



Australian Government

Department of Health

Department Reference: FOI 2245

J M
Right to Know

Via email: foi+request-6701-960556fd@righttoknow.org.au

Dear J M

NOTICE OF DECISION

I refer to your request of 8 February 2021 to the Department of Health (the department) seeking access under the *Freedom of Information Act 1982 (Cth)* (the Act) to the following documents:

All communications pertinent to this request (FOI 2033). This includes, but is not limited to internal/external messages & emails, transcripts, phone conversations, etc.

I am authorised under subsection 23(1) of the Act to make decisions in relation to Freedom of Information requests. I am writing to notify you of my decision on your request.

Decision

I have identified 15 documents falling within the scope of your request. The documents are set out in the Schedule at Attachment A.

I have decided to:

- grant access to three documents in full
- grant access to 10 documents in part, subject to the deletion of irrelevant material, and
- grant access to two documents in part, subject to the deletion of exempt and irrelevant material.

My reasons for this decision are set out at Attachment B.

Review rights

If you are dissatisfied with my decision, you may apply for an internal review or Australian Information Commissioner review of the decision.

Internal review

Under section 54 of the Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the department allows). To assist in the internal review process, please provide reasons you consider review of my decision is necessary. The internal review will be undertaken by another officer of the department within 30 days of your application being received.

An application for an internal review can be sent to:

Email: FOI@health.gov.au
Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner Review

Alternatively, under section 54L of the Act, you may apply to the Office of the Australian Information Commissioner (OAIC) for review of my decision. An application for review must be made in writing within 60 days of this notice (if you do not request an internal review).

You may also make a complaint to the OAIC about action taken by the department in relation to your application.

The OAIC can be contacted by:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about OAIC review and making a complaint is available on the OAIC website at <https://www.oaic.gov.au/freedom-of-information/reviews/>.

Relevant provisions

The Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Series/C2004A02562>.

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 that reads "KBishop".

K Bishop
Principal Lawyer
Legal Advice and Legislation Branch

9 March 2021

ATTACHMENT A

SCHEDULE OF DOCUMENTS - FOI 2245

Document No.	Date	Size	Description	Decision on access¹	Exemption
1	19/10/2020	1	Freedom of Information Request 2033	RI	Section 22 - page 1 (part)
2	20/10/2020	1	FW FOI request	RI	Section 22 - page 1 (part)
3	20/10/2020	2	FW New FOI Request	REI	Section 22 - page 1 (part) Section 47F - page 1 & 2 (part)
4	20/10/2020	1	FW New FOI Request - Data	REI	Section 22 - page 1 (part) Section 47F - page 1 (part)
5	20/10/2020	2	FW Freedom of Information Request 2033	RI	Section 22 - page 1 & 2 (part)
6	20/10/2020	4	Freedom of Information Request 2033 - Notification of Receipt	R	
7	21/10/2020	4	New FOI Request 2033 - Right to Know - Seeking Decision Maker	RI	Section 22 - page 1 (part)
8	21/10/2020	4	RE New FOI Request 2033 - Right to Know - Seeking Decision Maker	RI	Section 22 - page 1 & 2 (part)

¹ R: Release; RI: Release with irrelevant material deleted; REI: Release with irrelevant and exempt material deleted.

Document No.	Date	Size	Description	Decision on access ¹	Exemption
9	21/10/2020	3	RE_ New FOI request 2033 - Right to Know - Seeking Decision Maker	RI	Section 22 - page 1 (part)
10	27/10/2020	2	FOI Request Received - FOI 2033 (J M Right to Know) (LALB_LAD) - COVID-19 deaths with comorbidities	RI	Section 22 - page 1 & 2 (part)
11	06/11/2020	1	Freedom of Information Request 2033 - Notice of Decision	R	
12	09/11/2020	2	Re_ Freedom of Information Request 2033 - Notice of Decision	R	
13	10/11/2020	3	FW_ Freedom of Information Request 2033 - Notice of Decision	RI	Section 22 - page 1 (part)
14	10/11/2020	3	RE_ Freedom of Information Request 2033 - Notice of Decision	RI	Section 22 - page 1 (part)
15	10/11/2020	3	FW_ Freedom of Information Request 2033 - Notice of Decision	RI	Section 22 - page 1 (part)

ATTACHMENT B

REASONS FOR DECISION - FOI 2245

Material taken into account

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents sought
- advice from departmental officers with responsibility for matters relating to the documents sought
- the relevant provisions of the Act, and
- guidelines issued by the Australian Information Commissioner under section 93A of the Act (the FOI Guidelines).

Finding of facts and reasons for decision

My findings of fact and reasons for deciding the exemptions identified in the Schedule of Documents at Attachment A apply to the documents, are set out below.

Section 22 – deletion of irrelevant or exempt material

Section 22 of the Act applies to documents containing exempt material (subparagraph 22(1)(a)(i)) and irrelevant information (subparagraph 22(1)(a)(ii)), and permits an agency to provide a copy of a document, edited to remove information that would reasonably be regarded as irrelevant to the request.

Documents 1 to 5, 7 to 10, and 13-15 contain irrelevant and/or exempt material, which has been deleted in accordance with section 22 of the Act. The irrelevant material includes the names and contact details of Australian Public Service officers not in the Senior Executive Service (SES) and material that is outside the scope of your FOI request.

Section 47F – personal privacy

Section 47F of the Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person. The Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth), which regulates the handling of personal information about individuals. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not, and
- b. whether the information or opinion is recorded in a material form or not (refer to paragraph 6.128 of the FOI Guidelines).

Paragraph 6.130 of the FOI Guidelines provides that personal information includes a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

Documents 3 and 4 contain the names of third parties who have not consented to their personal information being made publicly available. This is personal information for the purposes of section 47F of the Act and paragraph 6.130 of the FOI Guidelines.

It is my view that personal information in the documents is conditionally exempt under section 47F of the Act.

I also consider this information irrelevant to the scope of your request.

Test of reasonableness

Subsection 47F(2) of the Act requires me to consider whether disclosure of conditionally exempt personal information would be unreasonable, and in doing so I am required to take into account:

- the extent to which the information is well known
- whether the person or persons to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly accessible sources, and
- any other matters I consider relevant.

I am satisfied from the nature of the information and my own enquiries that the personal information contained in the documents is not well known or available from publicly accessible sources. The individuals are also not known to be associated with the matters discussed in the documents. Disclosure of the relevant personal information could unreasonably affect personal privacy as a reasonable person would not expect such information to be put in the public domain.

Public interest test

I have turned my mind to whether disclosure of the third parties' personal information would be contrary to the public interest, and have included my reasoning in that regard below.

When weighing up the public interest factors in favour of disclosure, a relevant public interest factor I have considered in this instance is that disclosure may promote the objects of the Act by facilitating and promoting public access to information held by the department.

However, I have weighed up the above factor against the following factors, indicating access would be contrary to the public interest. I find there is a public interest in protecting the privacy of an individual's personal information. The

specific harm in disclosing the individuals' personal information without their agreement would be an interference with those individuals' right to privacy. Release of the personal information would not add any substance to the information being provided under this request and there would be no public purpose achieved through the release of the personal information. Further, most of the personal information is not available in full or in part from publicly-accessible sources.

I confirm I have not had regard to any of the irrelevant factors set out in subsection 11B(4) of the Act.

After careful consideration of all relevant factors, I consider that, on balance, the benefits of protecting the individuals' privacy must be given greater weight. Accordingly, I have decided the personal information in documents 3 and 4 is exempt from disclosure under section 47F and subsection 31B(b) of the Act.