



**Australian Government**  
**Department of Health**

Department Reference: FOI 230-1617

Mr Philip Nelson  
[www.righttoknow.org.au](http://www.righttoknow.org.au)

Via email: [foi+request-3200-3e370fcd@righttoknow.org.au](mailto:foi+request-3200-3e370fcd@righttoknow.org.au)

Dear Mr Nelson

**NOTICE OF DECISION**

I refer to your request of 6 March 2017 to the Department of Health (Department) seeking access under the *Freedom of Information Act 1982* (FOI Act) 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."*

I am writing to advise you of my decision.

**Decision**

I am authorised under section 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.

I have identified 2 documents falling within the terms of your request. The documents are set out in the schedule at Attachment A.

I have decided to refuse access to all documents.

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

## **Charges**

I notified you of your liability to pay charges on 31 March 2017 which you have paid in full.

## **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](mailto:FOI@health.gov.au)

OR

Mail: FOI Unit (MDP 41)  
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](mailto: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 referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2016C01042>

## Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Department's FOI Unit on (02) 62891666, or by email at [FOI@health.gov.au](mailto:FOI@health.gov.au).

Yours sincerely



Narelle Smith  
Assistant Secretary  
Office for Sport

7 April 2017

# ATTACHMENT A

## SCHEDULE OF DOCUMENTS - FOI 230-1617

Doc. No. <sup>1</sup>	No. of Pages	Date	Author	Addressee	Description of Document	Decision <sup>2</sup>	Portion Exempt
1	9	23.02.17	Department of Health	Department of Health	Ministerial Submission	E	S47C – Entire document
2	3	02.03.17	Department of Health	Department of Health	Ministerial Submission	E	S47C – Entire document

<sup>1</sup> \* = Third Party Consulted

<sup>2</sup> R= Release, RE = Release with Exemptions applied, E = Exempt in Full, I = Irrelevant

## **ATTACHMENT B**

### **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 documents to which you sought access;
- advice from departmental officers with responsibility for matters relating to the documents to which you sought access;
- the relevant provisions of the FOI Act; and
- guidelines issued by the Australian Information Commissioner under s93A of the FOI Act.

#### **Finding of facts and reasons for decision**

Where the schedule of documents indicates an exemption claim has been applied to a document, my findings of fact and reasons for deciding that the exemption applies to that document or part of the document are set out below:

#### **Section 47C – deliberative process**

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

The two documents are Ministerial Submissions which contain opinions and recommendations in relation to calls for the conduct of a Parliamentary Inquiry into the conduct of the Essendon Football Club doping investigation. Both ministerial submissions contain recommendations provided to the Minister for Health and Minister for Sport in the very early stages of the Ministry, and therefore forms part of the briefing provided by departments when there are ministerial changes to enable an understanding of the portfolio responsibility, this includes such matters as those referred to in the documents.

Disclosure of the documents would disclose ‘deliberative matter’ as defined in section 47C such as opinions and advice of Departmental officers on calls put forward to justify a Parliamentary inquiry into the conduct of the Essendon doping matter.

Consistent with Australia’s anti-doping legislation, the Department was not a party to the original Australian Sports Anti-Doping Authority (ASADA) investigation. The advice provided to the Minister was based on an assessment of material received by the Minister, a developed knowledge of national and international anti-doping processes, and the level of scrutiny to which the case has already been subjected which has included a review of an

appeal made by the World Anti-Doping Agency (WADA). Therefore the documents are conditionally exempt under that section.

As section 47C is a conditional exemption, I have considered whether their release would be contrary to the public interest.

The public interest relates to the interests of the public as a whole and not to interest particular individuals or sections of the public may have. I have taken into account that access to the document would inform debate on a matter of public importance and is essential to promoting effective transparency. In this case, the investigation has been finalised, the anti-doping process has been followed, the Federal Court and full bench of the Federal Court have ruled on the investigation and appeal rights available under the Australian Football League's anti-doping policy and the rules of the Court of Arbitration for Sport have been exercised. The players found to have committed an anti-doping rule violation have served their sanction and are eligible to resume playing in the 2017 season.

Decisions must be made in circumstances conducive to the free and frank analysis of potential options and advice to senior officials, stakeholders and to government. Release to the public of the documents in question would inhibit the willingness of decision makers to express their views. It would cause decisions to be made with a view to what publicity might ensue, rather than the best interests of the Australian community. I have, accordingly decided that, while there may be individuals who would find the documents interesting, the balance of public interest lies in favour of non-disclosure.

Given the above, I have decided that, on balance, disclosure of the documents would be contrary to the public interest. The documents are therefore exempt under section 47C of the FOI Act.