



Decision and Reasons for Decision

Citation: *V12 and Gold Coast Hospital and Health Service* [2019] QICmr 57 (10 December 2019)

Application Number: 314462 and 314616

Applicant: V12

Respondent: Gold Coast Hospital and Health Service

Decision Date: 10 December 2019

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - UNLOCATABLE AND NONEXISTENT DOCUMENTS - applicant contends additional documents exist - whether agency has taken all reasonable steps to locate documents but the documents cannot be found or do not exist - sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - legal professional privilege - communications between agency staff and legal advisers - whether the information would be privileged from production in a legal proceeding on the ground of legal professional privilege - whether the improper purpose exception to legal professional privilege is enlivened - sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - documents relating to the applicant and their interactions with the agency - personal information and privacy - agency's management functions - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. This decision relates to two separate access applications made by the applicant to the Gold Coast Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**).
2. In the **First Application**, which is the subject of external review 314462, the applicant applied¹ for access to:

All types of communications - to and from [a named employee of the Health Service] about [the applicant] or referring to [the applicant].

All types of communications - to and from [a named employee of the Health Service] about [the applicant] or referring to [the applicant] especially communications involving any of the following: OHO, OIC, CCC, [three named agency employees], OCP, Qld Ombudsman, [two named Health Service employees] QPS, [seven named Health Service employees].

3. The Health Service located 142 pages and decided² to refuse access in full to 48 pages and parts of 48 other pages.
4. In the **Second Application**, which is the subject of external review 314616, the applicant applied³ for access to:

All emails to and from [three named employees of the Health Service] about [the applicant] or referring to [the applicant's] matters, for the time period 20/04/2014 - 11/04/2019.

5. The Health Service located 8 pages and decided⁴ to refuse access to parts of 3 pages.
6. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's two decisions which refused access to information and raised concerns about the sufficiency of the searches conducted by the Health Service.
7. During the course of the external reviews, OIC negotiated with the Health Service for the release to the applicant of further information within the located documents.⁶
8. In addition, as a result of further searches in response to the applicant's sufficiency of search concerns, the Health Service located an additional 101 pages (**Additional Documents**) responding to the First Application and agreed to release some of this information to the applicant.
9. For the reasons set out below, I:

- vary the Health Service's decision in external review 314462 by finding that:
 - access to further documents may be refused on the basis that they are nonexistent or unlocatable
 - access to information may variously be refused on the grounds that it comprises:

¹ Application dated 11 January 2019.

² Decision subject of external review 314462 dated 18 February 2019.

³ Application dated 10 April 2019.

⁴ Decision subject of external review 314616 dated 17 May 2019.

⁵ For external reviews 314462 and 314616, the applications for external review are dated 18 February 2019 and 17 May 2019 respectively.

⁶ Email from the Health Service dated 4 September 2019 in response to correspondence from OIC dated 28 August 2019.

- exempt information on the basis that it is subject to legal professional privilege; or
 - information the disclosure of which would, on balance, be contrary to the public interest
- affirm the Health Service's decision in external review 314616 by finding that:
 - access to further documents may be refused on the basis that they are nonexistent or unlocatable
 - access to information may be refused on the ground that it comprises information the disclosure of which would, on balance, be contrary to the public interest.

Background

10. Significant procedural steps relating to these external reviews are set out in the Appendix.

Reviewable decision

11. The decisions under review in external reviews 314462 and 314616 are the Health Service's decisions dated 18 February 2019 and 17 May 2019 respectively.

Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).
13. The applicant provided extensive submissions during the two reviews. I have considered all this material and have included in this decision only those parts which I consider have relevance to the issues to be determined in these external reviews.

Information in issue

14. As noted at paragraphs 7 and 8 above, the Health Service agreed to release further information to the applicant⁷ and located the Additional Documents, agreeing to release some of this information to the applicant.⁸ Thus, that information is no longer in issue in these reviews.
15. The remaining **Information in Issue** is set out at paragraphs 35, 47 and 48 below.

