



Australian Government

Department of Health

Department Reference: FOI 3685 IR

Mr Domonic Manganaro

Via email: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxx.xxx.xx

Dear Mr Manganaro

NOTICE OF DECISION - INTERNAL REVIEW

I refer to your request for an internal review of the access decision made by the Department of Health (the department) in response to your request for documents under the *Freedom of Information Act 1982* (the FOI Act) (Cth).

Scope of your FOI request

On 21 March 2022, the department received your request for access to the following:

1. Documents created by the Department of Health in March 2020 containing formal health advice that were provided by the Department of Health to either the Prime Minister of Australia or to the Minister for Home Affairs that was relied upon for the closure of Australia's International borders in March 2020 and
2. Documents created by the Department of Health in September 2021 containing formal health advice that were provided by the Department of Health to either the Prime Minister of Australia or to the Minister for Home Affairs that was relied upon for the closure of Australia's International borders in September 2021.

The decision under review

On 13 April 2022 the department issued a decision to you under section 24A of the FOI Act on the basis that reasonable searches had been undertaken, and no documents relevant to your request has been located in the possession of the department. The original decision maker also noted that research and information relevant to your request is available in the public domain.

Internal review decision

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests, including requests for internal review.

I am writing to notify you of my decision in response to your request for internal review.

Material taken into account

In making my decision, I had regard to a range of information, including the following:

- the terms of your FOI request
- advice from departmental officers with responsibility for matters relating to the documents sought
- the relevant provisions of the FOI Act
- guidelines issued by the Office of the Australian Information Commissioner (OAIC) under section 93A of the FOI Act (the FOI Guidelines)
- publicly available information relevant to the scope of your FOI request, including information in the Notice of Decision provided to you
- the access decision and reasons for that decision communicated by the original decision maker, and
- decisions by the Information Commissioner (IC) not to continue or undertake reviews of the department's decisions in relation to the following requests for similar types of documents:
 - FOI 2027 (OAIC reference MR20/01179), and
 - FOI 2029 (OAIC reference MR20/01180).

My decision

I have decided to affirm the department's original access decision.

Health Advice Provided to Government

The Australian Health Protection Principal Committee (AHPPC) is the key decision-making committee for health emergencies. It is intended to enable candid discussions between the Commonwealth and State and Territory members, and its deliberations and documents are held 'in-confidence' and are not provided for broader distribution or public release. The AHPPC also responds to requests for advice from the Cabinet and National Cabinet.

To keep the community informed, the AHPPC has made a number of documents relevant to the COVID-19 pandemic publicly available here:

www.health.gov.au/committees-and-groups/australian-health-protection-principal-committee-ahppc.

I would also like to inform you that the department does not have access to all documents created by, received by, or stored by other government entities. You might like to submit a request for access to documents held by a particular Commonwealth, State or Territory agency if you would like access to documents held by that entity.

Decisions of the Information Commissioner

The IC has recently decided not to undertake or continue reviews of the department's decisions that the department does not hold any documents for, including the following FOI requests:

- FOI 2027 (OAIC reference MR20/01179), and
- FOI 2029 (OAIC reference MR20/01180).

The above FOI requests sought similar documents to the current request. In both cases, the department advised the applicants that the department held no relevant documents.

The OAIC decided not to continue or not to undertake IC reviews in relation to those decisions under s54W(a)(i) of the FOI Act on the basis that the applications lacked substance.

In making those decisions the IC considered information provided by the department, including that:

- the department does not collect or hold detailed information about COVID-19 cases and deaths of the nature requested by the applicant
- the department does not have access to all documents created by, received by, or held by, other Commonwealth, State and Territory entities
- the department does not hold or have access to all documents held by the various laboratories in Australia or elsewhere that might create such documents
- the department is not the custodian of the scientific studies establishing the existence of SARS-CoV-2 (the virus which causes COVID-19)
- many of the documents establishing the existence of COVID-19 are in the public domain, and
- the management of cases and the assessment of a COVID-19 death is the responsibility of the States and Territories.

The IC advised that continuing to review these matters would not promote the objects of the FOI Act.

FOI review rights

If you are dissatisfied with my decision, under section 54L of the FOI Act, you may apply to the OAIC for review of my decision by the 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 internal review decision.

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: xxxxxxxx@xxxx.xxx.xx

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 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 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/Details/C2021C00382>

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 xxx@xxxxxx.xxx.xx.

Yours sincerely

A handwritten signature in cursive script that reads "Mary Wood". To the right of the signature is a vertical dotted line that extends downwards.

Mary Wood
First Assistant Secretary
Office of Health Protection and Response

23 May 2022

