



29 July 2021

Mr Trent Morrison-Francis
Via Right to Know
foi+request-7559-502a50ec@righttoknow.org.au

Dear Mr Morrison-Francis

Your Freedom of Information Request No: REQ-0009806

Notice of Decision

The purpose of this letter is to acknowledge and give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Kerri Burden, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to documents relating to My Health Record on 17 July 2021. Specifically, you sought access to:

“the commonwealth E-health records of persons notified to the department as returning a positive HIV result in a Queensland Lab.”

We received your request on 17 July 2021 and the 30 day statutory period for processing your request commenced from the day after that date.

DECISION AND REASONS FOR DECISION

I have decided your request is exempt from disclosure for the following reasons:

- Under section 47F of the FOI Act.
- The My Health Record System Operator (the Agency) has no visibility of notifications of a positive HIV result made to the Queensland Department of Health.
- If clinical information relating to a person’s HIV status is uploaded to their My Health Record, the My Health Record System Operator (the Agency) is not notified of this status.

Section 47F(1) of the FOI Act relevantly provides:

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information is defined in section 4 of the FOI Act as having the same meaning as in the *Privacy Act 1988*:

‘...information or an opinion about an identified individual, or an individual who is reasonably identifiable’.

The elements of personal information are:

- I. it relates only to a natural person (not, for example a company);
- II. it says something about the individual;
- III. it may be in the form of an opinion, it may be true or untrue, and it may form part of a database; and
- IV. the individual’s identity is known or is reasonably ascertainable using the information in the document.

Disclosure unreasonable

If information is personal information, it will be exempt if disclosure would be unreasonable. There are a range of factors in deciding whether or not disclosure would be unreasonable, including:

- I. the nature of the information (it should not be bland or common place);
- II. the circumstances in which the information was obtained;
- III. the current relevance of the information;
- IV. the stated object of the legislation in section 3 of the FOI Act being able to facilitate and promote the disclosure of information;
- V. the extent to which the person is a public figure;
- VI. the extent to which the information is already a matter of public knowledge;
- VII. whether there was any expectation of confidentiality; and
- VIII. whether the information would shed light on the workings of Government.

In relation to your request, I am satisfied that the information is personal information and that it would be unreasonable to disclose.

I have reached this conclusion based on the following factors:

- The information is of a highly personal, sensitive nature, which if disclosed, may cause harm to the individuals to whom it relates.
- I do not know of any reason why the information would be of benefit to the applicant.
- I consider that the individuals who may be named in the documents may have an expectation that their personal information would not be disclosed.
- It would not make a valuable contribution to public debate to release this information.

Material taken into account

I have taken the following material into account in making my decision:

- the FOI Act (specifically sections 47F)

- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Australian Digital Health Agency for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact the FOI Team by email foi@digitalhealth.gov.au or by phone on 02 6151 8653.

Yours sincerely,



Kerri Burden

Authorised Decision Maker