



Decision and Reasons for Decision

Citation:	<i>O83 and Office of the Health Ombudsman [2023] QICmr 20 (25 May 2023)</i>
Application Number:	316948
Applicant:	O83
Respondent:	Office of the Health Ombudsman
Decision Date:	25 May 2023
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – request for access to documents relating to complaint about medical treatment – personal details of a medical practitioner – privacy – whether disclosure would, on balance, be contrary to the public interest – section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Office of the Health Ombudsman (**OHO**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to various documents relating to a complaint she had made to OHO about medical treatment.¹
2. OHO located a file of documents relating to the applicant's complaint and decided to:
 - release 44 pages in their entirety
 - grant partial access to one page subject to the redaction of personal information of a medical practitioner; and
 - refuse access to internal OHO emails on the basis that disclosure would, on balance, be contrary to the public interest.²
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of OHO's decision.³ On external review, OHO agreed to release some of the refused information to the applicant, including the internal emails.

¹ Access application received 25 July 2022.

² Decision dated 13 September 2022. The decision stated that access to four pages were refused on this ground but on review, OHO clarified that the refused emails comprised five pages.

³ Email dated 10 October 2022, followed by submissions dated 30 October 2022.

4. For the reasons set out below, I affirm OHO's decision to refuse access to the medical practitioner's personal information on the basis that disclosure would, on balance, be contrary to the public interest.⁴

Background

5. The decision under review is OHO's decision dated 13 September 2022.
6. Significant procedural steps in this external review are set out in the Appendix.
7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including the footnotes and the Appendix).
8. The applicant has made submissions to OIC which raise issues that are beyond OIC's external review jurisdiction as they go to the applicant's dissatisfaction with OHO's handling of her complaint and other processes which she is pursuing or intends to undertake. During the review, OIC advised the applicant of the limits of OIC's jurisdiction, including that OIC cannot investigate complaints about the conduct of agencies.⁵ The applicant's submissions also provide details about her medical conditions and other complaints about the health system. I have considered the applicant's submissions to the extent they are relevant to the issue for determination in this review in the context of the information remaining in issue.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁶ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).⁷ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between similar pieces of Victorian legislation⁸ that '*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*'.⁹

Information in issue

10. As set out above, OHO agreed to release some information to the applicant during the review. The information remaining in issue is therefore, limited to redacted parts of a one-page extract from OHO's Practitioner Registration Database. The redacted parts comprise the personal details of a medical practitioner, operating in a private medical clinic, who was the subject of a complaint made by the applicant, including their date of birth, residential address, private contact details and some historical qualification information (**Practitioner Details**).

⁴ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁵ Letters dated 8 November 2022 and 2 March 2023.

⁶ Section 21(2) of the HR Act.

⁷ *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]. I further note that OIC's approach to the HR Act 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 McGill saw '*no reason to differ*' from this position).

⁸ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁹ *XYZ* at [573].

Issue for determination

11. The issue for determination is whether access to the Practitioner Details may be refused under the IP Act on the basis that disclosure would, on balance, be contrary to the public interest.¹⁰

Relevant law

12. An individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹¹ However, this right is subject to some limitations.¹² Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹³
13. 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.
14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹⁴
 - identify and disregard any irrelevant factors
 - identify any factors favouring disclosure
 - identify any factors favouring nondisclosure; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
15. Schedule 4 of the RTI Act non-exhaustively lists factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these factors,¹⁵ together with all other relevant information, in reaching my decision. I have also applied the IP Act's pro-disclosure bias¹⁶ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.¹⁷

Findings

16. I have taken no irrelevant factors into account in arriving at this decision.

Factors favouring disclosure

17. The RTI Act recognises that the public interest will favour disclosure of information which could reasonably be expected to:

¹⁰ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹¹ Section 40(1)(a) of the IP Act.

¹² 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 RTI Act were the document to be the subject of an access application under that Act.

¹³ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

¹⁴ Section 49(3) of the RTI Act.

