



## Australian Government

### Department of Health and Aged Care

FOI reference: 25-0162 LD

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

I refer to your information access request of 9 December 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:

*correspondence/guidelines etc that detail which drugs are recommended to be prescribed for a person with Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS) in Australia.*

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 17 December 2024, the department contacted you by email, acknowledging your request. On the same day, the department contacted you to seek a 7-calendar day extension of time under section 15AA of the FOI Act to allow it to process your FOI request.

On 19 December 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 15 January 2025.

On 26 December 2024, you contacted the department to follow up on the progress of the FOI request.

On 10 January 2025, the department informed you that it was consulting a third party whose information was contained in documents identified pursuant to sections 27 and 27A of the FOI Act. As a result, the statutory timeframe for your request was extended by 30 calendar days to 14 February 2025.

## **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**

I have identified three 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 grant access to three documents in part, subject to the deletion of irrelevant and exempt 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**.

Please note that the department of Health and Aged Care does not make any clinical recommendations for the treatment of Myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS) as this is a matter for registered clinicians and organisations that develop clinical guidelines.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gabriela Luksza', written in a cursive style.

Gabriela Luksza  
A/g Assistant Secretary  
Hearing Services & Chronic Conditions Branch

12 February 2025

**ATTACHMENT A.**

**SCHEDULE OF DOCUMENTS**

**FOI REQUEST 25-0162 LD**

<b>Document</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision on access</b>	<b>Relevant provisions of FOI Act</b>
1	18	17 July 2024	RE_ FOR CLEARANCE RE_ NCNED Developments [SEC=OFFICIAL]-reply #3	Granted in part	s 22 s 47F
2	2	20 July 2024	Form Submission - Contact Form - Health	Granted in part	s 22 s 47F
3	2	20 August 2024	Letter	Granted in part	s 22 s 47F

**ATTACHMENT B.**

**REASONS FOR DECISION  
FOI 25-0162 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 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 irrelevant information (subparagraph 22(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.

The documents contain the names of below Senior Executive Service level staff and contact details of departmental employees. When your FOI access request was acknowledged, 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.

In addition, document one contains references to grant applications made by third-party organisation for funding from other Commonwealth agencies and overseas organisations. I have interpreted the scope of your request as only requesting correspondence/guidelines concerning ME/CFS recommendations, and as such have treated references to grant applications where no decision has been made as

information irrelevant to your requested scope. As such 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 names, exact work location and contact details not publicly available of the third-party organisation. In addition, I have redacted the signature block of a below Senior Executive Staff member within document 3.

##### 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 conditional 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 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
- the individuals would not expect the information to be placed in the public domain, particularly their work room locations and detriment may be caused to the individuals to whom the information relates, 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.

## **5. Disclosure is not in the public interest**

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.

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

##### *Section 47F*

- 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, name of an employee within an organisation, contact details and signature block 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.

## 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](mailto: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/](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)