



Australian Government

Department of Health

Department Reference: FOI 2458

Jaay-H

via email: foi+request-7520-3c316968@righttoknow.org.au

Dear Jaay-H

NOTICE OF DECISION

I refer to your request of 17 June 2021 to the Department of Health (the department) seeking access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to the following:

On 17 June 2021 Professor Brendan Murphy was quoted as saying “For those over 60 and particularly those over 70, you have a more than one in 10 chance of dying if you get COVID”.

This extract is drawn from a news.com.au article titled “AstraZeneca vaccine should now only be given to those aged 60 and above, ATAGI recommends”.

I hereby request a copy of the documents with which Professor Murphy bases that advice. Namely, persons older than 60 to 70 have greater than 10% chance of dying if they contract the virus responsible for COVID.

FOI decision

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

I have identified two documents falling within the scope of your request. I have decided to grant you partial access to the documents with material removed under section 22 on the basis it is exempt from release under sections 47C and 47F of the FOI Act. Irrelevant material has also been removed under section 22 of the FOI Act. My reasons for this decision are set out further at [Attachment A](#).

FOI review rights

If you are dissatisfied with my decision, you may apply for a review.

Internal review

Under section 54 of the FOI Act, you may apply for internal review of this decision.

In accordance with section 54B of the FOI Act, an application for internal review must be made in writing within 30 days after the day you are notified of this decision (or such further period as the department allows). To assist in the internal review process, please provide reasons you consider the review of my decision is necessary.

The internal review will be carried out by another officer of this department within 30 days of receipt of your application.

An application for an internal review should be addressed 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 FOI Act, you may apply to the Office of the Australian Information Commissioner (OAIC) for review of my decision by the Information Commissioner (IC).

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 IC 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
Phone: 1300 363 992

Complaints

If you are dissatisfied with action 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 IC

Information about making a complaint to the IC 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/>

Relevant provisions of 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/Details/C2021C00239>

Publication

You should be aware that where I have decided to release documents to you, the department may also publish the released material on its Disclosure Log. The department will however, not publish information (such as personal or business information) where it would be unreasonable to do so.

For your reference the department's Disclosure Log can be found at:

<https://www.health.gov.au/resources/foi-disclosure-log>

Additional Information

In addition to my decision in response to your FOI request, the following information relating to the subject matter of your request, which is publicly available on the department's internet site, may be of interest to you:

- Tables and figures identifying 'COVID-19 cases by age group and sex' and the 'COVID-19 deaths by age group and sex':
<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-case-numbers-and-statistics>
- Table 8 in every second Epidemiology report:
https://www1.health.gov.au/internet/main/publishing.nsf/Content/novel_coronavirus_2019_ncov_weekly_epidemiology_reports_australia_2020.htm

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the department's Freedom of Information Unit on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely

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

Hope Peisley
Assistant Secretary
Program, Policy and ATAGI Branch

29 July 2021

REASONS FOR DECISION - FOI 2458**Material taken into account**

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

- the scope of your request
- the content of the documents sought
- advice from departmental officers with responsibility for matters relating to the documents sought
- the role of the Australian Technical Advisory Group on Immunisation (ATAGI)
- the relevant provisions of the FOI Act, and
- guidelines issued by the OAIC under section 93A of the FOI Act (the FOI Guidelines).

My reasons for applying the identified exemptions to parts of the document in scope are set out below.

Section 22 - Deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing exempt material (subparagraph 22(1)(a)(i)) and irrelevant information (subparagraph 22(1)(a)(ii)) and allows an agency to delete such material from a document.

I have deleted irrelevant information identified in Documents 1 and 2. The irrelevant material has been deleted in accordance with the department's redaction policy as advised to you on 22 June 2021, and includes the names and contact details of Australian Public Service officers not in the Senior Executive Service (SES) and mobile numbers of SES officers.

Section 47C - Deliberative matter

Subsection 47C(1) of the FOI Act conditionally exempts a document if its disclosure would reveal deliberative matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

Deliberative processes

Paragraphs 6.58 to 6.59 of the FOI Guidelines provide that a deliberative process involves the exercise of judgment in developing and making a selection from different options, and generally refers to the process of weighing up or evaluating competing arguments or considerations that may have a bearing upon a course of action. It has been articulated as the 'thinking process' of an agency.

Do the documents contain deliberative matter?

Paragraph 6.61 of the FOI Guidelines states that a deliberative process may include the recording or exchange of opinions, advice, recommendations, a collection of facts or opinions, including the pattern of facts or opinions considered, and interim decisions.