Issues for determination

16. The issues arising for determination in these external reviews are whether:
 - further documents sought are nonexistent or unlocatable; and
 - access to the Information in Issue may variously be refused on the grounds that:
 - it is exempt from disclosure on the basis it is subject to legal professional privilege (**Category A information**)

⁷ Contained within 33 pages (9-11, 14-15, 17-18, 20, 22-23, 25, 28, 34, 37, 40, 42, 44-45, 48-49, 58-59, 61, 63, 72-73, 77, 83-84, 89, 111, 120 and 128) and parts of 58 pages (1-5, 39, 62, 64-71, 85-88, 90-110, 112-119, 121-127, 129, 132 and 133) in relation to external review 314462 and 3 pages (3-4 and 8) in relation to external review 314616.

⁸ Contained within 43 pages (5, 7-8, 12, 14, 16-18, 21-22, 25, 29-31, 34-35, 37-38, 40-42, 46-47, 53-54, 58-59, 69-70, 76-78, 82-86, and 96-101) and parts of 51 pages (1-4, 6, 9-11, 13, 15, 19-20, 23-24, 26-28, 32-33, 36, 39, 43-45, 48-52, 55-57, 60-68, 71-75, 79-81, and 87-88).

- disclosure of the following types of information would, on balance, be contrary to the public interest:
 - other individuals' personal information (**Category B Information**); and
 - information relating to the Health Service's management of its staff (**Category C Information**).

Nonexistent or Unlocatable information

Relevant Law

17. Under the IP Act, an applicant has a general right to access documents of an agency to the extent they contain the individual's personal information.⁹ However, this right is subject to grounds for refusal of access.¹⁰ Under the *Right to Information Act 2009* (Qld) (**RTI Act**), access to a document may be refused if the document is nonexistent or unlocatable.¹¹
18. A document is nonexistent¹² if there are reasonable grounds to be satisfied that the document does not exist. A document is unlocatable¹³ if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found. Where circumstances that account for nonexistent and unlocatable documents are adequately explained by an agency, it will not be necessary for the agency to conduct additional searches.
19. On external review, if an applicant contends that all relevant documents have not been located, then the applicant must show there are reasonable grounds to believe that the agency or Minister has not searched properly to locate all documents. A mere assertion that more documents should have been created and/or located is not sufficient to found a reasonable belief as to the existence of further relevant documents.

Findings

First Application

20. In seeking an external review of the First Application, the applicant submitted:¹⁴

There are attachments missing...there should be emails, texts or discussions by [two named Health Service employees]...there should be notes on calls...the reviews by other radiologists... and emailed opinions of [named doctors] CT report...are missing...there should be a CT review report.

21. I note that in response to the access application, both named Health Service employees were requested to conduct searches for documents relevant to the First Application. As a result of these searches, 142 pages were located and considered in the Health Service's decision.
22. During the course of the external review, and in response to the applicant's specific sufficiency of search concerns, the Health Service conducted further searches, with the

⁹ Section 40 of the IP Act.

¹⁰ Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the RTI Act.

¹¹ Sections 47(3)(e) and 52(1) of the RTI Act.

¹² Section 52(1)(a) of the RTI Act.

¹³ Section 52(1)(b) of the RTI Act.

¹⁴ Email dated 18 February 2019 at 6:10pm.

assistance of Queensland Health IT,¹⁵ of all electronic correspondence using the applicant's full name as the search term. These searches located an additional 83 pages.¹⁶

23. In relation to the applicant's specific concern about attachments missing from documents located and considered in the Health Service's decision about the First Application, the Health Service's further searches during the external review located 18 pages comprising these attachments.¹⁷
24. The Health Service submitted¹⁸ that it *'is not surprising'* that no further information was located, other than as set out at paragraphs 22 and 23 above, as *'the large majority of patient information and correspondence pertaining to patients is contained on the patient's medical records.'* Further,¹⁹ *'it is highly unlikely that [the two named Health Service employees] communicated directly with external agencies.'*
25. I acknowledge the information management practices and processes of the Health Service generally, the Health Service's submissions about the practices and processes of its employees and the breadth of the searches conducted. In the absence of evidence pointing to the existence of further documents, I am satisfied that all reasonable searches for documents responding to the First Application, including attachments, emails, text messages and discussions, have been conducted, and that no further documents exist.

