



## Australian Government

### Department of Health and Aged Care

FOI reference: FOI 5065

Ms Bev D

By email: [foi+request-11308-9693f992@righttoknow.org.au](mailto:foi+request-11308-9693f992@righttoknow.org.au)

Dear Ms D,

#### Decision on your Freedom of Information Request

I refer to your request of 8 April 2024, to the Department of Health and Aged Care (the department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to:

*A copy of all mentioned attachments in FOI4806, including attachments listed in the released emails. Please do not include duplicates, or publicly available documents and transcripts.*

#### FOI decision

I am authorised under subsection 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.

I have identified 15 documents that are relevant to your request. These documents were in the possession of the department when your request was received.

I have decided to:

- give access to information relevant to your request in one document in full, subject to deletion of irrelevant material,
- give access to seven documents in part, subject to the deletion of exempt and irrelevant material, and
- refuse access to seven documents as they contain fully exempt material.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

My reasons for not providing access to material that has been deleted from the documents are set out in **ATTACHMENT B**.

You were informed on 6 May 2024 that consultation with a third party would be necessary. A contention has been made that certain parts of documents should be exempt. My decision has been to grant access to those parts of the documents. As such, the relevant third party has review rights under the FOI Act.

As a result, I am unable to provide you with access to documents 1, 2, 3, 4, 5 and 12 until the third-party review rights have been exhausted.

### **Legislative provisions**

The FOI Act, including the provisions referred to in my decision, is available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://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](http://www.legislation.gov.au/Series/C2004A03712).

### **Your review rights**

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

### **Publication**

Where I have decided to release documents to you, the department may also publish the released material on its Disclosure Log. The department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the department's Disclosure Log can be found at: [www.health.gov.au/resources/foi-disclosure-log](http://www.health.gov.au/resources/foi-disclosure-log).

### **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](mailto:FOI@health.gov.au).

Yours sincerely



Alastair Wilson  
Acting Assistant Secretary  
Private Health Strategy Branch

4 June 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENTS  
FOI

Document	Pages	Date	Description	Decision on access <sup>1</sup>	Relevant provisions of FOI Act
1	3	26/10/2022	Signed confidentiality and conflict deed	RE	s47F
2	4	27/10/2022	Signed confidentiality and conflict deed	RE	s47F
3	3	26/10/2022	Signed confidentiality and conflict deed	RE	s47F
4	3	26/10/2022	Signed confidentiality and conflict deed	RE	s47F
5	3	27/10/2022	Signed confidentiality and conflict deed	RE	s47F
6	20	13/01/2023	Analysis for PY23 resubmission	E	s38
7	2	09/12/2022	Departmental Correspondence	RI	s22
8	93	13/12/2022	Analysis for premium round	E	s38
9	2	13/12/2022	Draft requests for resubmission	E	s38
10	92	07/12/2022	Analysis for premium round	E	s38
11	20	16/01/2022	Analysis for PY23 resubmission	E	s38
12	14	02/09/2022	Response to request for quotation by Deloitte	REI	s22 s47(1)(b) s47E(d) s47F
13	14	31/10/2022	Mock rate submission by insurer	E	s38
14	6	25/11/2022	Rate submission industry charts	E	s38
15	3	22/12/2022	Schedule 6A - Order variation	RE	s47F

<sup>1</sup> E = Exempt in full, RE = Release with exempt information deleted, RI = Release with irrelevant information deleted, REI = Release with exempt and irrelevant information deleted.

## **ATTACHMENT B.**

### **REASONS FOR DECISION FOI 5065**

#### **1. Material taken into account**

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

- the FOI Act
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the terms of your FOI request as outlined above
- submissions from third parties consulted about documents which contain information concerning them
- the content of the documents sought, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

#### **2. Finding of facts and reasons for decision**

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the relevant documents and relevant parts of documents are set out below.

#### **3. Section 22 - deletion of irrelevant material**

Section 22 of the FOI Act applies to documents containing exempt material (subparagraph (1)(a)(i)) and irrelevant information (subparagraph (1)(a)(ii)) and allows an agency to delete such material from a document.

In our acknowledgment email of 9 April 2024, we advised direct telephone numbers of all staff and below Senior Executive Staff would be excluded from the scope unless otherwise advised. Document 7 contains a direct telephone number of a staff member and names of non-Senior Executive Staff. Document 12 contains names of non-Senior Executive Staff. On the basis that you did not notify us otherwise, this information has been deleted under section 22 of the FOI Act as outlined above. This information has been marked 's22' in the documents released to you.

#### **4. Section 38 - Documents to which secrecy provisions of enactments apply**

Section 38 of the FOI Act provides that a document is an exempt document if disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and that provision is specified in Schedule 3 of the FOI Act.