Document 2 contains preliminary opinions and advice shared between ATAGI and Minister Hunt regarding ongoing COVID-19 vaccine strategies, specifically weighing up future risks and benefits. These considerations shape the 'thinking process' of the department and ATAGI, and took place in the course of ATAGI providing revised recommendations to Minister Hunt on the use of COVID-19 Vaccine AstraZeneca and addressing vaccine safety concerns. Release of this information would reveal the nature of discussions that have yet to be considered and would prejudice the ability of the department or ATAGI to engage frankly in this process in the future.

In making my decision, I have considered the current COVID-19 environment and ATAGI's crucial role in providing the Minister for Health with evidence-based advice on immunisation policies, programs and priorities. It remains critical for the department to openly engage in future deliberations with ATAGI relating to COVID-19 vaccines in order to preserve Australia's strategic response to the COVID-19 pandemic.

Do the documents contain purely factual material?

Subsection 47C(2) of the FOI Act provides that deliberative matter does not include 'purely factual material'. Accordingly, I have considered whether the identified information in the documents is 'purely factual' within the meaning of subsection 47C(2).

Paragraph 6.73 of the FOI Guidelines provides that 'purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document or is embedded or intertwined with the deliberative content such that it is impractical to excise it.

I have determined that the relevant information in Document 2 is not 'purely factual material' for the purposes of subsection 47C(2) of the FOI Act.

Public interest test

Section 47C of the FOI Act is a conditional exemption. Pursuant to subsection 11A(5) of the FOI Act, the department is required to give access to a conditionally exempt document unless access to the document 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 objects of the FOI Act by providing the Australian community with access to information held by the Commonwealth Government
- inform debate on matters of public importance, and
- enhance the scrutiny of government decision making.

I have also considered the following factors against disclosure:

- there is a public interest in protecting opinions and recommendations by keeping this information confidential to ensure matters can be openly considered before final decisions are made
- disclosure of interim considerations could reasonably be expected to inhibit ATAGI's ability to provide the department with frank and candid advice, opinions and recommendations in the context of COVID-19 vaccines
- disclosure of information not otherwise publicly available would diminish the quality and usefulness of the advice received and recommendations made
- disclosure could prejudice the ability of ATAGI to share with department, gaps in the immunisation landscape to ultimately improve impact and confidence with the use of COVID-19 vaccines
- disclosure could reasonably be expected to prejudice the continued level of trust and cooperation between the department and ATAGI, which is crucial for maintaining the effective and equitable use of COVID-19 vaccines.

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

On balance, I consider that disclosure of the relevant information in Document 2 would be contrary to the public interest. I am satisfied that the relevant information is exempt from disclosure under section 47C of the FOI Act. Therefore, in accordance with subsection 22(2) of the FOI Act, I have provided you with an edited copy of Document 2 with the exempt material removed.

Section 47F – Personal privacy

Section 47F of the FOI Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person.

Paragraph 6.130 of the FOI Guidelines provides:

Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

Document 1 contains the name of a third party individual. Disclosure of this information could unreasonably affect the individual's personal privacy, as a reasonable person would not expect such personal information to be released in the public domain without consent.

In considering whether disclosure of the relevant personal information would be unreasonable, subsection 47F(2) of the FOI Act requires me to take into account:

- the extent to which the information is well known
- whether the person 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 individual and their involvement with the matter is not well known, and the information is not otherwise publicly available.

Public Interest Test

Section 47F of the FOI Act is a conditional exemption. Pursuant to subsection 11A(5) of the FOI Act, the department is required to give access to a conditionally exempt document unless access to the document at the time would, on balance, be contrary to the public interest.

I have considered the following factors in favour of disclosure to the extent disclosure would:

- promote the objects of the FOI Act, and
- provide the Australian community with access to government held information.

I have also considered the following factors against disclosure:

- There is a public interest in protecting the privacy of an individual's personal information. The specific harm in disclosing an individual's name and other personal details without agreement, and where this information has not been previously disclosed, would be an unreasonable interference with an individual's right to privacy.
- Release of this personal information would not add any substance to the information being provided under the request and there would be no public purpose achieved through the release of the personal information.
- The information is not publicly available in full or in part.

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

After consideration of all relevant factors, I find that, on balance, the benefits of protecting the individual's privacy must be given greater weight. I am satisfied that personal information of the third party individual is exempt from disclosure under section 47F of the FOI Act. Therefore, in accordance with subsection 22(2) of the FOI Act, I have provided you with an edited copy of Document 1 with the exempt material removed.