Second Application

26. In seeking an external review of the Second Application, the applicant submitted:²⁰

Highly inadequate searches... [the first named Health Service employee] was investigated many times so for there to be no email by [them] is unbelievable. [The second named Health Service employee] was reported for sexually assaulting me yet not a single email from [them]...
27. I note that in response to the Second Application, the Health Service conducted searches of the email accounts of the three named Health Service employees, with the assistance of Queensland Health IT. As a result of these searches, 8 pages were located and considered in the Health Service's decision.
28. On 16 October 2019, Assistant Information Commissioner Rickard conveyed a preliminary view to the applicant indicating that it appeared on the face of the documents located and searches conducted by the Health Service that no reasonable basis existed to require the Health Service to undertake further searches. In response, the applicant submitted:²¹

You did not consider the tendency and prolific history of crime, corruption, patient rape, victimisation, and cover up by this hospital.

They need much greater transparency.

¹⁵ The Health Service's submission dated 12 July 2019 states: *'Queensland Health IT are best suited to conduct these searches as they are able to remotely search all electronic correspondence held by Queensland Health staff for the designated search term, being the full name of the applicant. This includes deleted or archived correspondence. This search method is considered more reliable than contacting individuals directly and requesting they conduct their own searches...'*

¹⁶ Comprising pages 1-83 of the Additional Documents.

¹⁷ Comprising pages 84-101 of the Additional Documents.

¹⁸ Submission dated 12 July 2019.

¹⁹ Submission dated 12 July 2019.

²⁰ Email dated 17 May 2019 at 2:24pm (for 314616).

²¹ Emailed submissions dated 16 October 2019 at 4:55 pm.

The lawyers are concealing the methods communicated with and by those medical practitioners investigated.

You needed to find out if the lawyer conducting the processing tricked me into a scope that deliberately excluded the communication methods used in my complaints of rapes and torture and serious crimes in that hospital.

EMR is not the main method of communication.

...I do not accept these are sufficient searches or that the sources where my data is held has been honestly disclosed.

...

YOU HAVE NOT UNCOVERED THE METHOD OF COMMUNICATION USED BY DOCTORS AND NURSES WHEN THEY ARE DISCUSSING BEING REPORTED OR CONSPIRING TO CAUSE UNLAWFUL WOUNDING ON A COMPLAINANT PATIENT.

This is unreasonable and your faith in [the Health Service] in the face of continuous serious breaches of ethics and predatory conduct shows bias and Wednesbury unreasonableness.

...

[Named Health Service employee] is not a professor and has never published anything. [They have] a political honorary title only. Do not refer to [them] as Professor...

[Named Health Service employee] showed [they] emailed continuously and ran a conspiracy with CCC, OHO ..., and QHRC...

[Named Health Service employee] made fun of patients raped inside [their] hospital, when [they] had one raped patient, who was raped inside the hospital on multiple separate occasions spanning years criminally prosecuted despite [their] being suicidal on admission to the hospital BEFORE being raped.

These grubs do not deserve the trust to turn in their text messages and diary entries themselves.

It beggars belief that there are no records showing how they organised the ... corruption shown by their group email to have a corrupt regulator clear them and undermine treatment and redress for harmed patients, and families of the dead.

[Named Health Service employee] asked CCC to treat me as a vexatious complainant. [Named Health Service employee] has shown contempt for patients and the public deserve to know.

[Named Health Service employee] and lawyers were concerned about my PID and requests for the draft decision by OHO into 28 baby deaths at GCUH in 9 months, which was the work of the perpetrator writing up the decision into the regulator investigating them. These documents are missing.

