



Australian Government

Department of Health

Department Reference: FOI 3451

Concerned Citizen

via email: foi+request-8090-d3300249@righttoknow.org.au

Dear Sir or Madam

NOTICE OF DECISION

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

Please provide documents relating to the meeting between the Minister for Health and Apple's Global Health Lead on the 21st of May 2020.

Please provide:

- *any emails sent from the office of the Minister to Apple or from Apple to the office of the Minister to arrange the meeting or after the meeting,*
- *any attachments,*
- *any agenda,*
- *any notes taken during the meeting*
- *any documents referenced in the meeting.*

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 four documents falling within the scope of your request (see Attachment A). I have decided to grant you partial access to all four documents with exempt and irrelevant material removed. My reasons for this decision are set out further at Attachment B.

Third Party Consultation

On 21 December 2021, the department informed you that consultation with a third party would be necessary. My decision on access is consistent with the submissions received by the third party.

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/C2022C00036>

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the department's Freedom of Information Unit at FOI@health.gov.au.

Yours sincerely

Joanne Tester

[signed electronically 31 January 2022]

Joanne Tester

Chief of Staff

Office of the Hon Greg Hunt MP

Minister for Health and Aged Care

31 January 2022

ATTACHMENT A

SCHEDULE OF DOCUMENTS - FOI 3451

Document No.	Date	Number of pages	Description	Decision on access¹	Relevant FOI Act provisions
1	18 May 2020	2	Email correspondence	REI	section 22 - part section 47F - part
2	21 May 2020	1	Meeting Invite	RI	section 22 -part
3	21 May 2020	9	Email correspondence	REI	section 22 - part section 47F - part
4	21 May 2020	3	Ministerial Brief	REI	section 22 - part section 47C - part section 47F - part

¹ REI = Release with exempt and irrelevant material removed, RI = Release with irrelevant material removed.

REASONS FOR DECISION - FOI 3451

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
- submissions provided by the third party
- 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 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 from Documents 1 to 4 in accordance with the department's policy advised to you on 9 December 2021. Irrelevant material deleted from those documents include Commonwealth employee names and contact details below Senior Executive Service (SES) level, the direct and mobile numbers of SES officers, dial-in details for meetings, and material that falls outside the timeframe of your request.

I have also deleted exempt material from the documents as set out in the Schedule. The basis for my decision in relation to the exemptions applied to the documents is set out below.

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 4 contains preliminary enquiries and opinions as it relates to adopting the Exposure Notification Framework (ENF) within the COVIDSafe app that were considered when drafting the Ministerial Brief. These considerations shape the 'thinking process' that took place during discussions on the implementation of the ENF, which involved an assessment of its potential risks and benefits. Release of this information would reveal the nature of discussions that were not part of the final advice in the Ministerial Brief and would prejudice the ability of the department to engage frankly with the Minister's Office in future consultations.

Does the deliberative matter 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 while the deliberative material contains some 'purely factual material', that information is central to the content and purpose of the deliberative processes captured within those documents. Further, I consider the factual material is inextricably linked to deliberations in the process of drafting the Ministerial Brief.

Relevantly, paragraph 6.74 of the FOI Guidelines advises that 'where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt.'

For the reasons set out above, I am satisfied the release of the relevant material in Document 4 would disclose deliberative matter within the meaning of section 47C of the FOI Act, and it is conditionally exempt under section 47C.

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 preliminary opinions 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 the department's ability to provide frank and candid advice and recommendations in the context of the COVIDSafe app
- disclosure of information not otherwise publicly available would diminish the quality and usefulness of advice received and recommendations made, and
- disclosure could reasonably be expected to prejudice crucial discussions held within the department and undermine the operational deliberative processes involved when briefing the Minister.

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 4 would be contrary to the public interest for the reasons outlined above. I am satisfied that the relevant information is exempt 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 4 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.

'Personal information' under the FOI Act has the same meaning as section 6 of the *Privacy Act 1988*, and means information or an opinion about an identified individual, or an individual who is reasonably identifiable.

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.

Documents 1, 3 and 4 contain the names and contact details of third party individuals. I am satisfied that this information constitutes personal information.

In considering whether disclosure of the 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 names and contact details of the relevant individuals are not well known. I am also satisfied that the individuals to whom the personal information relates are not known to be associated with the matters dealt with in the document.

I am satisfied that the disclosure of the personal information could unreasonably affect their personal privacy, as a reasonable person would not expect such personal information to be released in the public domain without consent.

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 by providing the Australian community with access to government held information, and
- inform debate on matters of public importance.

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.

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 individuals' privacy must be given greater weight. I am satisfied that personal information of the third party individuals 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 edited copies of Documents 1, 3 and 4 with the exempt material removed.