



Australian Government

Department of Health and Aged Care

FOI reference: FOI-5165

Kath

Email: foi+request-11460-e5198c5a@righttoknow.org.au

Dear Kath

Decision on your Freedom of Information Request

I refer to your request of 29 May 2024 to the Department of Health and Aged Care (the department) seeking access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). The scope of your request is for:

All correspondence including briefs, emails, meeting records and other documents received from clinicians, health services and/or health service providers who have provided feedback on the change of pump supplied under the Insulin Pump Program since September 2023.

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 access request.

Extensions of time to process request

On 25 June 2024, the department informed you that it was consulting with third parties whose information was contained in documents identified as relevant to your request under sections 27 and 27A of the FOI Act. As a result, the statutory timeframe for your request was extended by 30 days to 28 July 2024.

On 18 July 2024, the department wrote to you under section 15AA of the FOI Act seeking a 10-day extension of time to allow it to process your FOI request.

On 19 July 2024, you responded to the department agreeing to the extension of time request. As a result, the statutory date for your FOI access request was extended to 7 August 2024.

On 31 July 2024, the department wrote to you under section 15AA of the FOI Act seeking a 20 day extension of time, as the department had identified an additional third party that would need to be consulted.

On 6 August 2024, you responded to the department agreeing to the extension of time request. As a result, the statutory date for your FOI access request was extended to 27 August 2024.

Reasonable searches

The department has conducted reasonable searches for documents in scope of your request. As per the FOI Guidelines [at 3.89], these searches were undertaken with reference to:

- the subject matter of your request
- the department's current and past file management systems
- the department's record management systems
- the individuals within the department with knowledge of the subject matter of the documents, or who could assist with location of documents
- the age of the documents.

I am satisfied that the searches undertaken were both thorough and reasonable in the context of the scope of your request, the resources of the department, and the requirements of the FOI Act and Information Commissioner's Guidelines.

Decision on access

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 15 documents in part, subject to the deletion of exempt and irrelevant 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 25 June 2024 that consultation with third parties would be necessary.

A contention has been made by more than one third party that parts of the documents should be exempt from release under the FOI Act. My decision has been to grant access to that material in part. As such, the relevant third parties will have review rights under the FOI Act. As a result, I am unable to provide you with access to the information in all documents until the time for the opportunity for third parties to apply for a review runs out.

You will be contacted by the department as soon as any review rights have run out.

Please refer to the [FOI Guidelines](#) [at 3.198 - 3.202] for further information about third-party review rights.

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.

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 C**.

Publication

Where I have decided to release documents to you, the department may also publish the released material on its Disclosure Log, as required by section 11C of the FOI Act. 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



Sarah Norris
Assistant Secretary
Pharmacy Branch
26 August 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENTS

FOI REQUEST - 5165

Document	Pages	Date	Description	Decision on access ¹	Relevant provisions of FOI Act
1	2	16/11/2023	Letter from Royal Hobart Hospital	exempt in part	s47F
2	2	12/1/2024	Letter from ANZSPED	exempt in part	s47E(d) s47F
3	2	3/11/2023	Email	exempt in part	s22 s47E(d) s47F
4	3	3/11/2023	Email	exempt in part	s22 s47E(d) s47F
5	5	5/12/2023	Email	exempt in part	s22 s47E(d) s47F
6	2	8/11/2023	Email	exempt in part	s22 s47E(d) s47F
7	2	13/11/2023	Email	exempt in part	s22 s47E(d) s47F
8	4	30/11/2023	Email	exempt in part	s22 s47E(d) s47F s47B
9	2	2/11/2023	Email	exempt in part	s22 s47E(d) s47F

10	1	3/11/2023	Letter	exempt in part	s47E(d) s47F
11	2	14/11/2023	Email	exempt in part	s22 s47E(d) s47F
12	2	17/11/2023	Letter from the Children's Hospital at Westmead	exempt in part	s47E(d) s47F
13	2	23/11/2023	Letter from Central Queensland Hospital and Health Services	exempt in part	s47F
14	2	27/11/2023	Email	exempt in part	s22 s47E(d) s47F
15	2	6/12/2023	Letter from Sydney Children's Hospital	exempt in part	s47E(d) s47F

ATTACHMENT B.

**REASONS FOR DECISION
FOI 5165**

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 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.

I have deleted material in the documents which can reasonably be regarded as irrelevant to your request and prepared an edited copy for release. This information has been marked 's22' in the documents released to you.

Irrelevant information includes information that was produced when emails were transferred to PDF format. As this information is not part of the original documents, it is not relevant to your request.

The documents also contain the names and telephone numbers of departmental employees. When your request was acknowledged on 31 May 2024, we notified you that this material would be considered irrelevant to the scope of your request unless you told us that you were seeking access to that material. 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.

