



21 March 2019

Our File Reference: 190303

Mr Justin Warren  
[foi+request-5264-2fabef25@righttoknow.org.au](mailto:foi+request-5264-2fabef25@righttoknow.org.au)

Dear Mr Warren,

**Your Internal Review Request No: IR 190303  
Notice of Decision**

Thank you for your letter of 3 March 2019 seeking an internal review of an Australian Digital Health Agency (the Agency) freedom of information (FOI) 190218 decision (the original decision). The original decision was made on the 1 March 2019.

From the outcome of this FOI process, you have requested and modified your request from:

*"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."*

To a request for:

*'Technical design documents for data deletion from MHR including backups'.*

This letter sets out my decision on your application.

**Authority**

I, Ronan O'Connor, am authorised under section 54 of the *Freedom of Information Act 1982* (the FOI Act) to conduct internal reviews for the Agency. Internal reviews, in accordance with the FOI Act, are conducted as a complete reconsideration of the merits of the request and I am empowered to make a fresh decision on access to documents.

**Background**

On 18 February 2019 you lodged a FOI request with the Agency and you received a response on 1 March 2019. You requested access to technical information for the deletion of data. The Agency gave you a comprehensive answer, and links, to all of the publicly available information that explains the technical dimensions of the data deletion and record destruction of My Health Records (MHR).

The Agency also reviewed its internal documentation around the scope of your request and identified one document that came within scope of your request. This document was exempted as the Agency believes that its release would compromise the operations of the Agency.

## Material taken into account

In making my decision, I had regard to:

- the terms of your application;
- the original FOI decision;
- the content of the documents to which you sought access in FOI 190218;
- the content of requested document;
- relevant publicly available information;
- relevant provisions of the FOI Act (specifically s.22, s.47E(d) and s.47G(1)(a)); and
- the guidelines published by the Office of the Australian Information Commissioner (OAIC) under section 93A of the FOI Act (the Guidelines).

## Decision

I affirm the decision made in the original decision.

A document like that requested is more than just operational as described by sections 47E(d). The document has deliberative material embedded in it, and it is not purely factual, these strands interweave throughout the document. The document does satisfy the exemption applied to it.

The response given to your original FOI request for a 'technical explanation' was responded to by the Agency. It is important to note that the FOI Act is focused on the supply of documents. It is not a process to supply explanations and information about deliberative internal agency operations.

The Agency did supply a technical explanation of how the My Health Record will permanently delete records and back-ups under legislation. The public domain information sources as to the deletion and destruction of My Health Record processes satisfy the parameters and scope of your original request.

Your statement about the operations of section 22 of the FOI Act misconstrue its use as a provision to redact information irrelevant and unrelated from the FOI request. In a document of this type section 22 would not be appropriate to utilise.

## Changed FOI request - Decision

Your request for a new FOI search with an expansion of scope to *'technical design documents for data deletion from MHR including backups'* has returned one document that satisfies the terms of your altered request.

The document that has come within scope of your modified request is an exempt document. It is exempt under sections 47E(d) and 47G(1)(a).

## Exemptions

### ***Conditional exemptions***

#### ***Document to which section 47E applies***

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

Subsection 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.

To divulge the document would compromise the security and integrity of the My Health Record system. It would undermine the Agency's ICT systems ecosystem and processes for the management of the My Health Record and potentially weaken the Agency's ICT capability into the future. Authors of deliberative 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.

***Documents to which section 47G applies***

The document also contains material that is exempt from disclosure under subsection 47G(1)(a) of the FOI Act as set out in the attached schedule.

The document is fully exempt under subsection 47G(1)(a) of the FOI Act.

Subsection 47G(1)(a) provides:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
  - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

I find the disclosure of the document would cause an unreasonable and adverse effect to the business affairs of Accenture Australia Pty Ltd. The document contains information in relation to methodologies and corporate business matters which are not otherwise publicly available. This information was provided by Accenture Australia Pty Ltd to the Agency as part of its role as the system operator of the My Health Record.

Section 47G(1)(a) states that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business.