29. It is my understanding that the applicant's submissions contend that the Health Service, and particular employees within the Health Service, are deliberately withholding information that is being sought by the applicant. However, on careful consideration of the information before me, including the information released to the applicant and the information in issue, the applicant's contentions do not appear to be supported. Further, there is nothing before me to suggest that the Health Service's submissions about its searches and its practices and procedures relating to information management (as set out at paragraph 24 above) are not credible. In these circumstances, I am satisfied that all reasonable searches for documents responding to the Second Application have been conducted, and that it is not necessary for any further searches to be undertaken.

30. Accordingly, I find that access to further documents responsive to the First and Second Applications may be refused on the basis that the documents sought are nonexistent.

Legal professional privilege - Category A information

Relevant law

31. Access to information may also be refused where information is exempt.²² Information will be exempt where it would be privileged from production in a legal proceeding on the basis that it is subject to legal professional privilege.²³
32. Establishing whether legal professional privilege applies to information at common law requires that the information must comprise a communication:
- made in the course of a lawyer-client relationship
 - that was and remains confidential; and
 - which was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.²⁴
33. Legal professional privilege can extend to copies of non-privileged documents where they are attached to privileged communications,²⁵ and to internal client communications repeating legal advice, whether verbatim or in substance, or gathering information necessary in order to seek legal advice.²⁶
34. When the requirements set out in paragraph 32 above are met, legal professional privilege is established. However, qualifications and exceptions to privilege²⁷ may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore whether it is exempt under the RTI Act.

Findings

35. While the legislation²⁸ prevents me from providing a detailed description of information which is claimed to be exempt, I can say that the Category A Information²⁹ comprises:
- advice which was sought or received from a suitably qualified and independent legal advisor
 - the communications were between staff of the Health Service and in-house legal counsel or external legal counsel, and were for the dominant purpose of seeking and/or providing legal advice; and
 - there is no evidence indicating that the communications were not confidential or that privilege has otherwise been waived.

²² Section 47(3)(a) of the RTI Act.

²³ Schedule 3, section 7 of the RTI Act.

²⁴ *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49 and *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at [9].

²⁵ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 (**Propend**).

²⁶ *Brambles Holdings v Trade Practices Commission (No. 3)* (1981) 58 FLR 452 at 458-459; *Komacha v Orange City Council* (Supreme Court of New South Wales, Rath J, 30 August 1979, unreported).

²⁷ Such as waiver or improper purpose.

²⁸ Section 121 of the IP Act and section 108 of the RTI Act.

²⁹ Consisting of page 134 of the initial documents and pages 89-95 of the Additional Documents in relation to External review 314462.

36. In seeking an external review, the applicant submitted:³⁰

If medical treatment caused me a disability and is still untreated this should not be hidden under the guise of legal privilege as a hospital has mandatory reporting of doctor errors to the... patient in its and doctors' code of ethics.

37. During the course of the external review, the applicant further submitted:³¹

The [Health Service] lawyers are concealing the majority of my IP. They are furthering crime so I do not accept privilege applies, I do not accept that any method this hospital uses should be secret...

The fact that so many pages were hidden by senior inhouse lawyers ... goes to show a much more stringent pro disclosure decision should have been made.

The fact that only lawyers are allocated to my IP applications indicates a cover up.

38. It appears from the applicant's submissions at paragraphs 36 and 37 above that the applicant is suggesting that the application of legal professional privilege to the Category A Information would be in furtherance of an improper purpose (concealing corrupt or criminal actions).

39. For the improper purpose exception to legal professional privilege to apply a communication must be made in pursuit of an illegal or improper purpose.³² In summarising an established line of relevant case law the Assistant Information Commissioner in *Secher and James Cook University*³³ explained that:

This exception operates to displace legal professional privilege where evidence exists that the relevant client has embarked on a deliberate course of action knowing that the proposed actions were contrary to law, and has made the relevant communications in furtherance of that illegal or improper purpose.

