



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 INTERNAL REVIEW DECISION

On 13 March 2018 you made a request to the Department of Health (Department) seeking access under the *Freedom of Information Act 1982* (FOI Act) to:

"all correspondence between HBF and the Department in relation to the decision by HBF to remove items from lower levels of cover."

On 8 May 2018 the Department made a decision on your request. On 5 June 2018 you sought internal review of that decision.

This letter sets out my decision on internal review. I am an authorised decision maker under section 23 of the FOI Act.

Decision

I have identified 3 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 all documents subject to the deletion of exempt material as indicated in the attached schedule.

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 the original decision maker to undertake consultation with a third party as part of their decision making

function. I have undertaken further consultation in the course of making this internal review decision.

Review rights

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.

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 email FOI@health.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read "David Weiss".

David Weiss
First Assistant Secretary
Medical Benefits Division

5 July 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 chain	R	
2	595	20.03.2018	HBF	Department of Health	Email with attachments	RE	S 47 - documents disclosing commercially valuable information
3	261	20.03.2018	HBF	Department of Health	Email with attachments	RE	S 47 - documents disclosing commercially valuable information

¹ 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;
- 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.

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 47 – commercially valuable information

Section 47(1)(b) of the FOI Act exempts a document if disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information was disclosed.

Information has a commercial value if it is valuable for the purposes of carrying on a commercial activity, for example if it is essential to the profitability of a business operation or if a genuine buyer is prepared to pay to obtain that information. Information may have no remaining commercial value if it is out of date or publicly available.

Commercial value

I find that some of the attachments to the emails at documents 2 and 3 disclose highly confidential information about HBF's business, including current and future product and pricing strategies, financial projections and operating margins.

Destroyed or diminished

I also find that if that information were to be disclosed under FOI, the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished. I understand and believe from the consultation responses received from HBF that it operates in a highly competitive market, and that disclosure of this information to HBF's competitors would significantly reduce its value, and would cause detriment to individual product lines and the HBF business more broadly.

Accordingly, I am satisfied that the documents are exempt under section 47(1)(b).