

7 March 2013

Mr Peter Demmery  
By Email only - [foi+request-58-38b09bd7@righttoknow.org.au](mailto:foi+request-58-38b09bd7@righttoknow.org.au)

Dear Sir

### **Freedom of Information Act 1982 Request - Notice of Decision**

1. Thank you for your request for information under the Freedom of Information Act 1982 (FOI Act).
2. On 6 February 2013 Australian Hearing received a request made under the Freedom of Information Act 1982 (Cth) (FOI Act) seeking access to documents concerning cochlear implants and speech processors (FOI Request).
3. The purpose of this letter is to notify you of the decision that has been made in relation to the FOI Request, and to advise you of your review rights.
4. The FOI Act contains a number of provisions that provide an exemption from release of documents under a range of circumstances. One of these provisions, section 47, includes an exemption from release for certain documents that contain information that amounts to a trade secret, or information that has commercial value.
5. Section 47 of the FOI Act provides as follows:
  - (1) A document is an exempt document if its disclosure under this Act would disclose:
    - (a) trade secrets; or
    - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
  - (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
    - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
    - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

- (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
6. In addition Section 47 G of the FOI Act provides as follows:
- (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, Norfolk Island 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.
  - (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
  - (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
    - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
    - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
    - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
  - (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
7. I have decided that information contained in the documents requested is partially exempt under sections 47 and 47G of the FOI Act.
8. I have decided I can release certain information and this information is contained below.

9. I have decided not to provide access to the documents in part, pursuant to section 47 of the FOI Act, on the basis that the release of the documents would disclose trade secrets or commercially valuable information belonging to Australian Hearing and Cochlear Limited.
10. I have decided to exempt from release the documents in part pursuant to section 47 G of the FOI Act on the basis that the documents contain information concerning the business, commercial or financial affairs of Australian Hearing and Cochlear Limited which if disclosed would or could reasonably be expected to unreasonably affect those organisations adversely in respect of their lawful business or commercial affairs.
11. The documents contain information that would, or could reasonably be expected to, cause real and significant harm to Australia Hearing's and Cochlear Limited's business affairs. Release of certain parts of the information requested would disclose certain aspects of Australian Hearing's and Cochlear Limited's business affairs that its competitors are not aware.
12. Section 47G(3)(c) provides that section 47G (1) does not have effect, and therefore a document will not be conditionally exempt, where the information contained in the document concerns the business, commercial or financial affairs of an organization where the person making the request is the organization or a person acting on behalf of the organization.
13. I am satisfied that the person making the FOI Request has not provided evidence that they are a person acting on behalf of any of the organisations referred to in the FOI Request.
14. I have considered the public interest factors set out in section 11B of the FOI Act and the Information Commissioner's FOI Guidelines as required by section 11B (5) FOI and concluded that on balance it is not in the public interest to disclose all the documents the subject of the FOI Request.
15. My decision is reviewable on application to the Information Commissioner (IC). The FOI Act outlines the process for an IC reviewable decision and the time frames in which an application for review must be lodged. For further information please contact the Office of the Information Commissioner on 1300363 992 or at [www.oaic.gov.au](http://www.oaic.gov.au).
16. The FOI Request asks Australian Hearing to provide the following information
  - a. **Documents stating the number of adult clients of Australian Hearing with complex needs over the age of 26 who have cochlear implants and the number of all clients of Australian Hearing over the age of 26 who have cochlear implants.**  
  
*Australian Hearing Response: Australian Hearing has 2152 clients, over the age of 26 years, with one or more cochlear implants. Please note we rely on either the client or the implant clinic to notify us of a client's current implant status and as a result it is possible that some clients have cochlear implants which have not been recorded. All clients with a cochlear implant are considered 'complex' according to Australian Hearing's criteria.*
  - b. **Documents showing the cost to Australian Hearing (or to the government) for each cochlear implant speech processor provided to clients under the age of 26 and the total number and cost of speech processors provided each year.**

**Australian Hearing Response:** For the 2013/2014 financial year, the Commonwealth Government has allocated Australian Hearing with funding amounting to \$60.7million, to provide all its Community Service Obligations, which includes the provision of funding for cochlear implant speech processors.


In the financial year ending 30 June 2012 Australian Hearing provided 584 speech processors to Australian Hearing clients under 26 years of age. For the reasons stated in this FOI Notice of Decision Australian Hearing has declined to release the cost of speech processors to Australian Hearing provided to clients under the age of 26.

- c. **Documents comparing the cost to Australian Hearing (or to the government) of speech processors and hearing aids.**

**Australian Hearing Response:** For the reasons stated in this FOI Notice of Decision Australian Hearing has declined to provide the cost of speech processors to Australian Hearing.

Information regarding fees paid for hearing devices can be found on the Office of Hearing Services website at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/health-hear-home>.

Yours faithfully



**Jim Brown**  
FOI Contact Officer  
Australian Hearing