¹⁵ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factors concerning protection of the environment and the maintenance of peace and order (schedule 4, part 2, items 13 and 15 of the RTI Act).

¹⁶ Section 64 of the IP Act.

¹⁷ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

- promote open discussion of public affairs and enhance the Government's accountability;¹⁸ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.¹⁹
18. As set out above, the Practitioner Details comprise the personal details of a medical practitioner who was the subject of the applicant's complaint to OHO. I acknowledge that the IP Act is to be administered with a pro-disclosure bias, and accept that disclosing the Practitioner Details would provide the applicant with a full and unredacted record of what is held on the OHO file in relation to her complaint.²⁰ However, given the Practitioner Details are confined to personal details of another individual, disclosure of such limited details would at its highest, serve to demonstrate the type of details which OHO retains about the particular practitioner, thereby only marginally enhancing OHO's accountability and transparency.
19. I am satisfied that disclosing the details redacted from the Practitioner Registration Database extract would not provide any insight into the steps taken by OHO in investigating the applicant's complaint, nor reveal considerations of OHO in making its decisions on actioning the complaint. To the extent such information is held by OHO, it has already been disclosed to the applicant in the information released to date under the IP Act, and through this review process. While I acknowledge that the applicant considers the released information demonstrates inadequacy of OHO's investigation, there is no evidence available to support a finding that disclosure of the Practitioner Details would enhance OHO's accountability and transparency to any great degree. Accordingly, I afford these factors²¹ low weight.
20. As noted above, the applicant's submissions²² demonstrate that she is dissatisfied with OHO's handling of her complaint and considers their investigation was inadequate. To support her external review application, the applicant submitted that:²³
- They have refused access to 4 pages, one has a doctors personal information, they can block that out but have chosen not to release at all. They said it is contrary to public interest.*
- They have not given me any explanation of why they would not let me send evidence to them (that was unable to be attached via the web form) even though I offered it in writing and via phone a number of times.*
- They will not explain or show proof of the investigation, I have grave doubts they investigated at all.*
21. In view of the applicant's submissions as to the inadequacy of OHO's investigation, I have considered whether disclosure could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;²⁴ or
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.²⁵

¹⁸ Schedule 4, part 2, item 1 of the RTI Act.

¹⁹ Schedule 4, part 2, item 11 of the RTI Act.

²⁰ The applicant has been granted full access to all other pages located by OHO in response to her application.

²¹ Listed at paragraph 17.

²² Emails dated 30 October 2022, 11, 19 and 26 March 2023 and submission provided by telephone on 14 March 2023.

²³ Submission dated 30 October 2022.

²⁴ Schedule 4, part 2, item 5 of the RTI Act.

²⁵ Schedule 4, part 2, item 6 of the RTI Act.

22. The applicant's complaint was made in connection with side effects she suffered from a vaccination and subsequent medical treatment. In this context, I have also considered whether disclosure of the Practitioner Details could reasonably be expected to:
- contribute to positive and informed debate on important issues or matters of serious interest;²⁶ and
 - reveal health risks or measures relating to public health and safety.²⁷
23. However, I am unable to find that the factors identified in the preceding two paragraphs apply in this case because the Practitioner Details are limited to personal and contact details of a private sector medical practitioner. I am satisfied that those details:
- do not disclose any evidence of misconduct or negligent, improper, or unlawful conduct, by an agency or official, nor would they allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official; and
 - would not, if disclosed, contribute to debate on important issues or matters of serious interest, nor reveal any health risks or public health and safety measures.
24. I have also considered whether disclosure could reasonably be expected to contribute to the administration of justice for the applicant.²⁸ For this factor to apply, the applicant must be able to demonstrate that:
- loss, damage, or some kind of legal wrong has been suffered, in respect of which a legal remedy is, or may be, available
 - she has a reasonable basis for seeking to pursue the remedy; and
 - disclosure of the Practitioner Details would assist her to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.²⁹
25. The applicant has made submissions regarding the impact which the vaccination and subsequent medical treatment has had on her health, personal life, and employment. However, based on the information available to me, I am unable to identify a legal remedy which is, or may be available to her, which would require disclosure of the Practitioner Details in order to pursue or evaluate the availability or prospects of a remedy. I also observe that the applicant is aware of the name of the medical practitioner due to her having made a complaint to OHO about the practitioner. For these reasons, I am satisfied that the administration of justice factor does not apply.³⁰