Relevantly, Schedule 3 of the FOI Act specifies the following secrecy provision, *Private Health Insurance Act 2007*, sections 323-1 and 323-40.

I am satisfied that the information contained in the documents marked 's38' in the schedule are subject to the secrecy provisions contained in the *Private Health Insurance Act 2007*, sections 323-1 and 323-40.

I am further satisfied subsections 38(1A) and 38(2) of the FOI Act do not apply in this instance are not relevant to my decision.

For the reasons outlined above, I have decided that the documents marked 's38' in the schedule are exempt from disclosure under section 38 of the FOI Act.

## **5. Section 47 - Documents disclosing trade secrets or commercially valuable information**

Subsection 47(1) of the FOI Act provides that a document is an exempt document if its disclosure would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

### Commercially valuable information

Paragraphs 5.234 and 5.235 of the FOI Guidelines state:

5.234 To be exempt under s 47(1)(b) a document must satisfy 2 criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body, and
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.

5.235 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person to whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors

- whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price.

I am satisfied that the relevant information contained in the documents:

- is only known to the department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine 'arm's length' buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party, and
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

As notified to you on 6 May 2024, in accordance with the obligations under section 27 of the FOI Act, the department has consulted with an affected third party. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I have decided that the parts of document 12 marked 's47(1)(b)' are exempt from disclosure under section 47 of the FOI Act.

#### **6. Section 47E - Documents affecting certain operations of agencies**

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.84 of the FOI Guidelines states that section 47E conditionally exempts a document where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain identified agency operations.

Paragraph 6.112 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.115 of the FOI Guidelines states that the predicted effect must bear on the department's 'proper and efficient' operations, that is, the department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the part of document 12 marked 's47E(d)' contains information, namely an operational email address, which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on the department's proper and efficient operations. This email address supports operational activities that are being undertaken in an expected and lawful manner, and its disclosure would not reveal inefficiencies in the way in which the department conducts these operational activities. I am satisfied that, were this information to be disclosed, the relevant departmental business area would, or could reasonably be expected to, receive a significant amount of unsolicited correspondence which it is not resourced to manage, and that this would have a substantial and unreasonable impact on the proper and efficient conduct of the operations of the department.

For the reasons outlined above, I have decided that the part of document 12 marked 's47E' is conditionally exempt from disclosure under section 47E of the FOI Act.

Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **7. Section 47F - Documents affecting personal privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.126 of the FOI Guidelines states that for particular information to be personal information an individual must be identified or reasonably identifiable.

Paragraph 6.125 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the parts of the documents marked 's47F' includes personal information.

#### Unreasonable Disclosure of Personal Information

Subsection 47F(2) of the FOI Act provides that in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.133 of the FOI Guidelines states that:

The personal privacy conditional exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984] AATA 437* stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.137 and 6.138 of the FOI Guidelines state:

- 6.137 Key factors for determining whether disclosure is unreasonable include:
- a) the author of the document is identifiable



- b) the documents contains third party personal information
- c) release of the document would cause stress on the third party
- d) no public purpose would be achieved through release.

6.138 As discussed in the IC review decision of 'FG' and National Archives of Australia [2015] AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

In making my decision, I have consulted with the affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals.

For the reasons outlined above, I have decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **8. Disclosure is not in the public interest**

Pursuant to subsection 11A(5) of the FOI Act, the department must give access to conditionally exempt documents unless access to the documents at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the documents would be contrary to the public interest.

### Factors favouring disclosure

Subsection 11B(3) of the FOI Act provides that factors favouring access to documents in the public interest include whether access to the documents would do any of the following:

- (a) promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure, and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following public interest factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

#### Section 47E

- could reasonably be expected to impede the proper and efficient conduct of the department's operations, and
- would not provide any additional benefit to the public, noting that the department already has existing public communications channels that are, in my view, readily available and sufficient for this purpose

### Section 47F

- could reasonably be expected to prejudice the protection of the relevant individuals' right to personal privacy, and disclosure of the personal information would not provide you with any further insight into the workings of government, and
- would not achieve any public purpose and, on balance, would harm the individuals' right to personal privacy.

In making my decision, I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act, which are:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

### Conclusion

For the reasons set out above, after weighing all public interest factors for and against disclosure, I have decided that, on balance, disclosure of the conditionally exemption information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

## 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](mailto:FOI@health.gov.au)

Mail: FOI Unit (MDP 516)  
Department of Health and Aged Care  
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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://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](http://www.health.gov.au/about-us/contact-us/complaints)