



**Australian Government**  
**Department of Health and Aged Care**

FOI reference: FOI-3902

BE

By email: [foi+request-9245-a45b31b5@righttoknow.org.au](mailto:foi+request-9245-a45b31b5@righttoknow.org.au)

Dear BE

**Decision on your Freedom of Information Request**

I refer to your request of 8 August 2022, to the Department of Health and Aged Care (the department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to:

I seek access under the FOI Act 1982 to Question Time briefs (however described) prepared for Ministers within the Health and Aged Care portfolio. This request is limited to Question Time briefs for the 47th Parliament (ie Question Time briefs prepared for 27 – 28 July and 1-4 August).

I also request a copy of the Department's current indexes of Question Time briefs.

**Clarification/Modification of scope of request**

On 30 August 2022, following consultation with you, you agreed to modify the scope of your request to the following:

1. The current version of the following Question Time briefs (however described) prepared for Ministers within the Health and Aged Care portfolio for the 47th Parliament:
  - a. Care Minutes and 24/7 election commitments
  - b. Home Care Packages access
  - c. Aged Care Funding
  - d. Aged Care Wages
  - e. Aged Care Workforce Shortages
  - f. HIB: Election Commitments
  - g. Medicinal Cannabis - Overview
  - h. Workforce challenges in rural and remote Australia
  - i. Medicare Benefits Schedule - Planned changes
  - j. Private Health Insurance and Private Hospitals
  - k. Primary Care Reform
2. A copy of the Department's current indexes of Question Time briefs.

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.

### **Background**

I note that the department has provided a copy of the current index of Question Time briefs to you administratively as part of the request consultation process. As a result, I have not considered this document as part of my decision.

### **FOI decision**

I have identified eleven documents that are relevant to your request. These documents were in the possession of the department when your request was received.

I have decided:

- to give access to information relevant to your request in five documents in full, and
- to give access to six documents in part, subject to the deletion of exempt material.

Irrelevant material has also been deleted from the documents.

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 to material that has been deleted from 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](http://www.legislation.gov.au/Series/C2004A02562)

### **Your review rights**

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

### **Publication**

Where I have decided to release documents to you, the department may also publish the released material on its Disclosure Log. The department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the department's Disclosure Log can be found at:  
[www.health.gov.au/resources/foi-disclosure-log](http://www.health.gov.au/resources/foi-disclosure-log)

## 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](mailto:FOI@health.gov.au)

Yours sincerely

Emma Wood

A handwritten signature in blue ink, appearing to read 'Emma Wood', with a stylized, cursive script.

Assistant Secretary  
Ministerial & Parliamentary Services

9 September 2022

ATTACHMENT A.

**SCHEDULE OF DOCUMENTS  
FOI-3902**

<b>Doc no.</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on access</b>	<b>Relevant provision of FOI Act</b>
1.	2	QB22-000254 – Medicare Benefits Schedule – Planned Changes	Release in part with irrelevant information removed	s22
2.	4	QB22-000260 – Private Health Insurance and Private Hospitals	Release in part with irrelevant information removed	s22 s47C
3.	3	QB22-000282 – Care Minutes and 24/7 Nursing Elections Commitments	Release in part with irrelevant and exempt information removed	s22 s47E(d) s47C
4.	5	QB22-000295 – Aged Care Wages	Release in part with irrelevant and exempt information removed	s22 s47E(d) s47C
5.	7	QB22-000296 – Aged Care Workforce Shortages	Release in part with irrelevant and exempt information removed	s22 s47E(d) s47C
6.	2	QB22-000324 – Medical Cannabis - Overview	Release in part with irrelevant information removed	s22
7.	4	QB22-000326 – Home Care Package Access	Release in part with irrelevant and exempt information removed	s22 s47E(d) s47C

Doc no.	No. of pages	Description	Decision on access	Relevant provision of FOI Act
8.	3	QB22-000330 – Aged Care Funding	Release in part with irrelevant and exempt information removed	s22 s47E(d) s47C
9.	3	QB22-000351 – Workforce Challenges in Rural and Remote Australia	Release in part with irrelevant information removed	s22
10.	2	QB22-000362 – Primary Care Reform	Release in part with irrelevant information removed	s22 s47C
11.	3	QB22-000398 – Aged Care – Election Commitments	Release in part with irrelevant and exempt information removed	s22 s47E(d)

ATTACHMENT B.

REASONS FOR DECISION  
FOI-3902

**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 (FOI Guidelines)
- the terms of your FOI request as outlined above
- the content of the documents sought, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

**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 parts of 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 parts of the documents marked 's47C' 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 parts of the documents marked 's47C' 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. Section 47E - Documents affecting certain operations of agencies**

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the department's 'proper and efficient' operations, that is, the department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the parts of the documents marked 's47E(d)' contain information which, if disclosed, would or could reasonably be expected to, have a substantial adverse effect on the department's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the department conducts those operational activities.

In order to obtain strong public administration outcomes for the Australian community, a strong relationship between a department and its ministers is absolutely vital.<sup>1</sup> Disclosure of the information marked 47E could reasonably be expected to negatively impact the department's relationship with its ministers, and in turn have an adverse effect on the department's proper and efficient operations.

For the reasons outlined above, I have decided that the parts of the documents marked 's47E' are conditionally exempt from disclosure under section 47E 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.

## **5. 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:

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.

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<sup>1</sup> <https://www.apsc.gov.au/publication/working-ministers>

Having regard to the above, I consider that disclosure of the conditionally exempt information 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.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure, and
- would not allow you access to your own personal information.

#### 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 recommendations or options that have potential to be put forward for consideration
- could reasonably be expected to prejudice the maintenance of a strong and effective ongoing working relationship between portfolio Ministers, their staff and the department and as a result could reasonably be expected to adversely affect effective public administration and the achievement of policy outcomes for on behalf of the Australian community.

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;
- (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.

## **6. Section 22 – deletion of irrelevant and exempt material**

Section 22 of the FOI Act applies to documents containing exempt material (subparagraph (1)(a)(i)) and irrelevant information (subparagraph (1)(a)(ii)) and allows an agency to delete such material from a document.

I consider that the information marked 's22' in the documents is not relevant to your request. This information consists of the direct telephone numbers of departmental employees. When your request was acknowledged, we notified you that this material would be considered irrelevant to the scope of your request unless you told us that you were seeking access to that material. On the basis that you did not notify us otherwise, this information has been deleted under section 22 of the FOI Act as irrelevant information.

In addition, as I have decided that some of the information in the documents released to you is exempt from disclosure, I have prepared an edited copy of the documents by deleting the exempt information from the documents under section 22 of the FOI Act as outlined above.

## 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 Commissioner (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 and Aged Care 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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://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](http://www.health.gov.au/about-us/contact-us/complaints)