



Australian Government

Department of Health and Aged Care

FOI reference: FOI 25-0018 LD IR

Ash Roth
Right To Know
By email: foi+request-12046-03fdcc2a@righttoknow.org.au

Dear Ash Roth

Decision on your Freedom of Information Request for Internal Review

I refer to your request of 12 November 2024 to the Department of Health and Aged Care (the department), requesting an internal review of the department's decision on access dated 7 November 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 11 September 2024, you requested 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-assessmentpolicy-and-methods-review-final-report?language=en>).

Original FOI decision

On 7 November 2024, a decision was made to refuse access to one document as it contains fully exempt material.

Your submissions

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

This is a request to understand the use of taxpayer funds on artwork commissioned by the Department for a public report. It is completely unreasonable for the amount of taxpayer funding used to commission this work to be hidden from the public.

Internal Review Decision

You have requested access to data that is held in computer systems ordinarily available to the department. Pursuant to section 17 of the FOI Act, the department used its computer systems to produce one written discrete document that contains the information you are seeking to access.

Under section 54C of the FOI Act, I have decided to vary the original decision and refuse access in another form, as the document in scope of your request contains fully exempt material.

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

My reasons for not providing access to material that has been deleted from the document is 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

Your review rights

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

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



Melissa Evans
A/g First Assistant Secretary
People, Communication and Parliamentary Division
22 November 2024

ATTACHMENT A.

INTERNAL REVIEW SCHEDULE
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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	s 47

ATTACHMENT B.

**REASONS FOR INTERNAL REVIEW DECISION
FOI 25-0018 LD IR**

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 document sought
- your request for internal review and submissions made to support that request
- advice from departmental officers with responsibility for matters relating to the document sought, and
- submissions from third parties consulted about the document which contains 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 apply to the document is set out below.

3. 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 two 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 for 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), and
- whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price.

You have requested information about the cost of artwork used in a government report.

I am satisfied that the financial information contained in the document produced by the department:

- is only known to the department and the affected third party for whom it has value
- is not known to others, so that disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and could provide the affected third party with access to markets not available to its competitors
- 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.

On the basis of the information before me, I am satisfied that the information contained in the document has a commercial value which would be diminished or destroyed by release of the document. I am satisfied that the financial information contained in the document is of recent date, and its release would provide competitors with a

commercial advantage when bidding against the affected third party for future work opportunities. Release of the document could, therefore, reasonably be expected to adversely impact the commercial and financial affairs of the third party in terms of both its profitability and continuity. In this case, the adverse impact is likely to be compounded by the fact that the affected third party is a small provider working in a niche area of commercial art.

As notified to you on 2 October 2024, in accordance with the obligations under section 27 of the FOI Act, the department consulted with an affected third-party. In making my decision on access to the relevant documents, I have taken into consideration the submissions made during that consultation process.

For the reasons outlined above, I have decided that the document marked 's47' in the schedule is exempt from disclosure under section 47 of the FOI Act.

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