



**Australian Government**

**Department of Health**

Department Reference: FOI 2245 IR

J M

Via email : [foi+request-6701-960556fd@righttoknow.org.au](mailto:foi+request-6701-960556fd@righttoknow.org.au)

Dear J M

**NOTICE OF DECISION - INTERNAL REVIEW**

I refer to your correspondence of 6 May 2021 requesting an internal review of the decision of the Department of Health (the department) in relation to your request of 8 February 2021 for access under the *Freedom of Information Act 1982* (the FOI 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 writing to notify you of my decision in response to your request for internal review.

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to freedom of information (FOI) requests, including decisions on applications for internal review and decisions to allow further time to make such an application.

**The decision under review**

The primary decision identified fifteen documents as falling within the scope of your request. The primary decision maker decided to:

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

Please note that the Schedule of Documents attached to the primary decision indicated that section 22 of the FOI Act applied to page 1 of documents 3 and 9 whereas it should have indicated that section 22 of the FOI Act was applied to pages 1 and 2 of each of those documents. I have corrected this in the Schedule attached to this letter.

### **Your submission**

You provided the following submission to support your request for the internal review:

I am writing to request an internal review of Department of Health's handling of my FOI request 'aggregate report of COVID-19 Co-morbidities'.

My request has been avoided in its entirety, furthermore, an outcome to an unrelated FOIA request was coupled along with my request - in affect rendering my request unanswered and effectively was avoided.

I am unhappy with my response on the grounds that while looking through liaising material, it's clear that not a single attempt had been made to fulfil my inquiry/gather the relevant documents and therefore believe the response given was unacceptable and the conduct of the officers pertinent to my request acted with utmost disregard to the intentions of FOIA responsibilities.

It is clear that my request was not fulfilled, nor was it in any way, shape or form investigated to the extent that the mission of the FOIA requires.

A full history of my FOI request and all correspondence is available on the Internet at this address:

[https://www.righttoknow.org.au/request/aggregate\\_report\\_of\\_covid\\_19\\_co](https://www.righttoknow.org.au/request/aggregate_report_of_covid_19_co)

### **Extension of time for applying for an internal review**

Pursuant to section 54B of the FOI Act, an application for internal review must be made within 30 days after the day the decision is notified to the applicant or such further period as the agency allows.

As you were notified of the primary decision on 10 March 2021, the statutory period for applying for an internal review expired on 9 April 2021.

The Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines) provide at paragraph 9.121:

The FOI Act does not specify any criteria that an agency must consider. Agencies are encouraged to adopt a liberal approach and grant an extension unless there is a special reason not to do so. It may, for example, be appropriate to refuse an extension if a long time has elapsed since the agency decision was made, the agency would encounter administrative difficulty or prejudice in undertaking a review after that delay, and the applicant has not satisfactorily explained the reason for the delay.

There may be no benefit in extending the time for applying for review of an access grant decision, for example, if the documents in question have already been released.

According to the Guidelines at paragraph 9.24, an applicant who is refused an extension of time to make an internal review request may make a fresh FOI request for the documents that were subject to the earlier FOI request and decision.

Taking each of these factors into account, I have decided to extend the 30 day statutory period for making a request for an internal review of the department's initial decision.

### **Decision**

In making a fresh decision on internal review, I have considered the same documents identified by the primary decision maker as falling within the scope of your request. I have also identified a further two documents, documents 16 and 17, as falling within the scope of your request.

Under section 54C of the FOI Act, I have decided to vary the department's primary decision of 9 March 2021. Specifically, I have found that there are 17 documents within the scope of your request and I have decided to:

- grant access to six documents in their entirety
- grant access to nine documents subject to the deletion of irrelevant material, and
- grant access to two documents subject to the deletion of both irrelevant and exempt material.

My decision varies the primary decision by:

- finding that the two additional documents 16 and 17 are in scope of the request and that they should be released in full, and
- granting access in full to document 15, which was previously released to you with deletion of a departmental officer's first name.

My reason for granting access to document 15 in its entirety is that the document is an email from the department to you, and the information in the document, including the officer's first name, has already been disclosed to you.