The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. On this basis, I am satisfied that the information in question has some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

There is a reasonable expectation that the disclosure of the information contained in this document would unreasonably affect Accenture Australia Pty Ltd in respect of its lawful business affairs to the extent that this could affect the ability of Accenture Australia Pty Ltd to work with the Agency in the future.

In addition, it is likely that the disclosure of the document would result in a loss of trust in the Agency by Accenture Australia Pty Ltd and could reasonably be expected to prejudice the future supply of information to the Agency in relation to its functions.

#### **Public interest considerations**

Conditionally exempt matters under sections 47E and 47G of the FOI Act must be released unless, in the circumstances, access to that document at this time would on balance be contrary to the public interest (section 11A(5) of the FOI Act).

As the OAI Guidelines state at paragraphs 6.7 to 6.9:

The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

The Decision-maker must analyse, in each case, where on balance the public interest lies based on the particular facts of the matter at the time the decision is made.

I have considered the factors favouring access and the factors that are irrelevant in subsections 11B(3) and (4). In balancing the public interest in this case, I have considered the following factors for and against disclosure.

#### *Factors in favour of disclosure:*

I have considered the following factors favouring disclosure, specifically that disclosure would:

- i) promote the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b) of the FOI Act);
- ii) inform debate on a matter of public importance; and
- iii) promote effective oversight of public expenditure.

I do not consider that the release of the document would inform debate on a matter of public importance, nor would it promote effective oversight of public expenditure. The information contained in the document relates to one business entity and its methodologies.

#### *Factors against disclosure:*

I have considered the following factors against disclosure, specifically that disclosure would:

- i) reasonably be expected to harm the interests of an individual or group of individuals;
- ii) reasonably be expected to damage the reputation and profitability of a business; and
- iii) found an expectation that the Agency deals with business information in a manner inconsistent with the standard reasonably expected of the Government in relation to health and commercially sensitive information.

In this case I have formed the view that the disclosure of the business information will make a negligible contribution to those factors in favour of disclosure. There is minimal public interest in this information being known. In contrast the interference with the privacy of individuals and the business affairs of Accenture Australia Pty Ltd is in my view significant.

I am of the view that section 47E(d) would be against the public interest as the public would expect technical design documents that underpin a system would not be available as it does not contribute to a matter of public debate or oversight public expenditure. It does protect the system that holds personal information that should not be accessed by the public.

I have concluded that disclosure would, on balance, be contrary to the public interest. Accordingly I find that section 47E(d) and 47G(1)(a) apply in exempting disclosure of the above listed document.

**Your review rights**

If you are dissatisfied with my decision, you have certain rights of review available to you.

**Administrative Appeals Tribunal**

You may apply to the Administrative Appeals Tribunal (AAT) for a review of an internal review decision.

Your application to the AAT must be lodged in writing. You may use the forms available from the AAT Registry in your capital city or from the AAT website.

A fee for lodgement may apply. Generally, you must lodge an application for review with the AAT within 60 days of receiving your internal review decision notice.

For more information about lodging an application or applicable fees, please call the AAT on 1300 366 700 or visit [www.aat.gov.au](http://www.aat.gov.au).

**Complaints to the Ombudsman**

You may also complain to the Commonwealth Ombudsman concerning action taken by the Agency in the exercise or the performance of functions under the FOI Act.

There is no fee for making a complaint. Your enquiries to the Ombudsman can be directed to their phone number 1300 362 072 and online at:

<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=oco-complaint-form>

Please note that an applicant cannot seek review by the AAT of a decision while the Ombudsman is investigating a complaint in relation to that same decision.

**Contact officer**

If you would like to ask any questions regarding your review, the officer for your request is Cecilia who can be contacted at the email address: [foi@digitalhealth.gov.au](mailto:foi@digitalhealth.gov.au).

Yours sincerely,



Ronan O'Connor  
Authorised Decision-Maker

**Attachments**

A: Schedule of documents



Australian Government  
Australian Digital Health Agency

Schedule of documents – Freedom of Information Request no: 190303

Document No	Date	Size (Page Nos)	Author	Receiver	Description	Decision on access	Exemptions
1	September 2018	177	Accenture Australia Pty Ltd	Australian Digital Health Agency	Technical Design Manual	Exempt in full	s.47E(d) s.47G(1)(a)