



Australian Government

Department of Health

Department Reference: FOI 230-1617

OAIC Reference: MR17/00218

Mr Philip Nelson

Via email: foi+request-3200-3e370fcd@righttoknow.org.au

Dear Mr Nelson

NOTICE OF DECISION UNDER SECTION 55G OF THE FREEDOM OF INFORMATION ACT 1982

On 24 April 2017, you filed an application for an Australian Information Commissioner Review (IC Review) of a decision made by the Department of Health (Department) on 7 April 2017 in response to a Freedom of Information (FOI) request that you made on 6 March 2017.

Section 55G of the *Freedom of Information Act 1982* (FOI Act) enables an agency to vary or set aside and substitute an access refusal decision at any time during an IC Review of the variation or substitution would have effect of giving access to a document.

I am authorised to make decisions on behalf of the Department under section 23(1) of the FOI Act, including a substituted decision under s 55G.

This letter sets out my decision under s55G to release additional documents to you. This decision replaces the decision advised in the Notice of Decision dated 7 April 2017 (primary decision).

Background

On 6 March 2017, you made a request to the Department under the FOI Act for access to:

"In respect of Minister Hunt's statement of 03 March 2017 in respect to the Australian Sports Anti-Doping Authority investigation into doping at the Essendon Football Club wherein Mr Hunt was advised there is no new or substantive information in the material supplied that would justify a further investigation."

I am requesting a copy of the Department's advice to Minister Hunt referred to in his statement, together with copies of correspondence (electronic and print) between ASADA and Health officials in preparing and finalising that advice."

On 7 April 2017, Ms Narelle Smith, Assistant Secretary, Office for Sport made a decision of which you were notified on 11 April 2017 that two documents falling within the scope of your request had been identified and that access to both documents was refused under s47C of the FOI Act on the basis that the material contained in both documents was deliberative in nature and release at that time would be contrary to the public interest.

Decision and reasons for decision

In making this new decision I have considered those two documents that were subject the Department's primary decision and the provisions of the FOI Act.

The reasons for my decision are set out in Attachment A.

I have decided to grant access in part to both documents subject to the deletion of exempt material or material irrelevant to the scope of the request as indicated in the schedule of documents at Attachment B. The primary decision exempted these documents in their entirety under s47C of the FOI Act.

Review Rights

Information Commissioner

I have informed the Information Commissioner of the substituted decision. Under s55G of the FOI Act, your application for IC Review if the primary decision is now taken to be an application for the review of this substituted decision.

If you are satisfied with this substituted decision, you may withdraw your application to the Information Commissioner. If you are dissatisfied with this substituted decision, the Information Commissioner will continue the IC Review.

You may make a complaint to the Information Commissioner about the action taken by the Department in relation to your application. The complaints must be in writing and identify the Department as the agency. The complaints should also set out what action you consider should be investigated.

You can contact the Information Commissioner by email at enquiries@oaic.gov.au or by telephone at 1300 363 992.

Administrative Appeals Tribunal

If you continue with the IC Review you may apply to the Administrative Appeals Tribunal (AAT) for review of the Information Commissioner's decision. The AAT is an independent tribunal with power to make a fresh decision.

Your application to the AAT should be accompanied by an application fee, which may be refunded in some instances. The fee may be waived by the AAT where financial hardship is shown.

The AAT has a help desk to advise on its procedures. More information is available at the AAT website at www.aat.gov.au

Relevant provisions

The FOI Act, including the provisions relevant to this decision can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2017C00364>

Publication

You should be aware that as I have decided to release material to you, the Department may also publish the released material on the Department's FOI Disclosure Log on the Department's website:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/foi-disc-log-2017-18>

The Department will not publish information, such as personal or business information, where it would be unreasonable to do so.

Contacts

If you require clarification of any of the matters discussed in this Notice you should contact the Department's FOI Unit on (02) 6289 1666 or via email at

FOI@health.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jaye Smith', with a stylized flourish at the end.

Jaye Smith
Acting First Assistant Secretary
Population Health and Sport Division

23 November 2017

ATTACHMENT A

REASONS FOR DECISION

Material taken into account

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

- the terms of your request;
- the Notice of Decision and reasons for decision of 7 April 2017;
- your letter of 24 April 2017 to the Office of the Australian Information Commissioner making an application for IC Review;
- the content of the documents to which you have sought access;
- the passage of time since the primary decision;
- advice from departmental officers with responsibility for matters relating to the documents to which you sought access;
- advice from other Commonwealth agencies;
- the relevant provisions of the FOI Act; and
- guidelines issued by the Australian Information Commissioner under s93A of the FOI Act.

Section 47F – Public interest conditional exemption – personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information.

Section 4 of the FOI Act provides that the term ‘personal information’ in the FOI Act has the same meaning as the *Privacy Act 1988*.

Parts of Documents 1 and 2 contain personal information about individuals other than the applicant; namely, the mobile and direct telephone numbers and names of departmental employees and/or the names of certain individuals not employed by the Commonwealth.

This information constitutes personal information for the purposes of s47F.

I have determined that it would be unreasonable to disclose this information. In making that determination, I had regard to the following matters set out in s47F(2) of the FOI Act:

- (a) the extent to which the information is well known;
- (b) whether the relevant individuals are known to be associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources; and
- (d) any other matters the agency considers relevant.

While the names of individuals not employed by the Commonwealth are known to be associated with the subject matter to which Documents 1 and 2 relate and there may be aspects that are available from publicly accessible sources, what is not publicly known, or available from other sources is that they are referred to in these specific documents, created for a specific purpose in response to a specific request. Therefore disclosure would be unreasonably detrimental to the individuals concerned.

I am therefore satisfied that the parts of Documents 1 and 2 containing personal information are conditionally exempt under s47F of the FOI Act.

Public interest

As s47F is a conditional exemption, pursuant to s11A(5) of the FOI Act, I am required to give access to a conditionally exempt document unless access to the document at that time, would on balance, be contrary to the public interest.

In making my decision, I considered the following factors in favour of disclosure in s11B(3) of the FOI Act: disclosure would promote the objects of the FOI Act. None of the other factors set out in s11B(3) are relevant to the personal information contained in the documents.

I also considered the following factors against disclosure:

- Disclosure could, based on knowledge of previous actions of individuals reasonably be expected to prejudice the protection of the officers privacy;
- Disclosure could subject the officers to undue and unnecessary harassment when undertaking their duties;
- The release of the information would not add any substance to the information being released; and
- The information would not enhance accountability or transparency or promote oversight of the Department's activities.

On balance, I find that access to the personal information in Documents 1 and 2 would be contrary to the public interest. Accordingly, I have decided that parts of Documents 1 and 2 are conditionally exempt under section 47F of the FOI Act.

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SCHEDULE OF DOCUMENTS

Doc No.	No. of Pages	Date	Author	Addressee	Description of Documents	Decision ¹	Portion Exempt
1	9	23/02/17	Department of Health	Minister for Health, Minister for Sport	MS17-000325: Essendon Football Club – Doping Investigation	RE	s47F Page 1 – mobile and direct telephone numbers, position title and names of departmental employees. Pages 1 and 2 – names of certain individuals
2	3	27/02/17	Department of Health	Minister for Health, Minister for Sport	MS17-000374: Supplementary Advice – Essendon Football Club Doping Matter	RE	s47F Page 1 – mobile and direct telephone numbers, position title and names of departmental employees.

¹ R = release, E = exempt, I= irrelevant material.