



## Australian Government

### Department of Health and Aged Care

FOI reference: FOI 25-0173 LD

Andrew  
Right to Know  
By email: [foi+request-12656-5b8029d2@righttoknow.org.au](mailto:foi+request-12656-5b8029d2@righttoknow.org.au)

Dear Andrew

### Decision on your Freedom of Information Request

I refer to your information access request of 19 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:

*Could I please request access to the full list of aged care facilities in this document:*

<https://www.health.gov.au/sites/default/files/documents/2020/12/covid-19-outbreaks-in-australian-residential-aged-care-facilities-30-december-2020-covid-19-outbreaks-in-australian-residential-aged-care-facilities-30-december-2020.pdf>

*In page 1 of the document, it is noted that 218 facilities had COVID-19 outbreaks, however, in Appendix 1, only 129 facilities are listed. Could I please request access to the names and data for the remaining facilities?*

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 19 December 2024, the department contacted you by email, acknowledging your request and seeking a 14-calendar day extension of time under section 15AA of the FOI Act to allow it to process your FOI request.

On 23 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 1 February 2025 (OAIC reference: RQ24/06009).

On 22 January 2025, the department wrote to you under section 15AA of the FOI Act seeking a 7-calendar day extension of time to allow it to process your FOI request.

On the same date, 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 10 February 2025 (RQ25/00425).

### **Interpretation of the scope of the request**

The department would like to clarify that the list in Appendix 1 of the snapshot referenced in your request does not contain a list of 129 facilities. Appendix 1 is a list of 129 outbreaks that have occurred at a residential aged care home (RACH) with more than one staff or resident COVID-19 case across all outbreaks. Therefore, the list may contain some duplicate RACHs in the event where multiple outbreaks occurred.

You have requested access to data in relation to 218 facilities which have had COVID-19 outbreaks. As Appendix 1 is a list of outbreaks, we have interpreted this to compare to the '*Total number of outbreaks at residential aged care facilities*' number (row 6 in Table 1 of the report), which is 224. Therefore, there are 95 outbreaks that were omitted from the report as they did not meet the reporting business rules at the time.

In meeting this request, the department is providing a list of the 95 RACHs that were not published in the 30 December 2020 '*COVID-19 outbreaks in residential aged care facilities*' report. The reason for these RACHs not being included in the report is because Appendix 1 only contained RACHs with two or more COVID-19 cases (staff or residents) across all outbreaks.

### **The department's current privacy rules**

In September 2022, the department implemented a policy to suppress data relating to low COVID-19 case and death figures to protect the privacy of RACH residents and staff. This policy remains in place, with reports from September 2022 clearly stating the following: "*Where a RACH is reporting less than six resident or staff cases or less than six deaths, data has been suppressed to protect the privacy of affected individuals.*"

### **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.

## **Caveats to document produced**

The information within the document is provided on the following basis:

- All data is as of 30 December 2020.
- The document was recreated from the original data source used for the report on 30 December 2020.
- This information pre-dates current reporting systems and business rules used by the department.
- Due to the department's current privacy policies, the associated case and death data have not been included.

## **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 grant access to one document in full, which contains a list of the 95 RACHS excluded from the previous report.

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.

I am satisfied that due to the number associated with the breakouts and death cases, that the information is personal information.

### 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, and
- 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, numbers of individuals/deaths would, in the circumstances, constitute an unreasonable disclosure of personal information as it could allow identification of individuals. In addition, the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have considered that the disclosure of the information would not inform debate, promote effective oversight of public expenditure or allow you access to your own personal information.

I have considered that if the department produced this data it could reasonably be expected to prejudice the protection of the relevant individuals' right to personal privacy, which would be contrary to the objects of the *Privacy Act 1988* and therefore against the public interest.

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.

For the reasons set out above, after weighing all public interest factors for and against disclosure, I have decided that, on balance, producing the 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 not produced data on the associated COVID-19 cases and deaths.

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

### **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 B**.

### **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



R Box  
Assistant Secretary  
Emergency Preparedness and Response Branch

7 February 2025

**ATTACHMENT A.**

**SCHEDULE OF DOCUMENTS**

**FOI REQUEST 25-0173 LD**

<b>Document</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision on access</b>	<b>Relevant provision of FOI Act</b>
1	4	30 January 2025	Recreated data table comprising all RACHs previously omitted	Granted in part	s 47F

## ATTACHMENT B.

### 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)