



Decision and Reasons for Decision

Citation: R44 and Mackay Hospital and Health Service [2026] QICmr 154 (20 August 2026)

Application Number: 00022146

Applicant: R44

Respondent: Mackay Hospital and Health Service

Decision Date: 20 August 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DISCLOSURE NOT IN CHILD'S BEST INTERESTS - application on behalf of child by parent for access to child's hospital records - child subject to long-term guardianship order until 18 years of age under *Child Protection Act 1999* (Qld) - whether disclosure would be contrary to the best interests of the child - section 47(3)(c) and 50 of the *Right to Information Act 2009* (Qld)

DECISION

I vary¹ the reviewable decision of Mackay Hospital and Health Service (**Mackay HHS**) and find that access to the Information in Issue² may be refused on the ground that it comprises the child applicant's personal information, and disclosure would not be in the child's best interests.³ This means that no information is to be released to the child applicant. My reasons for the decision follow.



A Rickard
Assistant Information Commissioner

Date: 20 August 2026

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

² As defined in paragraph 6.

³ I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

REASONS FOR DECISION

Background

1. This review relates to an access application to Mackay HHS. The application was made for a child by their parent.⁴ For such applications, the applicant is taken to be the child, rather than the parent.⁵
2. The child was 7 years of age at the time of the access application. The parent applied⁶ on behalf of the child to access:

A complete copy of all Mackay Base Hospital medical records for [child], from 1 January 2023 to 10 September 2025 (including all clinical records, administrative records, test results, specialist consultations, autism related records, medication records, care plans, internal and external communication relating to treatment and care).

3. Mackay HHS decided⁷ to refuse access to the requested information on the ground that disclosure would, on balance, be contrary to the public interest.
4. The parent applied⁸ on behalf of the child to the Office of the Information Commissioner (**OIC**) for external review.
5. The child is subject to child protection orders made by the Children’s Court. Under these orders, the parent who made the application no longer has custody of the child, and the chief executive of the Department of Families, Seniors, Disability Services and Child Safety (**Department**) has been granted long-term guardianship under the *Child Protection Act 1999* (Qld).⁹

Information in issue

6. Mackay HHS located documents responsive to the access application (**Information in Issue**). While I cannot provide details about the Information in Issue it generally comprises medical records held by Mackay HHS about the child. The records concern observations about the child’s physical health, mental health, treatment history, clinical observations, assessments and interactions with healthcare providers.

⁴ Section 25(1) of the RTI Act. In addition to the access application that is addressed in this decision, the parent made further access applications to Mackay HHS on behalf of their four other children, and access applications to another hospital and health service on behalf of all five children. These nine applications are each the subject of separate external reviews involving the relevant child applicant and agency.

⁵ Section 25 and definition of ‘applicant’ in schedule 5 of the RTI Act.

⁶ Access application made 11 September 2025. Became *compliant* on 23 September 2025.

⁷ Decision dated 25 November 2025. This is the *reviewable decision* in this review. Despite having considered section 50 of the RTI Act, the decisions also undertook steps under section 49(3) of the RTI Act and concluded that access may be refused under section 47(3)(b), rather than section 47(3)(c) of the RTI Act.

⁸ External review application dated 30 November 2025.

⁹ Email from Mackay HHS dated 8 April 2026.

Issue for determination

7. The issue for determination on external review is whether access to the Information in Issue may be refused under section 47(3)(c) of the RTI Act on the ground it comprises the child's personal information, the disclosure of which would not be in the child's best interests under section 50 of the RTI Act.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information,¹⁰ as well as rights relating to children.¹¹ 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 RTI Act.¹² I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Relevant law

10. Section 25 of the RTI Act provides that an access application may be made for a child by the child's parent, and defines parent as follows:

parent—

Parent, of a child, is any of the following persons—

- (a) *the child's mother;*
- (b) *the child's father;*
- (c) *a person who exercises parental responsibility for the child, including a person who is granted guardianship of the child under the Child Protection Act 1999 or who otherwise exercises parental responsibility for the child under a decision or order of a federal court or a court of a State.*

11. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.¹³ While the legislation is to be administered with a pro-disclosure bias,¹⁴ the right of access is subject to certain limitations, including grounds for refusing access.¹⁵
12. Access may be refused to information under section 47(3)(c) of the RTI Act where:
 - the information is sought under an application made by or for a child
 - the information sought comprises the child's personal information; and
 - the disclosure of that information would not be in the child's best interests.¹⁶

¹⁰ Section 21 of the HR Act.

