



Australian Government

Department of Health and Aged Care

FOI reference: FOI-5328 IR

Ray D

Right to Know

By email: foi+request-11876-71060532@righttoknow.org.au

Dear Ray D

Decision on your Freedom of Information Request for Internal Review

I refer to your request of 4 November 2024 to the Department of Health and Aged Care (the department), requesting an internal review of the department's decision on access dated 25 October 2024 (the original decision) under the *Freedom of Information Act 1982* (Cth) (FOI Act).

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.

Original FOI request

On 12 August 2024, you requested access to:

Any correspondence, including briefs, emails and other documents between the Department of Health and Aged Care and Private Healthcare Australia regarding the following PHI circulars:

PHI 33/24 Consultation on two Prescribed List compliance measures PHI 55/24

Consultation on general use items – utilisation, expenditure and integrity.

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

Original FOI decision

On 25 October 2024 a decision was made to:

- give access to information relevant to your request in three documents in full, and
- give access to three documents in part, subject to the deletion of exempt material.

Your submissions

In making your request for the department to review its original decision on access, you have provided the following submissions:

While information regarding PHI 55/24 has been provided, I do not believe information regarding PHI 33/24 has been provided in my request:

PHI 33/24 Consultation on two Prescribed List compliance measures PHI 55/24 Consultation on general use items – utilisation, expenditure and integrity.

Reasonable searches

As part of your submission, you queried whether documents relating to PH 33/24 were included within the document pack of the FOI request. In response to your internal review application, the department has conducted further searches for documents in scope of your request and identified a further two documents relevant which relate to PH 33/24 correspondence between the department and Private Healthcare Australia.

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 FOI Guidelines.

Internal Review Decision

In making a fresh decision as part of this internal review, I have identified eight documents that are relevant to your request, including the original six documents identified in the original decision. These documents were in the possession of the department when your request was received.

Under section 54C of the FOI Act, I have decided to vary the original decision. My decision is to:

- give access to information relevant to your request in three documents in full; and
- give access to five documents subject to deletion of exempt material. Of the five documents, I have decided to give greater access to two documents.

A schedule setting out the documents relevant to your request, with my decision in relation to each document, 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.**

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*, 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 further review rights at **ATTACHMENT C.**

Publication

You should be aware that 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 Unit on (02) 6289 1666 or at FOI@health.gov.au

Yours sincerely



Duncan McIntyre
First Assistant Secretary
Technology Assessment and Access Division
03 December 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENTS
FOI-5328 IR

Document	Page	Date	Description	Decision on access	Relevant provisions of FOI Act
1	3	27 June 2024	Pre-consultation paper – General Use Items (GUI) workshop	Granted in full	N/A
2	1	27 June 2024	Meeting agenda – GUI workshop, 27 June 2024	Granted in full	N/A
3	1	27 June 2024	Email re GUI letter attachment 9 May 2024	Granted in part	s 22 s 47F
4	4	2 May 2024	GUI letter attached to document 3	Granted in full	N/A
5	5	15 May 2024	Re: Meeting/workshop request on general use items	Granted in part	s 22 s 47F
6	4	10 May 2024	RE: Meeting/workshop request on general use items	Granted in part	s 22 s 47F
7	1	14 June 2024	Email: Private Healthcare Australia (PHA) submission on PL gifts and benefits register	Granted in part	s 22 s 47F
8	8	14 June 2024	Submission: PHA	Granted in part	s 47F

ATTACHMENT B.

**REASONS FOR INTERNAL REVIEW DECISION
FOI-5328**

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
- the terms of your FOI request as outlined above
- the content of the documents sought
- your request for internal review and submissions made to support that request
- advice from departmental officers with responsibility for matters relating to the documents sought, and
- submissions from third parties consulted about documents which contain information concerning them.

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 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. This information has been marked 's22' in the documents released to you.

When your request was acknowledged, on 13 August 2024, we notified you that the names of below Senior Executive Staff and telephone numbers of all departmental employees would be treated as irrelevant unless advised otherwise. 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 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 parts of the documents marked 's47F' includes personal information, namely emails and names.

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:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- 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 or minister'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
- 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, and

- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

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.

5. 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.

Paragraph 6.224 of the FOI Guidelines states:

The public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

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:

- promote the objects of the FOI Act
- 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:

- 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.
- would not achieve any public purpose and, on balance, would harm the individuals' right to personal privacy, which would be contrary to the objects of the *Privacy Act 1988* and therefore against the public interest.

In forming my decision, I confirm that 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. I have therefore redacted the conditionally exempt information from the documents released to you.

ATTACHMENT C.

YOUR FURTHER REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review by the Information Commissioner.

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