



Australian Government

Department of Health and Aged Care

FOI reference: FOI 4876

Eperke Barsony
Right to Know
foi+request-10965-3e81928a@righttoknow.org.au

Dear Eperke Barsony

Decision on your Freedom of Information Request

I refer to your request of 12 December 2023 to the Department of Health and Aged Care (the department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to:

- 1. The minutes of the meetings Pico Advisory Subcommittee meeting on 7-8 December 2023, referencing item 1754 - Patient consultations and surgical procedures for gender affirmation in adults with gender incongruence*
- 2. Any documentation relied upon, or otherwise referenced in these meetings*

Clarification/Modification of scope of request

On 2 January 2024, following consultation with you, you agreed to modify the scope of your request to the following:

I agree to exclude the consultation input from individuals, especially any input that would threaten the privacy of trans consultants.

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.

FOI decision

I have identified 40 documents that are relevant to your request. These documents were in the possession of the department when your request was received.

I note that some of the documents in scope of the request, specifically a number of submissions made to the Pico Advisory Subcommittee, were redacted prior to the Subcommittee considering them. These redactions were not made pursuant to the FOI Act.

I have decided to:

- give access to information relevant to your request in ten documents in full
- give access to twenty-seven documents in part, subject to the deletion of exempt material
- refuse access to three documents as they contain fully 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**.

The documents contain the names and telephone numbers of departmental employees. When your 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.

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.

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.

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. 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.

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

A handwritten signature in black ink, appearing to read 'Caroline Turnour', followed by a period.

Caroline Turnour
Assistant Secretary
Technology Assessment and Access Office Health Technology Assess Branch

12 March 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENTS
FOI 4876

Document	Pages	Date	Description	Decision on access ¹	Relevant provision/s of FOI Act
1	23	24/03/2023	Combination Australian Medical Association Position Statement on LGBTQIA+ Health - 2021; and AusPATH: Public Statement on Gender Affirming AusPATH: Public Statement on Gender Affirming Healthcare, including for Trans Youth	R	
2	9	24/03/2023	Australian Society of Plastic Surgeons Inc - Patient Consultations and Surgical Procedures for Gender Affirmation in Adults with Gender Incongruence - MSAC Application - lodgement summary	RE	s 47F
3	14	24/03/2023	Australian Society of Plastic Surgeons Inc - Patient Consultations and Surgical Procedures for Gender Affirmation in Adults with Gender Incongruence - MSAC Application - lodgement summary	RE	s 47 F
4	35	24/03/2023	Australian Society of Plastic Surgeons Inc - Patient Consultations and Surgical Procedures for Gender Affirmation in Adults with Gender Incongruence - MSAC Application - Population	RE	s 47F
5	2	24/03/2023	Australian Society of Plastic Surgeons Inc - Patient	R	

¹ E = Exempt in full, R = Release in full, RE = Release with exempt information deleted, RI = Release with irrelevant information deleted, REI = Release with exempt & irrelevant information deleted.

Document	Pages	Date	Description	Decision on access ¹	Relevant provision/s of FOI Act
			Consultations and Surgical Procedures for Gender Affirmation in Adults with Gender Incongruence - MSAC Application - Gender Affirmation PICO Set Reference List		
6	1	24/03/2023	Australian Society of Plastic Surgeons Inc - Patient Consultations and Surgical Procedures for Gender Affirmation in Adults with Gender Incongruence - MSAC Application - Gender Affirmation Inputs used to calculate proposed MBS fee	R	
7	24	24/03/2023	Australian Society of Plastic Surgeons Inc - Patient Consultations and Surgical Procedures for Gender Affirmation in Adults with Gender Incongruence - MSAC Application - Gender Affirmation PICO Set_Estimate of People Treated and Number of Surgeries	R	
8	42	7/12/23	1754 - Dec 2023 PASC Presentation	E	s 47C, s 47E (d)
9	37	16/11/2023	1754 Pre-PASC PICO Confirmation document	RE	s 47C
10	37	24/11/2023	1754 Pre-PASC PICO Confirmation - Suggested Revisions by Applicant document	RE	s 47C
11	43	24/11/2023	1754 Pre-PASC PICO Confirmation - Suggested Revisions by Applicant document	RE	s 47C

