



Australian Government

Department of Health

FOI reference: FOI-3757

Peter Martin

Via email: foi+request-8799-a37c6cfd@righttoknow.org.au

Dear Mr Martin

Decision on your Freedom of Information Request

I refer to your request of 24 April 2022, to the Department of Health (the department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to:

In the 2020-21 budget the government gave the department over \$2 million for actuarial studies of private health insurance incentives, being LHC and risk Equalisation.

I request to see these reports.

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

FOI decision

I have identified two documents that are relevant to your request.

I have decided to refuse access to the two documents as they contain fully exempt material.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

My reasons for not providing access the documents are set out in **ATTACHMENT B**.

Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562

Your review rights

I have set out your review rights at **ATTACHMENT C**.

Contacts

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'B L L L'.

Brian Kelleher
Assistant Secretary
Private Health Industry Branch

20 June 2022

ATTACHMENT A.

**SCHEDULE OF DOCUMENTS
FOI-3757**

| Doc no. | Date | No. of pages | Description | Decision on access | Relevant provision of FOI Act |
|----------------|-------------|---------------------|---|---------------------------|--------------------------------------|
| 1 | 2 May 2022 | 44 | Actuarial Review of Lifetime Health Cover | Exempt in full | s 47C |
| 2 | 2 May 2022 | 49 | Risk equalisation: Final report | Exempt in full | s 47C |

**REASONS FOR DECISION
FOI-3757**

1. Material taken into account

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

- the FOI Act
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act
- the terms of your FOI request as outlined above
- the content of the documents sought
- advice from departmental officers with responsibility for matters relating to the documents sought
- submissions from third parties consulted about documents which contain information concerning them

2. Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemption identified in the schedule of documents applies to the relevant documents are set out below.

3. Section 47C - Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*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; or a Minister; or the Government of the Commonwealth.

Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations

or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents marked 's 47C' in the schedule contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I have decided that the documents are conditionally exempt from disclosure under section 47C of the FOI Act.

Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

4. Disclosure is not in the public interest

Pursuant to subsection 11A(5) of the FOI Act, the Department must give access to conditionally exempt documents unless access to the documents at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the documents would be contrary to the public interest.

Paragraph 6.5 of the FOI Guidelines states:

6.5 The public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to documents in the public interest include whether access to the documents would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the documents at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government; and
- would inform debate on a matter of public importance.

Factors weighing against disclosure

I consider that the following public interest factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward;
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- undermine the genuine exercise of official functions of this department in informing the decision making processes of the Government.

In making my decision, I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act, which are:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the document could result in confusion or unnecessary debate.

Conclusion

For the reasons set out above, after weighing all public interest factors for and against disclosure, I have decided that, on balance, disclosure of the conditionally exemption information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

ATTACHMENT C.

YOUR REVIEW RIGHTS

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

Internal review

You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be made by:

Email: FOI@health.gov.au
Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you.

Information Commissioner review or complaint

You also have the right to seek Information Commission (IC) review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Health as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: www.oaic.gov.au/freedom-of-information/foi-review-process.

Complaint

If you are dissatisfied with action taken by the department, you may also make a complaint directly 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 here: www.health.gov.au/about-us/contact-us/complaints