.... In establishing improper purpose, the standard of proof is high. The High Court has observed that it "is a serious thing to override legal professional privilege where it would otherwise be applicable" and as a result "vague or generalised contentions of crimes or improper purposes will not suffice."³⁴

40. I have carefully considered the Category A Information and the applicant's submissions at paragraphs 36 and 37 above. I am satisfied that the contents of the Category A Information do not evidence the applicant's view that Health Service employees, including those employed as legal advisors, obtained or gave legal advice for the purpose of hiding corruption, reprisals or otherwise illegal activity.
41. There is no evidence in the information before me that the particular communications that comprise the Category A Information were made in preparation for, or in furtherance of, an illegal or improper purpose. Accordingly, I find that the improper purpose exception does not apply to preclude the application of legal professional privilege to the Category A Information.
42. On the basis of the above, I find that the Category A Information is subject to legal professional privilege; and that improper purpose is not made out; and that the

³⁰ Emailed application for external review dated 18 February 2019 at 6:10 pm.

³¹ Emailed submissions dated 16 October 2019 at 4:55 pm.

³² *R v Bell; Ex parte Lees* (1980) 146 CLR 141.

³³ (Unreported, Queensland Information Commissioner, 6 June 2012).

³⁴ See *Shaw and Department of Justice and Attorney-General* [2014] QICmr 33 at [16]; see also *Propend* at 591-592 and *Murphy and Treasury Department* (1998) 4 QAR 446 at 31-43.

information is therefore exempt information under schedule 3, section 7 of the RTI Act and access to it may be refused.

43. Where information is found to be exempt, there is no scope under the legislation to take into account public interest arguments because Parliament has decided that it would be contrary to the public interest to disclose exempt information. In addition, the Information Commissioner does not have the power to direct that access be given to information that is found to be exempt.³⁵

Contrary to public interest - Category B and C information

Relevant law

44. Access to documents may also be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.³⁶
45. 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.³⁷
46. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:³⁸
 - identify factors irrelevant to the public interest and disregard them
 - 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.

Findings

47. The Category B information comprises mobile telephone numbers,³⁹ and names of public service officers in the context of their direct email addresses.⁴⁰
48. The Category C information comprises information relating to the management of staff.⁴¹

³⁵ Section 118(2) of the IP Act.

³⁶ Section 47(3)(b) of the RTI Act.

³⁷ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

³⁸ Section 49(3) of the RTI Act.

³⁹ Consisting of:

- External review 314462: pages 39, 62, 64-71, 86-88, 92-95, 98, 100-102, 106-109, 112, 114-117, 121-124 and 129 of the initial documents and pages 4, 36, 39, 43, 45, 49, 52, 57, 60, 63, 68, 74 and 88 of the Additional Documents; and
- External review 314616: page 8.

⁴⁰ Consisting of:

- External review 314462: pages 1-2, 4, 39, 62, 64-71, 86-88, 92-95, 98, 100-102, 106-109, 112, 114-117, 121-124, 129 and 132 of the initial documents and pages 1-3, 6, 9-11, 13, 15, 19-20, 23-24, 26-28, 32, 44, 48, 50-51, 55, 56, 60-62, 64-67, 71-73, 75, 79-81 and 87-88 of the Additional Documents; and
- External review 314616: page 8.

⁴¹ Consisting of:

- External review 314462: pages 85-86, 88, 90-92, 96-97, 99, 103-106, 109-110, 113-114, 118-119, 124-127 and 133 of the initial documents and page 33 of the Additional Documents; and
- External review 314616: page 4.

