



Ms Raphaella Kathryn Crosby
Via email: foi+request-8016-28bba8d5@righttoknow.org.au

Dear Ms Crosby

FREEDOM OF INFORMATION REQUEST: No. 2021/22-010
ACCESS DECISION

I refer to your request under the *Freedom of Information Act 1982* (FOI Act), which was partially transferred to the National Health and Medical Research Council (NHMRC) on 11 November 2021 from the Australian Government Department of Health (the Department) under section 16 of the FOI Act, seeking:

A list of all applications for NHMRC funding over the past 5 years for migraine, including whether they were successful or unsuccessful.

With an accompanying note that stated, *'We only need brief detail of what the studies were about, as per the publicly available lists of successful grants'*.

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

Timeframe for processing your request

The FOI request was received by the Department via email on 26 October 2021. As part of your request specified that you sought information about NHMRC funding, it was partially transferred to NHMRC on 11 November 2021 under section 16 of the FOI Act. The statutory timeframe for processing a request is 30 days, starting from the day after the day on which your application was received. Accordingly, the due date for a decision on your request is 25 November 2021.

Decision

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

- the terms of your request
- the content of the documents to which you have sought access
- advice from NHMRC officers with responsibility for the matters relating to the documents to which you sought access
- the relevant provisions of the FOI Act (accessed via: www.legislation.gov.au)
- the Office of the Australian Information Commissioner's FoI Guidelines published under section 93A of the FOI Act (accessed via: www.oaic.gov.au/freedom-of-information/foi-guidelines).

NHMRC conducted a search of its grants management databases for any grant applications received in the five year period (2016–2020 inclusive), using key search terms relating to 'migraine research'. The key search terms used were ['head ache(s)', 'headache(s)' and 'migraine(s)']. This search identified 61 applications falling within the scope of your request, with 8 of these being successful applications (i.e. the proposed research was funded) and 53 being unsuccessful applications (i.e. the proposed research was not funded based on competitive selection criteria).

I have decided to grant access to some documents identified in response to your request, and to refuse access to a number of documents on the grounds that they fall within an exemption(s). My reasoning for this is provided below.

Successful applications for NHMRC funding over the past 5 years for 'migraine'

I grant full access to the list of successful applications for NHMRC funding from 2016-2020 identified using the key search terms relating to 'migraine research' - tabulated at [Attachment A](#).

On the basis that you stated you only wanted brief details on the applications, this information, which is publically available¹, includes brief details about what the funded research is about (see 'Title' and 'Media Summary' columns), as well as the names of the [Administering Institutions](#)², the relevant researchers and the amount of funding awarded.

Other publically available information on the outcomes of NHMRC funding rounds is also available via our [website](#).³

Unsuccessful applications for NHMRC funding over the past 5 years for 'migraine'

I have decided not to release information about the 53 applications for NHMRC funding that were unsuccessful, based on the following sections of the FOI Act:

- Section 45: exempts disclosure where information, in this case application material, has been obtained in confidence (by NHMRC) and its disclosure could found an action for breach of confidence
- Section 47E: exempts conditionally, information, the release of which would, or could reasonably be expected to, prejudice or have a substantial adverse effect on agency operations, and such disclosure would be contrary to the public interest
- Section 47G: exempts conditionally, information, the release of which would, or could reasonably be expected to, have a substantial adverse effect on the lawful business and professional affairs of a person (here individual researchers); and lawful business, commercial and financial affairs of an organisation (here relevant research organisations) and such disclosure would be contrary to the public interest.

My detailed reasons in relation to these exemptions is provided below.

Documents containing material obtained in confidence (s45)

Section 45 of the FOI Act exempts documents where information has been obtained in confidence, such that disclosure would found an action for breach of confidence. To release information that was submitted with the understanding of mutual confidentiality has the potential to destroy the credibility and competitiveness of NHMRC processes. The information contained in unsuccessful grant applications is recognised by both parties as being confidential. Confidentiality over the application process is reflected in the grant guidelines. In my view, disclosure of this information could found an action by the relevant researcher for a breach of confidence.

The following two conditional exemptions are subject to a public interest test.

I have considered the public interest factors for and against disclosure. While there may be some public interest in releasing details of unsuccessful grant applications, I am satisfied that, on balance, disclosure of these details would be contrary to the public interest. This is explained further below in relation to each exemption.

Public interest conditional exemptions - certain operations of agencies (s47E)

¹ Grant data in general is publically available on NHMRC's website (at: <https://www.nhmrc.gov.au/funding/data-research/outcomes>) or by request from NHMRC's Data Analytics, Reporting & MREA Section

² <https://www.nhmrc.gov.au/funding/manage-your-funding/nhmrcs-administering-institutions>

³ <https://www.nhmrc.gov.au/funding/data-research/outcomes>

Subsection 47E(d) of the FOI Act conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on agency activities, and in particular on the proper and efficient conduct of the operations of an agency.

As noted above, to release information that was submitted with the understanding of mutual confidentiality has the potential to destroy or diminish the credibility and competitiveness of NHMRC peer review, assessment and funding outcomes. The proper and efficient conduct of the NHMRC granting process relies on the applicant's trust in the robustness and integrity of the granting process.

A lack of confidence in NHMRC processes would reasonably be expected to dissuade future grant applicants from applying, and inhibit the willingness of applicants to provide comprehensive applications that include sensitive information or novel concepts. This is highly likely to result in non-competitive applications and a reduced ability to fund projects that will achieve desired research outcomes. Accordingly, such an impact would in my view, be contrary to the public interest in protecting the process by which decisions are made to support high quality health and medical research in Australia.

Public interest conditional exemption - Business Information (s47G)

Under subsection 47G(1) of the FOI Act, a document is conditionally exempt if:

- it discloses information (business information) concerning a person in respect of his or her business or professional affairs, or concerning the business or professional affairs of an organisation; and
- the disclosure of the information would, or could reasonably be expected to affect the person adversely in respect of his or her lawful business or professional affairs or that organisation in respect of its lawful business, commercial or financial affairs (subsection 47G(1)(a)); and
- such disclosure would be contrary to the public interest.

Disclosure of unsuccessful grant application information, which is not otherwise publically available, could reasonably be expected to adversely affect the business and professional advantage to the organisation and individual researchers if the material is accessed by others. It could also prejudice continuing work and unreasonably expose the organisation and individual researchers to disadvantage in not gaining future funding.

The adverse effects on the activities of the organisation and researcher could extend to the preparation and submission of future grant applications to NHMRC, whereby they do not include what in their view is sensitive information, which in turn results in a non-competitive application of what could be considered fundable. In my view, such an impact would be contrary to the public interest on the grounds that the best applications may not be brought forward. This would undermine future positive health outcomes for the Australian community.

Charges

I have decided not to impose charges for processing this FOI request.

Your review rights

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

Internal review

Under section 54 of the FOI Act, you may apply in writing to NHMRC 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. Such an application 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/smartforms/servlet/SmartForm.html?formCode=ICR_10
- email: foidr@oaic.gov.au
- post: GPO Box 5218, Sydney NSW, 2001.

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website (accessed via: www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/).

Questions

If you have any queries or wish to discuss my decision, please contact the NHMRC FOI Unit at foi@nhmrc.gov.au.

Yours sincerely



Tony Krizan
Executive Director
Corporate Operations and Information

24 November 2021

Attachment

- A. Successful applications for NHMRC funding from 2016-2020 that include search terms relating to 'migraine research'