁶
13. The *Right to Information Act 2009* (Qld) (**RTI Act**) identifies many factors that may be relevant to deciding the balance of the public interest⁷ and explains the steps that a decision-maker must take⁸ in deciding the public interest. To determine the balance of the public interest a decision-maker must:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to the public interest.

Findings

14. No irrelevant factors arise in the circumstances of this case. I will now consider the factors favouring disclosure and nondisclosure of this information.

Personal information of the applicant

15. The Information in Issue comprises the applicant's personal information⁹ as it is about the applicant and forms part of his medical records. This gives rise to a factor favouring disclosure.¹⁰ I acknowledge the importance of providing individuals with access to their personal information, particularly where it comprises their own medical records as held by a public hospital. I therefore attribute significant weight to this factor.

Accountability, transparency and fair treatment

16. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability¹¹

⁵ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**) were the document to be the subject of an access application under the RTI Act.

⁶ Sections 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁷ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

⁸ See section 49(3) of the RTI Act.

⁹ '*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*'.

¹⁰ Schedule 4, part 2, item 7 of the RTI Act.

¹¹ Schedule 4, part 2, item 1 of the RTI Act.

- reveal the reason for a government decision and any background or contextual information that informed the decision;¹² and
 - advance the fair treatment of an individual in accordance with the law in their dealings with agencies.¹³
17. The applicant has made extensive submissions to OIC regarding his interactions with medical and related staff of the Health Service and has indicated that he is deeply dissatisfied with the way that he has been treated by the Health Service.¹⁴ The applicant believes that there was a 'mismanagement'¹⁵ of his case by doctors. He contends that the doctors who treated him and prescribed him a particular drug were provided with false information. He submits that he was not warned about the side-effects of the drug and that he suffered a major health incident after taking the drug. He considers that the prescription of the drug was unlawful; that the Health Service has attempted to cover this up; and that the doctors involved should be stood down.¹⁶
18. There is a strong public interest in hospitals and their staff being accountable for their treatment of patients and for the decisions they make as part of that treatment. The applicant has received a considerable amount of information about his treatment by staff of the Health Service as a result of this application and previous applications.¹⁷
19. The Information in Issue is limited in terms of the detail it provides about the applicant's care and the reasons for decisions made by staff of the Health Service. I do not consider that disclosure of the Information in Issue would provide the applicant with a greater understanding of the reasons for his treatment or advance the accountability and transparency of the Health Service to any significant degree. For these reasons, I afford these three factors favouring disclosure low weight.

Personal information and privacy of other people

20. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;¹⁸ and
 - disclosing information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.¹⁹
21. The Information in Issue comprises the thoughts, opinions and feelings of other people and it is therefore also the personal information of other people. Given the nature of this information, and the way it is recorded in the applicant's medical records, it is not possible to separate the applicant's personal information from the personal information of others. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the IP Act.

¹² Schedule 4, part 2, item 11 of the RTI Act.

¹³ Schedule 4, part 2, item 10 of the RTI Act.

¹⁴ Applicant submissions received by post on 17 March 2015, 24 March 2015, 9 April 2015, 10 April 2015, 29 April 2015, 22 May 2015, 27 May 2015, 2 June 2015, 10 June 2015, 7 July 2015, 14 July 2015 and 21 July 2015; by phone on 20 July 2015; by fax on 21 July 2015; and during lengthy telephone discussions with OIC on 23 June 2015.

¹⁵ Applicant submission of 21 July 2015.

¹⁶ Applicant submission of 10 June 2015.

¹⁷ See paragraph 2. The applicant was given full access to 426 pages out of 465 pages, and part access to a further 33 pages.

¹⁸ Schedule 4, part 3, item 3 of the RTI Act.

¹⁹ Schedule 4, part 4, item 6(1) of the RTI Act.

22. I consider that the Information in Issue is highly personal and sensitive in nature. In my view, its disclosure under the IP Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is relatively high. I am therefore satisfied that these two factors favouring nondisclosure carry significant weight.