Irrelevant factors

49. No irrelevant factors have been taken into account in my decision.

Factors favouring disclosure

50. The Health Service must be transparent and accountable in how it deals with members of the public. However, I do not consider that the disclosure of the Category B and C Information would advance the Health Service's accountability and transparency in any significant way, particularly in light of the information which has been disclosed to the applicant in response to the First and Second Applications. Also, as regards the Category B Information, I note that it comprises no more than email and mobile contact details of public service officers and the information which has been disclosed to the applicant includes the names, position description (including work area) and land line phone numbers of those public service officers. I therefore afford the accountability and transparency factors favouring disclosure⁴² low weight.
51. I also consider that disclosure of the Category C Information would enhance the accountability and transparency of the Health Service or reveal reasons for a government decision and background information that informed the decision.⁴³ However, I am satisfied that the weight to be given to each of these factors is reduced significantly by the information already disclosed to the applicant. Accordingly, I afford these factors low weight in the circumstances.

Factors favouring nondisclosure

52. The RTI Act recognises that disclosing an individual's personal information⁴⁴ to someone else can reasonably be expected to cause a public interest harm⁴⁵ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁶
53. The Category B and C Information appear in documents about the applicant but comprise solely the personal information of third parties. While this information relates to public service officers, I do not consider that it is routine work information.⁴⁷ Disclosure of the Category B Information would allow officers to be contacted directly outside of work hours, thereby permitting potential contact with a public service officer when off duty and/or engaged in private activity. Disclosure of the Category C Information would disclose private details about support available and/or provided to staff in relation to matters outside their routine work matters. I consider that disclosure of information of the nature of the Category B and C information gives rise to a reasonable expectation of intrusion into the officers' private lives or 'personal sphere'. Accordingly, I afford these two factors favouring nondisclosure moderate weight for both the Category B and C Information.

⁴² Schedule 4, part 2, items 1 and 3 of the RTI Act.

⁴³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁴ *Personal information* is defined at section 12 of the IP Act: '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.'

⁴⁵ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁶ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁷ *Routine personal work information* is information that is solely and wholly related to the routine day to day work duties and responsibilities of a public sector employee, such as the fact of authorship of a work document or a work responsibility. Generally, it is not considered to be contrary to the public interest to disclose routine personal work information. However, it is considered to be contrary to the public interest to disclose sensitive personal information of public sector employees, such as complaints made by or about a public sector employee and reasons why an officer is accessing leave entitlements of any kind or when they have taken, or intend to take, leave.

54. The nature of the Category C Information also gives rise to factors favouring nondisclosure where disclosure could reasonably be expected to prejudice the management function of an agency,⁴⁸ and cause a public interest harm where disclosure could have a substantial adverse effect on the management by an agency of an agency's staff.⁴⁹ The Category C Information comprises information relating to the management of staff, disclosing private details about support available and/or provided to staff of the Health Service. If this type of information is disclosed under the IP Act, where there can be no restriction on its use, dissemination or republication, I consider that it could reasonably be expected to make staff reluctant to seek support and, in turn, prejudice the Health Service's ability to manage its staff. In these circumstances, I am satisfied that disclosure of the Category C Information would cause both a public interest harm and prejudice to the Health Service's management functions. Accordingly, I afford significant weight to each of these nondisclosure factors.

Balancing the public interest

55. I have considered the pro-disclosure bias in deciding access to information.⁵⁰ On balance, I find that the nondisclosure factors outweigh the disclosure factors in relation to the Category B and C Information and accordingly, access to the Category B and C information may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.

DECISION

56. For the reasons set out above, I:
- vary the Health Service's decision in external review 314462 regarding the First Application by finding that:
 - access to further documents may be refused on the basis that they are nonexistent or unlocatable
 - access to information may variously be refused on the grounds that it comprises:
 - exempt information on the basis that it is subject to legal professional privilege; or
 - information the disclosure of which would, on balance, be contrary to the public interest
 - affirm the Health Service's decision in external review 314616 regarding the Second Application by finding that:
 - access to further documents may be refused on the basis that they are nonexistent or unlocatable
 - access to information may be refused on the ground that it comprises information the disclosure of which would, on balance, be contrary to the public interest.
57. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 10 December 2019

⁴⁸ Schedule 4, part 3, item 19 of the RTI Act.