Document	Pages	Date	Description	Decision on access ¹	Relevant provision/s of FOI Act
12	2	28/11/2023	Australian Society of Plastic Surgeons Inc current clinical algorithm	E	s 47C
13	4	28/11/2023	Australian Society of Plastic Surgeons Inc proposed clinical algorithm	E	s 47C
14	10	24/05/2023	MSAC Executive Teleconference Agenda - 1754 Gender affirmation	REI	s 22, s 47E (d), s 47C
15	2	24/05/2023	Excerpt of July 2022 MSAC Executive Minutes for Gender Affirmation	RE	s 47C
16	10	24/05/2023	Department summary of gender affirmation surgery items and clinical algorithm	RE	s 47C
17	2	24/05/2023	Department summary of patient and multidisciplinary consultation items	R	
18	2	15/08/2023	Letter of response from Australian Society of Plastic Surgeons Inc to MSAC	RE	s 47E (d), s 47F
19	4	26/7/23	Excerpt - Final MSAC Executive Minutes - 26 May 23 - ratified 26 Jul 23	RE	s 47C
20	22	1/8/23 (date on letter)	Power Point presentation - Gender incongruence treatment systematic review from applicant	RE	s 47F
21	8	24/10/2023	Parents of Adolescents with Gender Distress – Victoria - Organisation consultation input on MSAC consultation survey	R	
22	1	26/10/2023	Letter from The Royal Australian & New Zealand College of Psychiatrists with consultation input on MSAC Application 1754	RE	s 47F

Document	Pages	Date	Description	Decision on access ¹	Relevant provision/s of FOI Act
23	10	30/10/2023	Email - Gender pathways service - Redacted with attached Organisation consultation input on MSAC consultation survey	REI	s 22, s 47F
24	6	1/11/2023	Thorne Harbour Health - Redacted Organisation consultation input on MSAC consultation survey	R	
25	13	2/11/2023	Genspect - Redacted Organisation consultation (consumer organisation) input on MSAC consultation survey	RI	s 22, s47F
26	7	2/11/2023	Royal Australian and New Zealand College of Obstetricians and Gynaecologists - Redacted Organisation consultation (medical organisation) input on MSAC consultation survey	R	
27	46	2/11/2023	Trans Health Research - Redacted Organisation consultation (medical organisation) input on MSAC consultation survey and journal publications	RE	s 47, s 47F
28	9	3/11/2023	USANZ - on behalf of 3x Urologist, Fellowship Trained in Genital Gender Affirmation Surgery - Redacted Organisation consultation (medical organisation) input on MSAC consultation survey	REI	s 22, s 47F
29	10	3/11/2023	Family Planning Alliance Australia and Sexual Health Quarters (FPAA and SHQ) - Redacted Organisation consultation (medical organisation) input on MSAC consultation survey and letter	REI	s 22, s 47F, s 47G 1(a)

Document	Pages	Date	Description	Decision on access ¹	Relevant provision/s of FOI Act
30	7	3/11/2023	TransFolk of WA - Redacted Organisation consultation (consumer organisation) input on MSAC consultation survey	REI	s 22, s 47F
31	13	3/11/2023	ACON Redacted Letter with consultation input, including an evidence brief on gender affirming surgery	REI	s 22, s 47F
32	7	3/11/2023	Public Health Association of Australia - Diversity, Equity and Inclusion Special Interest Group - Redacted Organisation consultation input on MSAC consultation survey	RI	s 22
33	8	3/11/2023	Monash Health - Redacted Organisation consultation input on MSAC consultation survey	R	
34	2	6/11/2023	Australian Medical Association - Redacted Letter with organisational input	RE	s 47F
35	14	6/11/2023	Trans Gender Victoria - Redacted Organisation consultation input in provided as a report and MSAC Consultation survey	RE	s 47F
36	11	7/11/2023	LGBTIQ+ Health Australia's - Redacted Organisation consultation input in provided as a report and MSAC Consultation survey	RE	s 47F
37	6	10/11/2023	Australian and New Zealand Association of Oral and Maxillofacial Surgeons Inc - Redacted Organisation consultation input on MSAC consultation survey	R	

Document	Pages	Date	Description	Decision on access ¹	Relevant provision/s of FOI Act
38	2	17/11/2023	Royal Australasian College of Surgeons - Redacted Email to MSAC - MSAC application 1754 - Consultation request - Royal Australian College of Surgeons	RE	s 47F
39	9	24/11/2023	MBS-related PASC Policy Paper - Application 1754	RE	s 47F
40	2	24/11/2023	Table titled Table 1 Existing similar items in/out hospital services FY 22/23 Attachment to document #39	RE	s 38

ATTACHMENT B.

**REASONS FOR DECISION
FOI 4876**

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 38 - Documents to which secrecy provisions of enactments apply

Section 38 of the FOI Act provides that a document is an exempt document if disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and that provision is specified in Schedule 3 of the FOI Act.

Relevantly, Schedule 3 of the FOI Act specifies the following secrecy provision:

- *Health Insurance Act 1973*, subsections 130(1), (4) and (9)

I am satisfied that the information contained in parts of the document marked 's38' in the schedule is subject to the secrecy provisions contained in the *Health Insurance Act 1973* (Cth).

I am further satisfied that subsections 38(1A) and 38(2) of the FOI Act do not apply in this instance and are not relevant to my decision.

For the reasons outlined above, I have decided that the parts of the documents marked 's38' in the schedule are exempt from disclosure under section 38 of the FOI Act.

