



Australian Government

Department of Health

Department Reference: FOI 235-1718

Mr Ben Fairless

Via email: foi+request-4436-38304c5a@righttoknow.org.au

Dear Mr Fairless

NOTICE OF DECISION

I refer to your request of 13 March 2018 to the Department of Health (Department) seeking access under the *Freedom of Information Act 1982* (FOI Act) to:

"Can you provide a copy of all correspondence between HBF and the Department in relation to the decision by HBF to remove items from lower levels of cover?"

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

I have decided to give access to one document subject to the deletion of exempt material and to refuse access to two documents.

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

Third Party Consultation

As you were informed on 6 April 2018, it was necessary for me to undertake consultation with a third party as part of my decision making function.

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

OR

Mail: FOI Unit (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 within 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 referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2018C00016>

Publication

You should be aware that where I have decided to release documents to you, the Department may also publish the released material on its Disclosure Log. The Department will however, not publish information (such as personal or business information) where it would be unreasonable to do so.

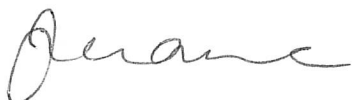
For your reference the Department's Disclosure Log can be found at:

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

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the FOI Unit on 02 6289 1666 or foi@health.gov.au.

Yours sincerely



Julianne Quaine
Assistant Secretary
Private Health Insurance and Pharmacy Branch

8 May 2018

SCHEDULE OF DOCUMENTS - FOI 235-1718

ATTACHMENT A

Doc. No.	No. of Pages	Date	Author	Addressee	Description of Document	Decision ¹	Portion Exempt
1	3	06.03.2018	HBF	Department of Health	Email	RE	s47F - personal information s22 - out of scope material
2	595	20.03.2018	HBF	Department of Health	Email	E	s45 - material obtained in confidence
3	261	20.03.2018	HBF	Department of Health	Email	E	s45 - material obtained in confidence

¹ RE = Release with Exemptions applied, E = Exempt in Full

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;
- submissions from third parties;
- the relevant provisions of the FOI Act; and
- guidelines issued by the Australian Information Commissioner under s93A of the FOI Act.

Section 22 – deletion of irrelevant and exempt material

Section 22 of the FOI Act applies to documents containing exempt material (22(1)(a)(i)) and irrelevant information (s22(1)(a)(ii)).

Section 22 enables an agency to provide an applicant with access to a copy of a document that is partially exempt by deleting the exempted material. I have caused exempt material to be deleted from the documents and an edited copy prepared for release.

Section 22 also allows an agency to delete irrelevant material from a document which is only partially relevant to an applicant's FOI request. The documents contain the names and telephone numbers of Department of Health employees. As outlined, in the acknowledgement to you on 20 March 2018, this material has been considered to be irrelevant to the scope of your request. I have deleted the material accordingly.

Finding of facts and reasons for decision

Where the schedule of documents indicates an exemption claim has been applied to a document or part of 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 45 – Documents containing material obtained in confidence

The information is exempt from disclosure under s45 of the FOI Act. Under s11A(4) of the FOI Act, an agency is not required by the FOI Act to give a person access to a document if it is an exempt document.

Section 45 of the FOI Act provides that a document is an exempt document if disclosure would found an action for breach of confidence. Paragraph 5.143 of the FOI Guidelines states:

To found an action for breach of confidence (which means s45 would apply), the following five criteria must be satisfied in relation to the information:

- *it must be specifically identified*
- *it must have the necessary quality of confidentiality*
- *it must have been communicated and received on the basis of a mutual understanding of confidence*
- *it must have been disclosed or threatened to be disclosed, without authority*
- *unauthorised disclosure of the information has or will cause detriment.*

Documents 2 and 3 contain HBF business information that is not in the public domain.

I am satisfied that the information about HBF that is not currently in the public domain is information the disclosure of which at this time would found an action for breach of confidence because:

- the information, i.e. business affairs of HBF, is specifically identified
- the information has the necessary quality of confidentiality at this time as it is not in the public domain
- the information was communicated from HBF and received from the Department on the basis of a mutual understanding of confidentiality
- disclosure at this time would amount to disclosure without the authority of HBF
- the information has the necessary quality of confidence as it is only known to a limited group and is not public knowledge
- unauthorised disclosure could cause detriment to HBF financially and to public criticism as well as other private health insurance providers being privy to the business affairs and operations of HBF.

Accordingly, I am satisfied that information in Documents 2 and 3 is exempt under section 45 of the FOI Act.

Section 47F – Personal privacy

Section 47F is a conditional exemption. Pursuant to s11A(5) of the FOI Act, the Department is required to give access to a conditionally exempt document at a particular time unless access to the document at that time would, on balance, be contrary to the public interest.

Section 47F of the FOI Act protects personal privacy by providing that a document is conditional exempt if its disclosure would involve unreasonable disclosure of personal information of any person.

Document 1 includes personal information of individuals that are not in the public domain including direct contact details. This is personal information that I consider would be unreasonable to disclose and it therefore conditionally exempt under section 27F.

I do not consider there to be any public interest factors in favour of the disclosure of this information. Taking account of the following factors, I conclude that disclosure of this information would be unreasonable because:

- The personal information is not well known;
- It is unlikely that the information could be obtained from publicly accessible sources.

I have therefore decided to refuse access to this information under section 47F of the FOI Act.