¹¹ Sections 21(2), 25 and 26 of the HR Act.

¹² *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) 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 (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).

¹³ Section 23 of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: see section 47(2)(a) of the RTI Act.

¹⁶ As explained in section 50 of the RTI Act.

13. When these three criteria are met, Parliament considers that disclosure would on balance be *contrary* to the public interest.¹⁷
14. Determining whether disclosure would not be in the *child's* best interests is not the same as determining whether disclosure would, on balance, be contrary to the *public* interest. Accordingly, the steps for considering whether disclosure would be contrary to the public interest in section 49(3) are not relevant.
15. In *FLK*,¹⁸ Judicial Member McGill confirmed the test in section 50(2) is to be determined objectively:

The question of whether disclosure of the information would or would not be in the best interests of the child is, I consider under s50(2) to be decided objectively, by reference to identifiable objective factors either advancing or damaging the interests of the child. Subsection (3), which applies where an access application has been made by a child personally, shows that the opinion of the child is not to be conclusive as to where the best interests of the child lie. That is consistent with the proposition that the test under subsection (2) is an objective one.

16. The RTI Act provides limited guidance as to what is to be considered in deciding whether disclosure of information would not be in the child's best interests.¹⁹
17. The 'best interests of the child' principle is set out in the United Nations' Convention on the Rights of the Child (1989) (**Convention**),²⁰ and has since been applied in Australia in a number of legal contexts, particularly in family law²¹ and administrative law.²² Courts have considered that 'best interests' is a multi-faceted test and incorporates the wellbeing of the child, all factors which will affect the future of the child, the happiness of the child, immediate welfare as well as matters relevant to the child's healthy development. The concept includes not only material wealth or advantage but also emotional, spiritual and mental wellbeing.²³

¹⁷ Section 50(2) of the RTI Act.

¹⁸ *FLK v Information Commissioner* [2021] QCATA 46 at [8].

¹⁹ Section 50(3) of the RTI Act provides that an agency must have regard to whether (a) the child has the capacity to understand the information and the context in which it was recorded and (b) make a mature judgement as to what might be in his or her best interests. However, this guidance is subject to an exception: '*unless the access application was made for the child*', as is the case in this review.

²⁰ Ratified by Australia in December 1990. This Convention provides that the best interests of the child is a 'primary consideration' in decisions concerning children and defines 'children' as everyone under 18 years.

²¹ For guidance, see section 60CC of the *Family Law Act 1975* (Cth). In the family law context, courts have recognised that the 'best interests of the child' is not a straightforward test – refer, for example, to *CDJ v VAJ* (1998) 197 CLR 172 at 219, where the High Court (in the majority judgment) noted that determining 'best interests' involved a '*discretionary judgement in respect of which judges can come to opposite but reasonable conclusions*'.

²² *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273.

²³ United Nations Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, available at I.A.5; see also *Q95 and Legal Aid Queensland* [2019] QICmr 38 (6 September 2019) at [48].

Findings

18. It is not in issue that the Information in Issue is sought under an application made by or for a child, nor that the Information in Issue comprises the child's personal information. The issue for consideration on external review is whether disclosure of the Information in Issue would not be in the child's best interests.²⁴
19. The parent made one submission to OIC at the time they sought this and other external reviews regarding the access applications they made on behalf of each of their children to Mackay HHS.²⁵ OIC communicated its preliminary view in the various reviews to the parent via one letter.²⁶ In response, the parent made one submission to OIC.²⁷
20. Given these procedural steps in common across the external reviews, and also noting the extent of the circumstances in common for the various child applicants, I adopt the reasoning set out in OIC's decision of *L87 and Mackay Hospital and Health Service*²⁸ (**L87**) regarding another of the child applicants, except where expressly modified below.
21. I adopt the reasoning at paragraphs 19 to 21 of L87 regarding the parent's ability to make an application on behalf of a child who is subject to a long-term guardianship order. I also adopt the reasoning at paragraphs 22 to 43 and 50 to 51 of L87 regarding whether disclosure would be in the child's best interest with respect to the child applicant in the present external review.
22. However, I do not adopt the reasoning regarding privacy interests of the child at paragraphs 44 to 49 of L87. This is because the child applicant in the present external review is of a different age to the child considered in L87. Instead, my reasons are as follows.