4. Section 47B - Documents affecting Commonwealth-State relations

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Paragraph 6.24 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.26-6.27 of the FOI Guidelines also state:

- 6.26 Disclosure of the document may cause damage by, for example:
- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
 - adversely affecting the administration of a continuing Commonwealth-State project
 - substantially impairing (not merely modifying) Commonwealth-State programs
 - adversely affecting the continued level of trust or co-operation in existing inter-office relationships
 - impairing or prejudicing the flow of information to and from the Commonwealth.
- 6.27 Decision makers may also need to consider future working relationships where disclosure may, for example:
- impair or prejudice the future flow of information
 - adversely affect Commonwealth-State police operations or investigations
 - adversely affect the development of future Commonwealth-State projects

6.28 The potential damage need not be quantified, but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that the part of document 8 would damage the Commonwealth-State relationships. The information comprises a state agency's recommendation to the department and a precedent of disclosure would or could reasonably be expected to have an adverse effect on the continued level of trust or co-operation in existing inter-jurisdictional relationships.

In making my decision, I have consulted with the relevant State and/or Territory government, and I have taken into account any concerns raised by the relevant State and/or Territory.

For the reasons outlined above, I have decided that the parts of the document 8 marked 's47B' is conditionally exempt from disclosure under section 47B 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.

5. 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.

Examples provided in paragraph 6.113 of the FOI Guidelines indicate that use of 47E(d) may be appropriate where disclosure of the information would:

- result in the need to make substantial changes to procedures to avoid jeopardising the effectiveness or methods and procedures used by the agency
- prejudice of the ability of an agency to perform its statutory, regulatory or public safety functions.

Paragraph 6.112 of the FOI Guidelines states that 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.

Paragraph 6.115 of the FOI Guidelines state that the predicted effect of disclosure 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.

You have requested access to documents that contain non-public facing email addresses used by the department.

I am satisfied that the parts of the documents marked 's47E(d)' contain information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on the department's proper and efficient management of its communication channels.

If the email addresses in question were to be released, it could reasonably be expected to result in an influx of unsolicited emails to non-public facing mailboxes used for internal administrative processes. If this occurred, the department would need to change the addresses of or decommission those inboxes, at operational and financial loss to the department. I am therefore satisfied that any impediment to the efficient and effective administration of departmental emails and communication channels would have a substantial adverse effect on the proper and efficient conduct of the department.

In forming this decision, I note that the use of non-public facing operational email addresses to manage administrative functions are operational activities that are being undertaken in an expected and lawful manner. I am further satisfied that release of these addresses would not reveal inefficiencies in the way in which the department conducts those operational activities.

For the reasons outlined above, I have decided that the parts of the documents marked 's47E' are 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.

6. 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 6.123 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable:

- whether the information is true or not, and

- whether the information or opinion is recorded in a material form or not.

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.

Paragraph 6.132 of the FOI Guidelines states that an individual is a natural person and does not include a corporation, trust, body politic or incorporated association. Section 47F specifically extends to the personal information of deceased persons.

I am satisfied that the parts of the documents marked 's47F' include personal information such as a person's name, email address, telephone number and signature.

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 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* at paragraph 51-52, 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 contain third party personal information

- c) release of the documents would cause stress on the third party
- d) no public purpose would be achieved through release

6.138 As discussed in the leading s 47F 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.

You have requested access to documents that contain:

- personal information about a number of professional individuals, including their names, job titles and personal contact details (phone and email)
- information about a number of individuals receiving treatment through various medical services related to the Insulin Pump Program which could reasonably be used to identify them via their location, age and medical/treatment profiles.

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 documents are identifiable
- release of this information could reasonably be expected to 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 concerned did not consent to and 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
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act, and

- release of the information would be contrary the objects of the *Privacy Act 1988*.

In making my decision, I have consulted with affected third parties, where practicable, regarding the disclosure of the personal information contained in documents and I have considered any concerns raised by those individuals. Where it has not been practicable to undertake third party consultation, I have taken a protective stance toward release of personal information, in line with the *Privacy Act 1988*.

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.

7. 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

Section 11B 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:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure, or
- 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:

s47B(a)

- would adversely affect the administration of a continuing Commonwealth-State program
- would damage the continued level of trust or co-operation in existing inter-government working relationships
- would prejudice the attainment of outcomes of procurement/tender process of Insulin Pump Program

s47E(d)

- could reasonably be expected to divert correspondence toward communication channels which are not intended or resourced for this purpose. Any interference to the department's communication channels could reasonably be expected to result in disruption to the operations of the agency, which is against the public interest.
- 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.

s47F

- could reasonably be expected to prejudice the protection of the relevant individuals' right to personal privacy, noting that the substance of the documents has been released to you 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 individual's right to personal privacy, which would be contrary to the objects of the *Privacy Act 1988* and therefore against the public interest.

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.

ATTACHMENT C.

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 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