



Australian Government

Department of Health and Aged Care

FOI reference: FOI 5068

Ms Bev D

Email: foi+request-11309-d8c20c40@righttoknow.org.au

Dear Ms D

Decision on your Freedom of Information Request

I refer to your request of 9 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:

Between the period 1 November 2023 to 5 March 2024, any correspondence, including attachments, briefs, emails and other documents regarding the Minister for Health and Aged Care's decision to seek further information from private health insurers to provide a more reasonable figure for private health insurance premiums:

- 1) between the Department of Health and Aged Care and stakeholders;*
- 2) Between the Minister for Health and Aged Care and stakeholders;*
- 3) Between the Office of the Minister for Health and Aged Care and stakeholders;*
- 4) Between the Department of Health and Aged Care and the Office of the Minister for Health and Aged Care;*
- 5) Between the Department of Health and Aged Care and the Minister for Health Aged Care.*

For the purposes of this FOI, stakeholders refers to private health insurance companies, private hospitals, and associations.

Please do not include duplicates, or publicly available documents and transcripts.

Clarification/Modification of scope of request

On 10 April 2024, the department transferred parts 2 and 3 of your request to the Office of the Minister for Health and Aged Care, as the documents you sought access to related more closely to its functions. You were informed of this transfer on 12 April 2024.

Parts 4 and 5 of your request to the department, that is, FOI request 5068, were renumbered parts 2 and 3.

On 23 April 2024, following consultation with you, you agreed to modify the scope of your request to the following:

Between the period 1 November 2023 to 5 March 2024,

- 1. any ministerial briefs and ministerial submissions from the Department of Health and Aged Care to the Minister for Health and Aged Care (and his office) that informed his decision to seek further information from private health insurers to change for private health insurance premiums, and*
- 2. any correspondence between the Department of Health and Aged Care and private health insurers that requested private health insurers to revise their requested private health insurance premiums, and*
- 3. any correspondence between the Department of Health and Aged Care and third parties (i.e. consultants supporting the Department with premium rounds) that related to the request for private health insurers to revise their requested private health insurance premiums.*

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 73 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 three documents in part, that is, attachments to documents 1 (1.1), 5 (5.2 & 5.2) and 9 (9.1) subject to the deletion of exempt material
- refuse access to 70 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**

Legislative provisions

The provisions referred to in my decision are available on the Federal Register of Legislation website, as follows:

- FOI Act: www.legislation.gov.au/Series/C2004A02562
- *Private Health Insurance Act 2007*: www.legislation.gov.au/C2007A00031
- *Australian Prudential Regulation Authority Act 1998*: www.legislation.gov.au/C2004A00310.

Your review rights

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

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.

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



Alastair Wilson
A/g Assistant Secretary
Private Health Strategy Branch

16 June 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENTS
FOI-5068

Document	Pages	Date	Description	Decision on access ¹	Relevant provision of FOI Act
1	8	29/11/2023	Ministerial Brief MB23-003609 and Attachment A	E	s38
1.1	2	29/11/2023	Attachment B to document 1 - PHI premium change formulas	RE	s38
2	170	14/12/2023	Ministerial Submission MS23-001739 and Attachments A-G Attachment G page 2 removed as duplicate to document 9.1	E	s38
3	9	15/12/2023	Ministerial Submission MS23-001739 and Attachment F	E	s38
4	2	18/12/2023	Correspondence	E	s38
5	166	24/01/2024	Ministerial Submission MS24-000053 and Attachments A-G Attachment G page 2 removed as duplicate to document 9.1	E	s38
5.1	1	24/01/2024	Attachment F to document 5: Draft approval letter	R	N/A
5.2	1	24/01/2024	Attachment H to document 5: Public interest test advice	R	N/A
6	5	30/01/2024	Ministerial Submission MS24-000053	E	s38
7	3	30/01/2024	Ministerial Submission MS24-000053: Attachment E	E	s38
8	13	26/02/2024	Ministerial Submission MS24-000142 and Attachments A-F	E	s38
9	4	22/02/2024	Ministerial Brief MB24-000459	E	s38