4. Section 47 - Documents disclosing trade secrets or commercially valuable information

Subsection 47(1) of the FOI Act provides that a document is an exempt document if its disclosure would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Commercially valuable information

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body, and
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the department and the affected third party for whom it has value

- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine “arm’s length” buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

As notified to you on 12 January 2024, in accordance with the obligations under section 27 of the FOI Act, the department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I have decided that parts of the documents marked ‘s47’ in the schedule are exempt from disclosure under section 47 of the FOI Act.

5. Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

Deliberative process

Paragraph 6.58 of the FOI Guidelines states that a deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one’s course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the ‘*deliberative process*’ generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that ‘*deliberative matter*’ is a shorthand term for ‘opinion, advice and recommendation’ and ‘consultation and deliberation’ that is recorded or reflected in a document. There is no reason generally to limit the ordinary

meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the documents marked 's47C' in the schedule contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the department or the process of reflection upon the wisdom and expediency of a particular proposal.

Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that the factual information contained within the documents is an integral part of the deliberative content is embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I have decided parts of the documents marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

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.

6. 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 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 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.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

This provision of the FOI Act specifically extends to the personal information of deceased persons.

I am satisfied that parts of the documents marked 's47F' in the schedule include personal information and/or sensitive personal health information

Unreasonable Disclosure of Personal Information

Subsection 47F(2) of the FOI Act provides that in determining whether a 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 6.138 of the FOI Guidelines states that:

The personal privacy 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 259, 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 6.142 and 6.143 of the FOI Guidelines state:

- 6.142 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

6.143 As discussed in the leading 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 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

Paragraph 6.153 of the FOI Guidelines states:

Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.

The documents contain the personal information of Australian Public Service (APS) staff who are not in the Senior Executive Service (SES).

However, I note that in *Chief Executive Officer, Services Australia and Justin Warren* [2020] AATA 4557 (*Warren*), at paragraph 83, Deputy President S A Forgie noted:

The whole of the FOI Act is a finely tuned balance between two interests. In one side of the balance is the facilitation and promotion of access to a national resource that is information held by Government, which enables increased public participation in Government processes and increased scrutiny, discussion, comment, and review of the Government's activities. In the other is the protection of the national interest, the essential operation of government and the privacy of those who deal with government. It is most important, therefore, that its provisions be read very carefully and that presumptions should not be introduced that are not expressed, or necessarily implicit, in the words Parliament has chosen to achieve the balance that it wants. Those words should be the starting point of any consideration rather than any presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and increases the objects of the FOI Act.

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
- release of this information would cause anxiety to the individuals concerned
- 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 placing of the personal information of individuals who work for a government department into the public domain has the potential to place those individuals at risk of harassment, abuse, threats and intimidation. This would be detrimental to the individuals concerned, and potentially also their families. Mitigating this risk is even more important with the prevalence of social media and technology allowing individuals to be more easily identifiable and contactable in online environments
- the individuals would not expect the information to be placed in the public domain, 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.

In making my decision, I have consulted with the affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals.

For the reasons outlined above, I have decided that parts of the documents marked 's47F' in the schedule are conditionally exempt from disclosure under section 47F of the FOI Act.

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.

7. Section 47G - Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Business information

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of the documents marked 's47G' in the schedule contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

Unreasonable adverse effect of disclosure

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in subsection 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of paragraph 47G(1)(a); but this does not amount to the public interest test of subsection 11A(5), which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties in preserving the profitability of their businesses.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on a person in respect of the business affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third party business outweighs the public interest in the disclosure of this information.

8. Disclosure is not in the public interest

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 6.5 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

Section 11B 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 (including all matters set out in sections 3 and 3A)
- 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 inform debate on a matter of public importance
- would not promote effective oversight of public expenditure

Factors weighing against disclosure

I consider that the following public interest factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- s47C could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have the potential to be put forward

s47F - general

- 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 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 individual's right to personal privacy

s47F - staff names

- would prejudice the department's ability to meet its statutory obligations and responsibilities in relation to the work health and safety of its employees

s47G

- could reasonably be expected to prejudice the department's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future

In making my decision, 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.

Conclusion

For the reasons set out above, after weighing all public interest factors for and against disclosure, I have decided that, on balance, disclosure of some of the conditionally exemption information would be in the public interest. I am satisfied that the benefit to the public resulting from disclosure outweighs the benefit to the public of withholding the information. Accordingly, I have decided to release that conditionally exempt information.

However, after weighing all public interest factors for and against disclosure of the remaining conditionally exempt information, I have decided that, on balance, disclosure of that 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. Accordingly, I have caused that conditionally exempt information to be redacted from the documents provided to you.

9. Section 22 - deletion of irrelevant material

Section 22 of the FOI Act applies to documents containing exempt material (subparagraph (1)(a)(i)) and irrelevant information (subparagraph (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 and telephone numbers of Department of Health and Aged Care employees. When your 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.

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

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 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.