



## Australian Government

### Department of Health and Aged Care

FOI reference: FOI-25-0036 LD IR

Ms Julie Keys

By email: [foi+request-12132-92282dfa@righttoknow.org.au](mailto:foi+request-12132-92282dfa@righttoknow.org.au)

Dear Ms Keys

### Decision on your Freedom of Information Request for Internal Review

I refer to your request of 7 November 2024, to the Department of Health and Aged Care (the department), requesting an internal review of the department's decision on access dated 30 October 2024 and sent to you on 1 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 2 October 2024, you requested access to:

*A copy of guidelines/information sheets/correspondence containing a list of evidence-based drugs for treating the neurological condition Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS).*

### Original FOI decision

On 1 November 2024 a decision was sent to you to refuse access to your request in accordance with section 24A of the FOI Act as the documents did not exist in the possession of the department.

### Your submissions

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

*I note that despite extensive searches the Department of Health and Aged Care has been unable to locate any internal correspondence relating to evidence based treatments for ME/CFS.*

*Whilst I appreciate the effort made to date, I find it extraordinary that the Department has not found any correspondence about a disease that pre Covid was found to affect more than 250 000 Australians (25% of them bed or housebound).*

### **Internal Review Decision**

Under section 54C of the FOI Act, I have decided to affirm the original decision.

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 original FOI request and your subsequent internal review submission, as outlined above
- the content of the documents sought, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

The FOI Guidelines, at paragraph 3.89, note that “[a]gencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request”.

The department consulted 5 internal business areas in response to your internal review request; no documents in scope of your request were identified. Further, the Prescriptions Medicines Authorisations Branch has advised that no documents could be located as there are no prescription medicines approved to date for the indications ME/CFS.

I note that your original request was for a “list” of evidence-based drugs for treating ME/CFS. Although your original request refers to “guidelines/information sheets/correspondence” and your internal review submission refers to “correspondence”, I am satisfied that a reasonable interpretation of your original request is that you seek access to a ‘list’. Although such a list, if it exists, may be contained in correspondence or other types of documents, I am satisfied that your request is for a ‘list’, not for any documents “relating to” or “about” drugs for treating ME/CFS.

The right to request access to a document in accordance with the FOI Act relates to documents in the possession of the department (section 4 (definition of ‘document of an agency’) refers).

Subsection 24A(1) of the FOI Act provides that:

An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document, and
- (b) the agency or Minister is satisfied that the document:
  - (i) is in the agency's or Minister's possession but cannot be found, or
  - (ii) does not exist.

The relevant business areas within the department have conducted searches of the department's information holdings, including Trim, the Parliamentary Document Management System (PDMS), computer drives, physical files, and also for documents held in the Protected Network. No documents matching the description in your request were identified as being in the possession of the department.

Based on these searches, I am satisfied that all reasonable steps have been taken to find the documents and the documents do not exist in the possession of the department. As such, I am refusing your request in accordance with section 24A of the FOI Act.

### **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](http://www.legislation.gov.au/Series/C2004A02562)

### **Your review rights**

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

### **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](mailto:FOI@health.gov.au)

Yours sincerely



Chris Johnston  
General Counsel  
Advice and Legislation Branch  
Legal Division

6 December 2024

## ATTACHMENT A.

### 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.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://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](http://www.health.gov.au/about-us/contact-us/complaints)