¹ E = Exempt in full, R = Release in full

9.1	1	22/02/2024	Ministerial Brief MB24-00459: Attachment A	R	N/A
10	2	18/12/2023	Resubmission - party 1	E	s38
10.1	9	13/12/2023	Attachment to documents 10 to 39	E	s38
11	2	18/12/2023	Resubmission - party 2	E	s38
12	2	18/12/2023	Resubmission - party 3	E	s38
13	2	18/12/2023	Resubmission - party 4	E	s38
14	2	18/12/2023	Resubmission - party 5	E	s38
15	2	18/12/2023	Resubmission - party 5	E	s38
16	2	18/12/2023	Resubmission - party 6	E	s38
17	2	18/12/2023	Resubmission - party 7	E	s38
18	2	18/12/2023	Resubmission - party 8	E	s38
19	2	18/12/2023	Resubmission - party 9	E	s38
20	2	18/12/2023	Resubmission - party 10	E	s38
21	2	18/12/2023	Resubmission - party 11	E	s38
22	2	18/12/2023	Resubmission - party 12	E	s38
23	2	18/12/2023	Resubmission - party 13	E	s38
24	2	18/12/2023	Resubmission - party 14	E	s38
25	2	18/12/2023	Resubmission - party 15	E	s38
26	2	18/12/2023	Resubmission - party 16	E	s38
27	2	18/12/2023	Resubmission - party 17	E	s38
28	2	18/12/2023	Resubmission - party 18	E	s38
29	2	18/12/2023	Resubmission - party 19	E	s38
30	2	18/12/2023	Resubmission - party 20	E	s38
31	2	18/12/2023	Resubmission - party 21	E	s38
32	2	18/12/2023	Resubmission - party 22	E	s38
33	2	18/12/2023	Resubmission - party 23	E	s38

34	2	18/12/2023	Resubmission - party 24	E	s38
35	2	18/12/2023	Resubmission - party 25	E	s38
36	2	18/12/2023	Resubmission - party 26	E	s38
37	2	18/12/2023	Resubmission - party 27	E	s38
38	2	18/12/2023	Resubmission - party 28	E	s38
39	2	18/12/2023	Resubmission - party 29	E	s38
40	1	05/02/2024	Approval - party 1	E	s38
41	1	05/02/2024	Approval - party 2	E	s38
42	1	05/02/2024	Approval - party 3	E	s38
43	1	05/02/2024	Approval - party 4	E	s38
44	1	05/02/2024	Approval - party 5	E	s38
45	1	05/02/2024	Approval - party 5	E	s38
46	1	05/02/2024	Approval - party 6	E	s38
47	1	05/02/2024	Approval - party 7	E	s38
48	1	05/02/2024	Approval - party 8	E	s38
49	1	05/02/2024	Approval - party 9	E	s38
50	1	05/02/2024	Approval - party 10	E	s38
51	1	05/02/2024	Approval - party 11	E	s38
52	1	05/02/2024	Approval - party 12	E	s38
53	1	05/02/2024	Approval - party 14	E	s38
54	1	05/02/2024	Approval - party 13	E	s38
55	1	05/02/2024	Approval - party 17	E	s38
56	1	05/02/2024	Approval - party 18	E	s38
57	1	05/02/2024	Approval - party 19	E	s38
58	1	05/02/2024	Approval - party 21	E	s38
59	1	05/02/2024	Approval - party 22	E	s38
60	1	05/02/2024	Approval - party 23	E	s38

61	1	05/02/2024	Approval - party 24	E	s38
62	1	05/02/2024	Approval - party 25	E	s38
63	1	05/02/2024	Approval - party 26	E	s38
64	1	05/02/2024	Approval - party 27	E	s38
65	1	05/02/2024	Approval - party 28	E	s38
66	1	05/02/2024	Approval - party 29	E	s38
67	1	05/02/2024	Resubmission - party 16	E	s38
68	1	05/02/2024	Resubmission - party 20	E	s38
69	1	05/02/2024	Resubmission - party 15	E	s38
70	1	15/02/2024	Approval - party 15	E	s38
71	1	04/03/2024	Approval - party 20	E	s38
72	1	04/03/2024	Approval - party 16	E	s38
73	1	15/01/2024	Premium Round 2024 - Resubmission information requested from insurers	E	s38
73.1	3	15/01/2024	Attachment to document 73: Information requested from insurers	E	s38

REASONS FOR DECISION
FOI-5068

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 are set out below.

3. 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.

In addition, parts of documents 2 and 5 contain information that is protected information for the purposes of the *Australian Prudential Regulation Authority Act 1988* (APRA Act), as defined in subsection 56(1) of the APRA Act. Subsection 56(11) of the APRA Act provides that any document that is a 'protected document' or contains 'protected information' within the meaning of subsection 56(1) of the APRA Act is also an exempt document under section 38 of the FOI Act.

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, and the APRA Act, section 56.

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.

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 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/
- 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