The Schedule of Documents at Attachment A provides a description of each document within the scope of your request, and sets out the access decision and statutory provisions applied in both the primary decision and in this decision.

The reasons for my decision are set out at Attachment B.

## **Further released information**

Documents 15, 16 and 17 are enclosed with this decision.

## **FOI review rights**

If you are dissatisfied with my decision, under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (OAIC) for review of my decision by the Information Commissioner.

In accordance with subsection 54S(1) of the FOI Act, an IC review application in relation to a decision covered by subsection 54L(2) (access refusal decisions) must be made in writing within 60 days after the day you are notified of this decision (if you do not request an internal review).

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

The OAIC can be contacted by:

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Phone: 1300 363 992

## **Complaints**

If you are dissatisfied with actions taken by the department, you may also make a complaint.

### Complaint to the department

Complaints to the department are covered by the department's privacy policy. A form for lodging a complaint directly to the department is available on the department's website:

<https://www.health.gov.au/about-us/contact-us/complaints>

### Complaint to the Information Commissioner

Information about making a complaint to the Information Commissioner about action taken by the department is available on the OAIC website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>

## **Publication**

Section 11C of the FOI Act requires the department to publish on its disclosure log documents released to an FOI applicant. There are some

exceptions to this rule. I have decided not to publish, on the department's disclosure log, the additional information released as a result of this internal review decision because it is personal information and it would be unreasonable to publish it.

### **Relevant provisions under the FOI Act**

The FOI 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 Freedom of Information Unit on (02) 6289 1666 or at [FOI@health.gov.au](mailto:FOI@health.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Celia Street', written in a cursive style.

Celia Street  
First Assistant Secretary  
Office of Health Protection & Response

9 June 2021

**ATTACHMENT A**

**SCHEDULE OF DOCUMENTS**

<b>Doc no.</b>	<b>Date</b>	<b>Number of pages</b>	<b>Description</b>	<b>Primary access decision<sup>1</sup></b>	<b>Primary decision exemptions</b>	<b>Internal review access decision<sup>2</sup></b>	<b>Internal review exemptions</b>
1	19.10.2020	1	FOI Unit email to the Executive Officer (EO), Health Emergency Management Branch	RI	Section 22 – page 1 (part)	RI	Section 22 – page 1 (part)
2	20.10.2020	1	Email to the EO Health Emergency Management Branch	RI	Section 22 – page 1 (part)	RI	Section 22 – page 1 (part)
3	20.10.2020	2	Email to the EO Health Emergency Management Branch	REI	Section 22 – pages 1 & 2 (part)  Section 47F – pages 1 & 2 (part)	REI	Section 22 – pages 1 & 2 (part)  Section 47F – page 1 & 2 (part)
4	20.10.2020	1	Email to the EO Health Emergency Management Branch	REI	Section 22 – page 1 (part)  Section 47F – page 1 (part)	REI	Section 22 – page 1 (part)  Section 47F – page 1 (part)
5	20.10.2020	2	Email between the FOI Unit and the EO, Health Emergency Management Branch	RI	Section 22 – pages 1 & 2 (part)	RI	Section 22 – pages 1 & 2 (part)
6	20.10.2020	4	Email to the applicant acknowledging receipt of the FOI request	R		R	

<sup>1</sup> R = Release, RI = Release with irrelevant information removed, REI = Release with exempt and irrelevant information removed.

<sup>2</sup> As above.

