



1 March 2019

Our File Reference: 190218

Mr Justin Warren
foi+request-5264-2fabef25@righttoknow.org.au

Dear Mr Warren,

Your Freedom of Information Request No: FOI 190218
Notice of Decision

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (the FOI Act).

Summary

I, Bettina McMahon, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests and this letter sets out the decision on your request for access.

On 18 February 2019 you requested access to documents held by the Australian Digital Health Agency (the Agency) under the FOI Act relating to technical explanations of how the Agency will delete My Health Records.

In your FOI request you sought access to:

“As at 1 Feb 2018, the technical explanation of how the My Health Record system ensures that when a person cancels their My Health Record that any record that includes health information that is included in the My Health Record of the person is destroyed, including any backups, copies, or previous versions.”

Documents identified

The Agency has identified one document that falls within the scope of your request. I have decided to exempt this document from release. The decision is set out in full at Attachment A: Schedule of Documents.

Material taken into account

In making my decision, I had regard to:

- the terms of your application;
- the content of the documents to which you sought access;
- relevant publicly available information;
- relevant provisions of the FOI Act (specifically s.47E); and
- the guidelines published by the Office of the Australian Information Commissioner (OAIC) under section 93A of the FOI Act (the Guidelines).

Decision

The schedule indicates the document to which access is refused. My reasons for refusing access are given below.

Exemptions

Conditional exemptions

Documents to which section 47E applies

I have decided that document 1 contains material that is fully exempt from disclosure under section 47E of the FOI Act as set out in the attached schedule.

Sub section 47E(d) of the FOI Act concerns documents that may affect certain operations of agencies and it provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

....

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I note that paragraph 6.123 of the OAIC Guidelines state that any predicted substantial adverse effect must 'bear on the agency's proper and efficient operations, that is the agency is undertaking its expected activities in an expected manner'.

I have found that the Agency's operations would be substantially affected if the information in the above document was disclosed. The information regarding the technical operation system for the deletion processes contained in this document is such that, if it were released, the Agency's My Health Record (MHR) and ICT systems would be vulnerable to potential exploitation and other cyber security risks.

To divulge that level of technical information, would compromise the security and integrity of the MHR system. It would undermine the Agency's ICT systems control, operations and processes for the management of the MHR and potentially weaken the Agency's ICT capability into the future. Authors of operational information may limit the detail included in this material to reveal less about the system and the way it operates in case the information is made publicly available.

I am satisfied that the document identified above attracts the subsection 47E(d) exemption because the Agency's operations would be compromised.

After determining that the documents are conditionally exempt in accordance with subsection 47E(d), I am required to consider the Public Interest test (section 11A(5)).

Public interest considerations

Disclosure of the deliberative material would facilitate the objects of the FOI Act, by providing the applicant with access to information held by the Commonwealth Government (the Government) and increasing scrutiny of the Government's activities. However, I consider that release of this information could reasonably obstruct the future development of ICT operational systems from being honestly expressed and recorded. It is also of equal importance that a level of integrity and confidence is maintained for the continued free flow of ideas and that operational platforms are protected. It is important that officers are able to give full and uncensored consideration to opinions, advice and outcomes when engaging in operational functionalities. The ability and willingness of officers to thoroughly consider all options would

be adversely affected if the document could then be disclosed to the public for debate and comment outside of official operational processes.

Therefore, it is reasonably foreseeable that allowing public access to documents concerning the operations of the Agency would undermine the functioning of the Agency, its ICT systems and its conduct in discharging Commonwealth business.

I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under section 47E(d) of the FOI Act.

In accordance with section 11B(4) of the FOI Act, I have not taken any irrelevant factors into account when making my decision.

Additional information

In relation to your request, there is legislation and publicly available information that explains the technical dimensions of the record destruction of MHRs.

A MHR that was cancelled in the past (and archived) will be permanently deleted. If you cancel a record at any time it will be permanently deleted. See:

<https://www.myhealthrecord.gov.au/about/legislation-and-governance/summary-privacy-protections>]

The Australian Parliament passed the *My Health Records Amendment (Strengthening Privacy) Act 2018 on the 26 November 2018*. See:

https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6169

As at 1 February 2018 consumer's cancelling records were archived in the MHR System. The MHR website holds information on permanently deleting your record, permanent deletion of a cancelled My Health Record, recent changes now allow permanent deletion of a MHR and previously cancelled records. Please see <https://www.myhealthrecord.gov.au/for-you-your-family/howtos/cancel-your-record>.

Please note: Any MHR that has previously been cancelled will also be permanently deleted from the system.

The process to permanently delete these records started on 23 January 2019 and is expected to take up to 90 days. There is no archived or back up of these deletions and that information will not be able to be recovered.

Your review rights

If you are dissatisfied with my decision, you may apply for an internal review or an OAIC review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Agency for an internal review of my decision.

The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

Email: foi@digitalhealth.gov.au

Post: Freedom of Information

Scarborough House
Level 7, 1 Atlantic Street
Woden ACT 2606 Australia

Where possible please attach reasons why you believe the review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by the OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: [OAIC FOI Review](#)

Phone: 1300 363 992

Email: enquiries@oaic.gov.au

Post: GPO Box 5218 Sydney NSW 2001

In person: Level 3, 175 Pitt Street Sydney NSW 2000

Contact officer

If you would like to ask any questions, the contact officer for your request is Cecilia who can be telephoned on (02) 6223 0780 or email at foi@digitalhealth.gov.au.

Yours sincerely



Bettina McMahon

Authorised Decision-Maker

Attachments

Attachment A: Schedule of documents



Attachment A: Schedule of documents – Freedom of Information Request no: FOI 190218

Document No	Date	Pages Nos	Author	Addressee	Description of Document	Decision on access	Exemption
1	September 2018	176	Accenture Australia Pty Ltd	Australian Digital Health Agency (the Agency)	Design specification manual	Exempt in full	s.47E(d)