Factors favouring nondisclosure

26. The RTI Act recognises that disclosing an individual's *personal information*³¹ to a person other than the individual can reasonably be expected to cause a public interest harm.³²
27. The RTI Act also recognises that the public interest will favour nondisclosure of information that could reasonably be expected to prejudice the protection of an individual's right to privacy.³³ While the concept of privacy is not defined in the IP Act or

²⁶ Schedule 4, part 2, item 2 of the RTI Act.

²⁷ Schedule 4, part 2, item 14 of the RTI Act.

²⁸ Schedule 4, part 2, item 17 of the RTI Act.

²⁹ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

³⁰ Schedule 4, part 2, item 17 of the RTI Act.

³¹ 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*'.

³² Schedule 4, part 4, section 6 of the RTI Act.

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

the RTI Act, it may be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.³⁴

28. The Practitioner Details are, as described in paragraph 10 above, the personal details of a medical practitioner. I am satisfied that the Practitioner Details comprise personal information as defined under the IP Act, and that disclosure of those details would cause a public interest harm by revealing the inherently personal and identifying details. I also find that they comprise part of the medical practitioner's private sphere, which an individual is entitled to keep free from intrusion. I find that both public interest factors should be afforded high weight in favour of nondisclosure.³⁵

Balancing the public interest

29. In the circumstances of this case, I am satisfied that disclosure of the Practitioner Details would only marginally enhance OHO's accountability and transparency and that those public interest factors can, therefore, only be afforded low weight. Balanced against the weight of the pro-disclosure factors is the much higher weight which I have afforded to protecting the personal information and safeguarding the privacy of the medical practitioner who was the subject of the applicant's complaint. I am satisfied that the nondisclosure factors are determinative and therefore, find that disclosure of the Practitioner Details would, on balance, be contrary to the public interest and access to the information may be refused on this basis.³⁶

DECISION

30. I affirm OHO's decision to refuse access to the Practitioner Details under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
31. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 25 May 2023

³⁴ 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 12 August 2008, at paragraph 1.56.

³⁵ Schedule 4, part 4, item 6 and part 3, section 3 of the RTI Act.

³⁶ Section 67(1) of the IP Act and sections 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
10 October 2022	OIC received an email from the applicant seeking external review.
30 October 2022	OIC received further information from the applicant, including submissions and a copy of OHO's decision.
31 October 2022	OIC requested preliminary documents from OHO.
1 November 2022	OIC received preliminary documents from OHO.
8 November 2022	OIC advised the applicant and OHO that the external review application had been accepted. OIC asked OHO to provide a copy of the information in issue.
18 November 2022	OIC received the information in issue from OHO.
9 February 2023	OIC conveyed a preliminary view to OHO which asked it to consider releasing some additional information.
13 February 2023	OHO responded to OIC's preliminary view and agreed to release additional information to the applicant.
2 March 2023	OIC requested OHO release the additional information to the applicant. OIC conveyed a preliminary view to the applicant regarding the remaining information in issue.
7 March 2023	OHO released additional information to the applicant.
11 March 2023	The applicant responded to OHO's release of additional information, copying in OIC.
14 March 2023	The applicant requested an extension of time to consider OIC's preliminary view and provided submissions to OIC verbally.
16 March 2023	OIC granted the applicant an extension of time.
19 March 2023	The applicant made written submissions to OIC.
24 March 2023	OIC wrote to the applicant to clarify the issues for determination and to outline the next steps in the process.
26 March 2023	The applicant made further written submissions and requested OIC make a formal decision to finalise the review.