Doc no.	Date	Number of pages	Description	Primary access decision <sup>1</sup>	Primary decision exemptions	Internal review access decision <sup>2</sup>	Internal review exemptions
7	21.10.2020	4	Email from the FOI Unit	RI	Section 22 – page 1 (part)	RI	Section 22 – page 1 (part)
8	21.10.2020	4	Email	RI	Section 22 – pages 1 & 2 (part)	RI	Section 22 – pages 1 & 2 (part)
9	21.10.2020	3	Email	RI	Section 22 – pages 1 & 2 (part)	RI	Section 22 on pages 1 & 2 (part)
10	27.10.2020	2	FOI Unit email - FOI Request Received	RI	Section 22 – pages 1 & 2 (part)	RI	Section 22 – pages 1 & 2 (part)
11	06.11.2020	1	FOI Unit email to the applicant enclosing a Notice of Decision	R		R	
12	09.11.2020	2	Email from the applicant to the FOI Unit	R		R	
13	10.11.2020	3	FOI Unit email	RI	Section 22 – page 1 (part)	RI	Section 22 – page 1 (part)
14	10.11.2020	3	FOI Unit email	RI	Section 22 – page 1 (part)	RI	Section 22 – page 1 (part)

<b>Doc no.</b>	<b>Date</b>	<b>Number of pages</b>	<b>Description</b>	<b>Primary access decision<sup>1</sup></b>	<b>Primary decision exemptions</b>	<b>Internal review access decision<sup>2</sup></b>	<b>Internal review exemptions</b>
15	10.11.2020	3	FOI Unit email to the applicant	RI	Section 22 - page 1 (part)	R	

<b>ADDITIONAL DOCUMENTS</b>							
<b>Doc no.</b>	<b>Date</b>	<b>Number of pages</b>	<b>Description</b>	<b>Internal review access decision<sup>3</sup></b>			
16	13.10.2020	2	Applicant's email - FOI Request	R			
17	30.10.2020	3	Notice of Decision attached to Document 11	R			

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<sup>3</sup> R = Release.

## ATTACHMENT B

### REASONS FOR DECISION - IR 2245

#### Material taken into account

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

- the scope of your request
- the content of the documents identified as falling within scope of your request
- the initial decision and reasons for decision
- your request for internal review and your submission
- advice from departmental officers with responsibility for matters relating to the documents sought
- the relevant provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

#### Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the sections of the FOI Act identified in the Schedule of Documents at Attachment A apply to the relevant documents are set out below.

#### Section 47F - Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person.

Documents 3 and 4 contain the names of individuals. Paragraph 6.130 of the Guidelines relevantly provides that this information can be considered to be personal information. I am satisfied that the information is personal information for the purpose of the FOI Act. I am also satisfied that, given the context in which they appear in the documents, the names would convey or say something about the relevant individuals.

Given the circumstances in which the information was obtained and the likelihood that the relevant individuals would not wish to have their names disclosed without consent, I have determined that it would be unreasonable to disclose the individuals' names and that this information is conditionally exempt under section 47F of the FOI Act.

Section 47F is a conditional exemption. Subsection 11A(5) of the FOI Act provides that an agency is required to give access to a conditionally exempt

document at a particular time unless access to the document at that time would, on balance, be contrary to the public interest.

When weighing up the public interest factors in favour of disclosure, I have taken into account the extent to which disclosure would:

- promote the objectives of the FOI Act, and
- inform the public on matters of interest.

I have weighed up the above factors against the following factors against disclosure:

- disclosure could reasonably be expected to prejudice the protection of the relevant individuals' right to privacy
- disclosure would adversely harm the interests of the relevant individuals
- disclosure would not add any substance to the information being released, and
- disclosure would not enhance accountability or transparency or promote oversight of the department's personnel management and assessment activities.

I have determined that, on balance, disclosure of the names in the documents would be contrary to the public interest. The parts of documents 3 and 4 that contain the names of the individuals are exempt from disclosure under section 47F of the FOI Act.

## **Section 22 - Deletion of exempt and irrelevant material**

Section 22 of the FOI Act requires an agency to prepare and provide an applicant with an edited copy of a document with irrelevant material deleted where it is reasonably practicable to delete that information.

The documents contain the names and contact details of the department's employees below Senior Executive Service level. As outlined, in the department's email of 18 February 2021 to you acknowledging receipt of your FOI request, this material is considered to be irrelevant to the scope of your request.

Document 4 also contains information that is not within the scope of your request and is therefore irrelevant.

I note that the primary decision maker caused the irrelevant and exempt material in the documents to be deleted from the documents before release. I agree with the decision to delete the information.