



Australian Government

Department of Health and Ageing

Karen Dearne
Right to Know
Sydney, NSW
foi+request-63-f2bc2d48@righttoknow.org.au

Dear Ms Dearne

Freedom of Information Request No. 175-1213

I refer to your request of 13 February 2013 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the *eHealth Memorandum of Understanding (MOU)* which replaces the *National Partnership on eHealth* which expired on end of June 2012.

I am authorised to make decisions on behalf of the Department of Health and Ageing (the Department) under section 23 of the FOI Act. This letter sets out my decision about the documents to which you sought access.

Decision

I have identified one document relevant to your request. The document is titled *Memorandum of Understanding Between the Commonwealth of Australia and the States and Territories dated 9 November 2012 in relation to developing and Effective National eHealth Capability*.

I have decided that the document is wholly exempt from disclosure under section 47B of the FOI Act. My reasons for this decision are set out at Attachment A to this letter.

Review rights

You are entitled to seek review of the decision. Your rights are set out at Attachment B to this letter.

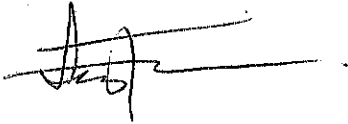
Relevant provisions

I have enclosed copies of the provisions of the FOI Act relevant to your request at Attachment C to this letter.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the FOI Unit on (02) 6289 1666.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Liz Forman', written over a horizontal line.

Liz Forman
Assistant Secretary
Strategy and Policy Branch
eHealth Division
10 May 2013

ATTACHMENT A – 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;
- Consultation responses from third parties consulted in accordance with the FOI Act;
- Advice from Departmental officers with responsibility for matters relating to the documents to which you sought access;
- Advice from other Commonwealth Departments (particularly the Department of the Prime Minister & Cabinet);
- The relevant provisions of the FOI Act;
- The Department's guidance material on the FOI Act, and
- Guidelines on FOI, available on the Office of the Australian Information Commissioner website.

Findings of fact and reasons for decision

Section 47B – Public interest conditional exemption - Commonwealth-State relations

Section 47B(a) conditionally exempts a document (or part of document) from disclosure if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (including a Territory).

I have decided that the Memorandum of Understanding is exempt in full under section 47B(a) of the FOI Act. As the Memorandum of Understanding is not yet signed by all parties and is considered not to commence until this has happened, I consider that the release of the document may pre-empt jurisdictional agreement and may cause damage to relations between the Commonwealth and a State (including a Territory).

Public interest

Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A). In considering this issue, I have taken into account whether the following public interest factors in favour of disclosure would do any of the following:

- a. promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure;
- d. allow a person to access his or her own personal information.

I also considered the following factors against release of the document:

- a. The interest in preserving the efficient and proper functioning of government;
- b. The interest in preserving close working relationships between different governments in relation to the Memorandum of Understanding;
- c. The MOU does not commence until it is signed by all parties;
- d. Release of the document in its draft state will not inform debate nor increase public participation in Government processes;
- e. Release of the document may pre-empt jurisdictional agreement and may cause damage to relations between the Commonwealth and a State (including a Territory);

- f. Third parties consulted objected to the disclosure of the document on the basis that the documents is considered to be a deliberative draft form and to release the document, until signed by all parties, could be interpreted as pre-empting jurisdictional agreement to the current draft MOU and may damage Commonwealth State relations in this way.

In my view, in relation to this document, the factors against disclosure including the risk of damage to Commonwealth and State relations from releasing the draft document outweigh the factors in favour of disclosure.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release the document. The document (or part of document) is therefore exempt under section 47B(a) of the FOI Act.

ATTACHMENT B - REVIEW RIGHTS

Review Rights – FOI applicant - original decision

1. If you are dissatisfied with this decision, you have certain rights of review available to you. You can apply for either internal review or Australian Information Commissioner (AIC) review. You do not have to apply for internal review before seeking AIC review:
 - if you choose internal review, you can still apply for AIC review if you are dissatisfied with the internal review decision;
 - if you choose AIC review, you will not be able to seek internal review of that decision and your only avenue will then be AAT review.

Details of the review options are set out below.

Internal Review

2. Under section 54B of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:
 - 30 days of you receiving this notice (or such further period as the agency allows), or
 - where access is granted to some documents and not others, 30 days after receiving this decision notice or 15 days of you receiving the documents to which you have been granted access (if any) – whichever is the longer period.
3. An internal review will be conducted by a different officer of this Department from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI Coordinator (MDP 350)
Department of Health and Ageing
GPO Box 9848
CANBERRA ACT 2601
Email: foi@health.gov.au

Australian Information Commissioner Review

4. Alternatively you may apply in writing for review by the Australian Information Commissioner.
5. The Australian Information Commissioner can be contacted by:

E-mail: enquiries@oaic.gov.au
Phone: 1300 363 992
6. In making your application you need to provide:
 - An address for notices to be sent (this can be an email address); and

- A copy of this decision
7. Although not required, you can set out the reasons for review in your application
 8. An application for AIC review must be made:
 - Within 60 days of this notice (if you do not request an internal review) or within 60 days of notice of the internal review decision.

Administrative Appeals Tribunal review

9. You may also apply to the AAT for review of a decision made on Australian Information Commissioner review with which you are dissatisfied. (Note: if you are dissatisfied with an internal review decision you must apply for AIC review.)
10. The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by an application fee - currently \$816, which may be refunded in some instances. The fee may be waived by the AAT where financial hardship is shown.
11. The AAT has a help desk to advise on its procedures. More information is available on the AAT's website www.aat.gov.au.
12. The contact details of the AAT in the State of your mailing address are:

NSW

District Registrar
Administrative Appeals Tribunal
GPO Box 9955
Sydney NSW 2001
Ph: (02) 9391 2400
Fax: (02) 9283 4881

Complaints to the Australian Information Commissioner

13. You may also make a complaint to the Australian Information Commissioner about action taken by the Department in relation to your application. The complaint needs to be in writing and identify the agency against whom the complaint is made. The Australian Information Commissioner's contact details are above in paragraph 5.
14. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

ATTACHMENT C – RELEVANT FOI ACT PROVISIONS

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or
- (c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or
- (d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or
- (e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or
- (f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).