⁴⁹ Schedule 4, part 4, section 3(c) of the RTI Act.

⁵⁰ Section 44 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
18 February 2019	OIC received the applicant's application for external review 314462.
20 February 2019	OIC notified the Health Service and the applicant that the application for external review 314462 had been received and requested procedural documents from the Health Service. OIC received emailed submissions from the applicant.
21 February 2019	OIC received emailed submissions from the applicant.
27 February 2019	OIC received the requested documents from the Health Service in relation to external review 314462.
6 March 2019	OIC received emailed submissions from the applicant.
7 March 2019	OIC received emailed submissions from the applicant. OIC notified the Health Service and the applicant that the application for external review 314462 had been accepted, and requested the following from the Health Service: <ul style="list-style-type: none"> • a copy of the acknowledgement letter sent to the applicant • a copy of the documents located; and • any records of the searches conducted.
8 March 2019	OIC received emailed submissions from the applicant.
13 March 2019	OIC received the requested documents from the Health Service in relation to external review 314462.
15 March 2019	OIC received two emailed submissions from the applicant.
29 March 2019	OIC conveyed a written preliminary view to the Health Service in relation to external review 314462.
3 April 2019	OIC received a submission from the Health Service in relation to external review 314462.
4 April 2019	OIC sought a further submission from the Health Service in relation to external review 314462. OIC received emailed submissions from the applicant.
11 April 2019	OIC received a submission from the Health Service in relation to external review 314462.
15 April 2019	OIC received emailed submissions from the applicant.
26 April 2019	OIC received emailed submissions from the applicant.
17 May 2019	OIC received the applicant's application for external review 314616. OIC received two emailed submissions from the applicant.
20 May 2019	OIC received emailed submissions from the applicant.
21 May 2019	OIC notified the Health Service and the applicant that the application for external review 314616 had been received and requested procedural documents from the Health Service.
22 May 2019	OIC received the requested documents from the Health Service in relation to external review 314616.

Date	Event
28 May 2019	OIC received emailed submissions from the applicant.
30 May 2019	OIC conveyed a written preliminary view to the Health Service in relation to external review 314462.
31 May 2019	OIC notified the Health Service and the applicant that the application for external review 314616 had been accepted, and requested the following from the Health Service: <ul style="list-style-type: none"> • a copy of the documents located; and • any records of the searches conducted.
3 June 2019	OIC received the requested documents from the Health Service in relation to external review 314616.
18 June 2019	OIC received emailed submissions from the applicant.
12 July 2019	OIC received a submission from the Health Service in relation to external review 314462.
25 July 2019	OIC sought a further submission from the Health Service in relation to external review 314462.
1 August 2019	OIC received a submission from the Health Service in relation to external review 314462.
5 August 2019	OIC received emailed submissions from the applicant.
8 August 2019	OIC received emailed submissions from the applicant.
26 August 2019	OIC received emailed submissions from the applicant.
27 August 2019	OIC received emailed submissions from the applicant.
28 August 2019	OIC conveyed a written preliminary view to the Health Service in relation to both external reviews. OIC received two emailed submissions from the applicant.
4 September 2019	OIC received a submission from the Health Service in relation to both external review reviews.
9 September 2019	OIC received emailed submissions from the applicant.
11 September 2019	OIC received emailed submissions from the applicant.
12 September 2019	OIC received emailed submissions from the applicant.
13 September 2019	OIC received emailed submissions from the applicant.
17 September 2019	OIC received emailed submissions from the applicant.
19 September 2019	OIC received emailed submissions from the applicant.
25 September 2019	OIC wrote to the applicant about their external reviews.
26 September 2019	OIC received emailed submissions from the applicant.
16 October 2019	OIC conveyed a written preliminary view to the applicant in relation to both external reviews. OIC received two emailed submissions from the applicant.
17 October 2019	OIC asked the Health Service to release further information to the applicant as agreed.
23 October 2019	OIC received the Health Service's confirmation that the further information had been sent to the applicant.