Prejudice future supply of confidential information

23. The RTI Act gives rise to a factor favouring nondisclosure where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information.²⁰
24. The Information in Issue was provided to health care workers by other people to assist in the treatment of the applicant. I have carefully considered the nature of the Information in Issue and the context in which it appears. In my view, it is sensitive information that was communicated in confidence by the providers, with the expectation that it would remain confidential.
25. Healthcare workers often rely on information provided by individuals to assist in the diagnosis and treatment of health conditions. It is reasonable to expect that individuals may be discouraged from providing this information to healthcare workers if they are aware that it might be disclosed to the patient under the IP Act. This could significantly prejudice the ability of healthcare workers to care for patients. In those circumstances, I am satisfied that this factor carries significant weight in favour of nondisclosure.

Balancing the public interest

26. I have attributed significant weight to the two factors favouring nondisclosure of the Information in Issue. I am satisfied that disclosure of the Information in Issue would prejudice the privacy of individuals other than the applicant; and that it could reasonably be expected to have a detrimental effect on the Health Service's ability to obtain confidential information about patients to assist in their treatment.
27. There are four factors that I have identified as favouring disclosure of the Information in Issue. However, I have afforded significant weight only to the factor relating to providing the applicant with access to his personal information. I consider that the other three factors relating to accountability, transparency and fair treatment should be afforded low weight as the Information in Issue does not provide a greater understanding of the reasons for the applicant's medical treatment beyond that which is contained in information already released to the applicant.
28. I consider that the nondisclosure factors which seek to preserve the privacy of third parties and the ability of the Health Service to obtain confidential information from persons associated with the patient carry a greater weight than the factors identified in favour of disclosure. I am therefore satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

²⁰ Schedule 4, part 3, item 16 of the RTI Act.

DECISION

29. For the reasons set out above, I vary the decision under review by finding that disclosure of the Information in Issue would, on balance, be contrary to the public interest under section 47(3)(b) and section 49 of the RTI Act. The Health Service is therefore entitled to refuse access to the Information in Issue under section 67(1) of the IP Act.
30. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Clare Smith
Right to Information Commissioner

Date: 24 August 2015

APPENDIX

Significant procedural steps

Date	Event
12 January 2015	The Health Service received the access application from the applicant.
16 January 2015	The applicant validated the access application by providing ID to the Health Service.
20 February 2015	The Health Service issued a decision to the applicant.
17 March 2015	The applicant applied to OIC for external review.
17 March 2015	OIC made preliminary inquiries of the Health Service and requested copies of the relevant documents.
20 March 2015	The Health Service provided OIC with requested documents.
24 March 2015	OIC received written submissions from the applicant.
26 March 2015	OIC advised the applicant and the Health Service that it had accepted the external review application. OIC requested that the Health Service provide copies of the Information in Issue.
9 and 10 April 2015	OIC received written submissions from the applicant (2 letters).
16 April 2015	The Health Service provided OIC with copies of the Information in Issue.
29 April to 10 June 2015	OIC received written submissions from the applicant on 29 April; 22 May; 27 May; 2 June; and 10 June 2015.
15 June 2015	OIC conveyed a written preliminary view to the applicant and the Health Service that disclosure of the Information in Issue would, on balance, be contrary to the public interest.
23 June 2015	Lengthy telephone conference between OIC and the applicant discussing OIC's preliminary view.
30 June 2015	The Health Service advised it accepted OIC's preliminary view.
7 July 2015	OIC received written submissions from the applicant. The applicant requested a 3 week extension within which to provide a further submission.
8 July 2015	OIC wrote to the applicant granting the extension and further explaining the role of the OIC.
14 July 2015	OIC received written submissions from the applicant.
16 July 2015	OIC wrote to the applicant in response to issues raised in his submissions.
20 July 2015	OIC received a phone call and facsimile from the applicant containing an addendum to his submissions.
21 July 2015	OIC received further written submissions from the applicant.