



FOI17/142; 17/8681

16 November 2017

Mr Richard Smith

By email only: foirequest-3751-b5da0031@righttoknow.org.au

Dear Mr Smith

### **Freedom of Information Request – FOI17/142**

The purpose of this letter is to advise you of my decision following your request for internal review of the decision of the Attorney-General's Department to refuse access to documents you requested under the *Freedom of Information Act 1982* (the FOI Act).

#### **Summary of your request**

I, Sara Samios, Assistant Secretary, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Attorney-General's Department (the department).

On 28 August 2017, you requested documents relating to legal advice and court attendances at the Victorian Supreme Court for the Minister for Health, Minister for Human Services, and the Assistant Minister to the Treasurer. This request is attached (**Attachment A**).

It was identified that the department holds three documents that fall within the scope of your request. You were advised on 3 October 2017 of the decision to refuse access to the three documents identified (**Attachment B**). You asked for an internal review of that decision on 12 October 2017. Your request for internal review is attached (**Attachment C**).

#### **Decision on review**

I note the comments you provided in your request for internal review, which include the following –

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*As my request is primarily aimed at the release of the cost to the taxpayer of the legal advice and representation, then this numerical data could be extracted and summarised for release without affecting legal professional privilege.*

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*If the documentation submitted to substantiate the claim does provide some confidential information (for example medical or personal information) then the Department should be able to manage this through redaction of the confidential information and by partial release to allow the public to have oversight that that Department is discharging its duties appropriately.*

As your comments indicate you are not seeking information other than that which constitutes numerical data, I have interpreted your comments as a narrowing of the scope of your request.

Accordingly, I have made a decision to set aside the initial decision made by Mr Roberts in respect of those parts of the document that relate to numerical data. I do not consider these numbers on their own are exempt information under section 47E and 47F of the FOI Act.

As I consider that you have revised the scope of your request, a decision in relation to the other information contained in the documents would not be required. For completeness, without your confirmation that the scope is revised, I affirm the initial decision that exempted information in accordance with sections 42, 47E and 47F of the FOI Act. In doing so, I rely on the reason and explanation provided in the initial decision.

### **Material taken into account**

I have taken the following material into account in making my decision:

- your initial request under the FOI Act
- the initial decision made by Mr Roberts on 3 October 2017 in respect of your request
- your request for internal review and related submissions
- the FOI Act (specifically sections 22, 42, 47E and 47F), and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

### **Reasons for decision**

As stated above, this decision releases to you the information identified in your internal review request. As far as it is necessary, I affirm the initial decision and reason as they relate to the remaining information.

In your request for internal review of the initial decision you commented that:

*Considering that the three individuals subject to this FOI request are Ministers of the Crown, the normal requirement for the right to privacy would not apply. This is particularly the case in the circumstances of the court case, as it resulted from the three Ministers of the Crown making public statements”*

Please note that the personal privacy considerations taken into consideration, and the redactions applied by Mr Roberts, related to the individual counsel engaged and not the Ministers.

### **Information Commissioner review**

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 5218, SYDNEY NSW 2001  
in person: Level 3, 175 Pitt Street, SYDNEY NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

### **Questions about this decision**

If you wish to discuss this decision, please contact the FOI unit by telephone on (02) 6141 6666 or by email [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



Sara Samios  
Assistant Secretary

### **Attachments**

#### **The Schedule of Documents; and**

- A. Your original FOI request of 28 July 2017;**
- B. The original decision of 3 October 2017 made by Mr Roberts on your FOI request;**
- C. Your request for internal review of 12 October 2017**