Privacy

23. I find that the child's privacy interests are deserving of considerable weight in this review, having regard to the sensitive nature of the Information in Issue and ongoing long-term guardianship order for the child.
24. There is no evidence before me to suggest that the child has given consent for their parent to seek information on their behalf or expressed any interest in sharing the relevant information with their parent. Accordingly, the practical effect of disclosure of the Information in Issue would be that the parent will access the child's sensitive medical information, without the child's knowledge or consent.
25. I have had regard to the fact that the child was 7 years of age at the time the access application was made by their parent on their behalf. There is no evidence before me about the child's maturity and whether they possess the understanding

²⁴ As explained in section 50 of the RTI Act.

²⁵ External review application dated 30 November 2025.

²⁶ Preliminary view dated 1 May 2026.

²⁷ Email to OIC dated 27 May 2026.

²⁸ [2026] QICmr 125 (16 July 2026).

necessary to make decisions independently regarding access to their personal information. Given the child's young age, I consider that there is no basis on the evidence before me to attribute to the child a significant degree of autonomy in relation to decisions about access to their medical records. I also note that obtaining evidence about the child's maturity or views could, of itself, cause some amount of prejudice to the child's best interests.

26. I note that, generally, as a child grows older, their level of autonomy and independence also grows. Consistent with this, the sphere of their privacy interests also expands, and a parent or guardian's access to their medical records becomes more limited without their express consent.
27. For an applicant who was 7 years old at the time of the access application, I consider that their young age and the inherently sensitive nature of medical information are relevant to the weight to be given to their privacy interests. While privacy interests generally develop progressively with age and maturity, and while the child's age means that it may be inappropriate to attribute to them the same degree of autonomy that might reasonably be attributed to an older child, this does not diminish the fact that the medical records concern the child's own personal information, and does not mean that they have no separate privacy interests in such information. As such, I am satisfied that the child may expect a degree of privacy regarding their medical records.
28. To the extent a child of younger years such as the child in this review may have a relatively small and still developing sphere of privacy, those responsible for the child's daily and long-term care, wellbeing and development are aware of the child's personal information. This is a function of their exercise of parental responsibility as required given the particular child's level of autonomy. In the present circumstances, it is the chief executive of the Department who has and exercises parental responsibility, as a result of being given long-term guardianship of the child. It follows that the child has a greater right to privacy as against the parent who no longer has or exercises parental responsibility for the child. Whether or not there is a distinction between the child's right to privacy as against the parent, compared to the public at large, I am satisfied that the child's privacy is a material concern in this review.
29. Taking these matters into account, I am satisfied that the child may be attributed a relatively significant right to privacy from their parent regarding their medical records. I therefore consider that disclosure of the Information in Issue to the child's parent without the consent of the child would have a significantly negative effect on the welfare interests of the child as it would prejudice the privacy rights of that child.

Conclusion

30. Determining the child's best interests is a multi-faceted test and incorporates the child's immediate and future wellbeing, welfare, happiness and development. As set out above, I have considered the nature of the Information in Issue and the impact of its disclosure on the Department's rights and responsibilities under the guardianship order, the parent's ability to scrutinise and question medical decisions

and treatment, the provision of therapeutic and other care to the child, and the extent of privacy reasonably due to the child.

31. Having carefully taken these matters into account, I am satisfied that disclosure of the Information in Issue would not be in the child's best interests. I therefore conclude that the Information in Issue comprises information that, according to section 50(2) of the RTI Act, Parliament considers would, on balance be contrary to the public interest. I therefore find that access to the Information in Issue may be refused under section 47(3)(c) of the RTI Act.
32. The above are the reasons for my decision set out at page 1.