



Australian Government

Department of Health and Aged Care

Reference: FOI 4386

J S

By email: foi+request-10205-e65bf71b@righttoknow.org.au

Dear J S,

Your Freedom of Information request

I refer to your request of 29 April 2023 to the Department of Health and Aged Care ('the department'), made under the *Freedom of Information Act 1982* (Cth) ('FOI Act'):

Can you please provide a list of meetings held between the Department of Health and/or staff of the Minister(s) of Health between 1 January 2022 and 29 April 2023. A csv list of dates / meetings would be great, if the data is held could the representatives of the Guild or DH be noted for each meeting as well as the reason for the meeting?

Can you also please release the date that communication was made to the Pharmacy Guild to alert them to potential changes to dispensing period of supply (60 day dispensing) as part of the upcoming budget.

Freedom of Information decision

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.

The right to access a document in accordance with the FOI Act relates to documents in the possession of the department (see section 4 of the FOI Act which provides a definition of 'document of an agency'). My decision is to refuse your request in accordance with subsection 24A(1) of the FOI Act on the basis that the department does not hold the documents you have requested, nor can it produce the documents requested. Section 17 of the FOI Act provides that the department shall deal with a request as a request to a written document where the department has such a document in its possession.

The FOI Act provides a right to obtain access to a document of an agency, unless the document is exempt. The right of access under the FOI Act is to existing documents, rather than to information. Although a request may be framed by reference to a document that contains particular information, the right of access provided for under the FOI Act is to existing documents held by the agency. The FOI Act does not require an agency to provide information in answer to questions, outside the requirements to process and respond to a request to obtain access to a document.

However, the department can advise that the Pharmacy Guild of Australia (the Guild) was first alerted to consideration of the policy of 60 day dispensing in 2018. Consultation with the Guild commenced ahead of the 2023-24 Budget on 28 March 2023.

The reasons for my decision are set out in **ATTACHMENT A**.

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 review rights at **ATTACHMENT B**.

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,



Jerome Boland
Acting Assistant Secretary
Technology Assessment and Access Division

13 July 2023

REASONS FOR DECISION
FO 4386

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
- the content of the documents sought, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

2. Reasons for decision

In making my decision, I have 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, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

The right to request access to a document in accordance with the FOI Act relates to documents in the possession of the department (see definition of 'document of an agency' in s 4 of the FOI Act).

Section 17 of the FOI Act provides that:

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

(c) the agency could produce a written document containing the information in discrete form by:

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

I am refusing your request in accordance with section 17 of the FOI Act as the department does not hold the documents you have requested.

Further, the relevant business area within the department has conducted searches of the department's information holdings. 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 cannot be located or do not exist in the possession of the department.

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). I am refusing your request in accordance with subsection 24A(1) of the FOI Act as the department does not hold the documents you have requested.

Section 24A of the FOI Act

- (1) 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.

Further, you have requested access to data that is held in computer systems ordinarily available to the department. Under section 17 of the FOI Act, the department is required to produce a written document of information that is stored electronically and not in a discrete form where, per FOI Guidelines paragraph 3.210:

- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i));
- Producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).

Accordingly, I am satisfied that the department's compliance with your request to produce a list (document) would substantially and unreasonably divert the department's resources from its other operations.

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
Mail: FOI Unit (MDP 516)
Department of Health
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 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