



Australian Government
Department of Health

Department Reference: 258-1415

Ms Karen Dearne

Via email: foi+request-1067-5db12f6e@righttoknow.org.au

Dear Karen

NOTICE OF DECISION

I refer to your request of 11 May 2015 to the Department of Health, for access under the *Freedom of Information Act 1982* (FOI Act) to:

“a copy of the Deloitte eHealth Working Group (EHWG) National eHealth Strategy for Australia summary report dated November 2013”.

I am writing to advise you of my decision.

Decision

I have identified one document falling within the terms of your request. The document is titled *eHealth Working Group (EHWG) National eHealth Strategy for Australia* and is a draft dated 31 October 2013 (this is the version referenced throughout the report on the Review of the Personally Controlled Electronic Health Record (PCEHR). The document was prepared by Deloitte Access Economics and comprises of 18 pages.

I have decided to refuse access to the document.

My reasons for this decision are set out at Attachment A.

Review rights

If you are dissatisfied with my decision, you may apply for an internal review or Australian Information Commissioner (Information Commissioner) review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the Department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this Department within 30 days.

An application for an internal review should be addressed to:

Email: FOI@health.gov.au

Mail: FOI Coordinator (MDP 350)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review must be made in writing 60 days of this notice (if you do not request an internal review).

The Australian Information Commissioner can be contacted by:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>

You may also make a complaint to the Information Commissioner about action taken by the Department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions

The FOI Act, including the provisions relevant to your request can be accessed from the ComLaw website using the following link: <http://www.comlaw.gov.au/Series/C2004A02562>

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Department's FOI Unit on (02) 6289 1666.

Yours sincerely



Linda Jackson
Assistant Secretary
eHealth Policy Branch

9 June 2015

REASONS FOR DECISION

Material taken into account

In making my decision, I had regard to the following:

- the terms of your request;
- the content of the document to which you sought access;
- advice from Departmental officers with responsibility for matters relating to the document to which access is sought;
- the relevant provisions of the FOI Act; and
- guidelines issued by the Australian Information Commissioner under s93A of the FOI Act.

Paragraph 47B(a) – Commonwealth-State relations

Paragraph 47B(a) conditionally exempts a document (or part of a document) from disclosure if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (including a Territory).

The *eHealth Working Group (EHWG) National eHealth Strategy for Australia* (National eHealth Strategy) is a draft revised version of the 2008 National eHealth Strategy for consideration by State and Territory Governments and the Commonwealth Government. The National eHealth Strategy provides a draft plan for a nationally coordinated approach to eHealth in Australia, including key areas for future joint Commonwealth, State and Territory investment if the full benefits of eHealth are to be realised. Given the nature of the issues being discussed, disclosure before a decision by the Council of Australian Governments Health Council is made would damage relations with the States and Territories. Disclosure would inhibit the future flow of information needed for the Commonwealth and the States and Territories to work co-operatively to achieve national outcomes on eHealth.

Accordingly, I am satisfied that the National eHealth Strategy is conditionally exempt under paragraph 47B(a).

Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A of the FOI Act).

Section 11B(3) of the FOI Act lists factors which favour access when applying the public interest test. I have taken into account that access to the document would inform debate on a matter of public importance. On the other hand there is a public interest in the Commonwealth maintaining good relations with the States and Territories to be able to achieve mutual objectives. Disclosure would pre-empt and potentially undermine the discussion currently being undertaken in relation to the revised National eHealth Strategy. Disclosure would inhibit the ability of the Commonwealth to work closely with the States and Territories on finalising their agreement to a revised National eHealth Strategy.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release the National eHealth Strategy and it is therefore exempt under paragraph 47B(a).

Section 47C – Deliberative processes

Section 47C conditionally exempts a document if its disclosure would disclose opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the deliberative processes of an agency or Minister or the Government of the Commonwealth.

The draft National eHealth Strategy contains advice and recommendations about the future direction of, and investment, in eHealth nationally. The Strategy is currently being reviewed by the Commonwealth/State eHealth Working Group (EHWG) and once that process is complete it will be considered and agreed upon by the Commonwealth Minister for Health and State and Territory Health Ministers.

I am satisfied that the disclosure of the advice and recommendations in the National eHealth Strategy would disclose deliberative matter within the meaning of section 47C of the FOI Act, given the contents of the report and the fact that it is to be considered by the Commonwealth Minister for Health. The parts of the report identified in the National eHealth Strategy are therefore conditionally exempt under section 47C.

Section 47C is a conditional exemption. Section 11A(5) provides that access must be given to a conditionally exempt document unless such access “*would, on balance, be contrary to the public interest*”. In conducting my review I took into account whether access to the report would be contrary to the public interest.

I have taken into account that access to the document would inform debate on a matter of public importance. However, at this point in time, the public release of the advice and recommendations in the National eHealth Strategy may expose matters under deliberation to premature scrutiny which would undermine the integrity of the decision-making process of government.

I am of the view that disclosure of the advice and recommendations in the report could reasonably be expected to prejudice the effective development of policy in this area. It is in the interest of the Australian community that consideration of the National eHealth Strategy’s advice and recommendations be conducted in circumstances of confidentiality to protect the decision making process.

After weighing these factors I have decided that disclosure of those parts of the report in the National eHealth Strategy is, on balance, contrary to the public interest and therefore those parts are exempt under section 47C.