



Australian Government

Department of Health and Aged Care

FOI reference: FOI 25-0018 LD

Ms Ash Roth

Email: foi+request-12046-03fdcc2a@righttoknow.org.au

Dear Ms Roth

Decision on your Freedom of Information Request

I refer to your information access request of 11 September 2024, made to the Department of Health and Aged Care (the department) under the *Freedom of Information Act 1982* (Cth) (FOI Act). In your request, you sought access to:

The cost to the Department/Government of the cover artwork commissioned for the "Health Technology Assessment Policy and Methods Review – Final report" (the report is listed by the Department as published on 10 September 2024, available here: <https://www.health.gov.au/resources/publications/health-technology-assessment-policy-and-methods-review-final-report?language=en>).

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.

Extension of time to process request

On 2 October 2024, the department informed you that it was consulting with a third party whose information was contained in document as relevant to your request under section 27 of the FOI Act. As a result, the statutory timeframe for your request was extended by 30 days to 10 November 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 FOI Guidelines.

Decision on access

You have requested access to information that is held in the department's computer systems.

Pursuant to section 17 of the FOI Act, the department has used its computer systems to produce one document that contains the information you are seeking to access.

I have decided to refuse access to the document in full as it contains exempt material.

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

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

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.

Your review rights

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

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 black ink, appearing to read 'Leanne', with a long horizontal line extending to the right.

Leanne Ringwood
Assistant Secretary
Communication Branch
7 November 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENT

FOI REQUEST 25-0018 LD

Document	Pages	Date	Description	Decision on access	Relevant provision of FOI Act
1	1	26 September 2024	Cost to the Department of Health and Aged Care for the cover artwork for the <i>Health Technology Assessment Policy and Methods Review – Final Report</i>	Exempt in full	s47G

ATTACHMENT B.

**REASONS FOR DECISION
FOI 25-0018 LD**

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 a third party consulted about document which contains 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 exemption identified in the schedule of document apply to the relevant document are set out below.

3. Section 47G - Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Business information

Paragraph 6.177 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.191 of the FOI Guidelines states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.193 of the FOI Guidelines states that 'profession' is not static and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The document marked 's47G' contains business affairs information that is relevant to the business, commercial or financial affairs of an organisation, namely the cost of a commercial transaction. This information is relevant to the profitability and financial viability of that organisation, and does not relate to their private or internal affairs.

As such, I am satisfied that this information is business information.

Unreasonable adverse effect of disclosure

Paragraph 6.184 of the FOI Guidelines states that the presence of 'unreasonably' in subsection 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of paragraph 47G(1)(a); but this does not amount to the public interest test of subsection 11A(5) which follows later in the decision process.

Paragraph 6.185 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

The document created under section 17 of the FOI Act states the cost of the design of the cover art for the *Health Technology Assessment Policy and Methods Review – Final Report*. This information is not publicly available, and the service provider does not advertise its market rates.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of that organisation. Disclosure of the information could reasonably be expected to prejudice the future supply of information from business organisation to the Commonwealth for the purpose of the administration of a law of the Commonwealth. Disclosure of the information could also reasonably be expected to affect adversely the business affairs of the service provider, as it could adversely affect its ability to attract competitively and secure future work if its rates of service were released by the department.

In coming to this conclusion, I note that I have consulted with and given weight to the submissions of the third party.

For the reasons outlined above, I have decided that the document marked 's47G' is conditionally exempt from disclosure under section 47G 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.

4. Public interest assessment

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 6.5 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

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 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, on the basis that disclosure:

s47G – business information

- could reasonably be expected to expose the business or commercial affairs of a third party supplier to the world at large and adversely affect that service provider's current or future business and/or commercial opportunities. Any impediment to the ability of Australian suppliers to conduct freely their lawful business affairs is contrary to the public interest.
- could reasonably be expected to reduce the pool of information and service available to the department, which would have adverse effects on the ability of the department to source quality and cost-effective goods and services. Any impediment to the ability of the department to conduct its lawful affairs by procuring quality and cost-effective business services would be contrary to 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

I have carefully considered the competing arguments that favour and weigh against disclosure of the document created under section 17 of the FOI Act.

On one hand, release of information about the expenditure of public money furthers the objects of the FOI Act. On the other hand, release of the information contained in the document could adversely impact the viability of a small business by revealing, and potentially disrupting, its pricing strategies and market competitiveness.

On balance, I am satisfied that the preservation of the financial information of the affected third-party business outweighs the public interest in the disclosure of the use of public monies in this instance. I have therefore decided that disclosure of the

conditionally exempt 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