



Australian Government

Department of Health and Aged Care

FOI reference: FOI 4402

Mr Watson Norwood

Email: foi+request-10263-eecd158f@righttoknow.org.au

Dear Mr Norwood

Decision on your Freedom of Information Request

I refer to your request of 6 May 2023 to the Department of Health and Aged Care (the department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to:

A complete copy of the departments' Freedom of Information (FOI) logs for the period 2013-2023, including any secondary departments controlled by the agency.

I request that this is provided as a document and not a simple redirect to the agency website as I am of the view that your online disclosure logs do not actively reflect your FOI requests that you have received in this period.

I am authorised under s 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests. I am writing to notify you of my decision on your request.

Background

The department must publish information released in response to an FOI request to members of the public generally on a website (known as a disclosure log), except in certain cases as set out in s11C of the FOI Act.

Paragraph [14.14] of the guidelines issued by Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines) states that the disclosure log requirement does not apply to:

- personal information about any person, if it would be unreasonable to publish the information (s 11C(1)(a))
- information about the business, commercial, financial or professional affairs of any person, if publication of that information would be unreasonable (s 11C(1)(b))
- other information of a kind determined by the Information Commissioner if publication of that information would be unreasonable (ss 11C(1)(c) and 11C(2))

- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete information listed in one of the above dot points (s 11C(1)(d)).

Publishing information on a disclosure log is a separate decision to granting access to documents under the FOI Act (see para [14.16] of the FOI Guidelines).

FOI decision

In making my decision, I had regard to the following:

- the FOI Act
- the FOI Guidelines
- the terms of your FOI request as outlined above
- the content of the documents sought, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

The right to request access to a document in accordance with the FOI Act relates to documents in the possession of the department (see the definition of 'document of an agency' in s 4 of the FOI Act). A document does not include material that is maintained for reference purposes that is otherwise publicly available (see the definition of 'document' in s 4 of the FOI Act).

As stated in paragraph [2.60] of the FOI Guidelines, the right to obtain access under the FOI Act does not apply to all documents that are in the possession of agencies that are subject to the FOI Act. The FOI Act does not apply includes a document that is already publicly available as part of a public register or in accordance with an enactment where a fee or other charge may apply (s 12(1)(b) of the FOI Act).

Your request seeks access to the department's FOI disclosure logs for the period 2013 to 2023. The department's disclosure log for documents disclosed under FOI Act from July 2018 to 2023 is publicly available on the department's website as required, at: www.health.gov.au/resources/foi-disclosure-log.

Older FOI disclosure logs, for documents disclosed under the FOI Act from January 2011, are publicly available and can be viewed in the Australian Government Web Archives at: [12 Nov 2017 - Department of Health | Freedom of Information \(FOI\) - Trove \(nla.gov.au\)](http://12.Nov.2017-Department.of.Health|Freedom.of.Information.(FOI)-Trove(nla.gov.au)). A link to these disclosure logs on the Australian Government Web Archives is also published on the department's website.

As the information relevant to your request information is publicly available, the FOI Act does not apply to that information and access has not been provided under the FOI Act.

Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562.

The *Privacy Act 1988* (Cth) (Privacy Act), can also be accessed from the Federal Register of Legislation website here: www.legislation.gov.au/Series/C2004A03712.

Your review rights

I have set out your review rights at **ATTACHMENT A**.

Contacts

If you require clarification of any matters discussed in this letter you can contact the FOI Section on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

S Lynch
Principal Lawyer
Freedom of Information Unit
Advice and Legislation Branch

30 May 2023

ATTACHMENT A

YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review.

Internal review

You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision maker.

No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be made by:

Email: FOI@health.gov.au
Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you.

Information Commissioner review or complaint

You also have the right to seek Information Commissioner (IC) review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Health and Aged Care as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or

- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: www.oaic.gov.au/freedom-of-information/foi-review-process.

Complaint

If you are dissatisfied with action taken by the department, you may also make a complaint directly to the department.

Complaints to the department are covered by the department's privacy policy. A form for lodging a complaint directly to the department is available on the department's website here: www.health.gov.au/about-us/contact-us/complaints .