



Australian Government

Department of Health and Aged Care

FOI reference: FOI-3970

Kharhol Yves

By email: foi+request-9365-2f3bf38b@righttoknow.org.au

Dear Kharhol Yves

Decision on your Freedom of Information Request

I refer to your request of 12 September 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 would like to make a request under The Freedom of Information Act 1982 (FOI Act) for the contents of the Public Summary Document – July 2019 PBAC Meeting, 11.05 Cost-effectiveness review of pneumococcal vaccines for the National Immunisation Program (NIP).

Specifically in regards to the Redacted sections - Page 6 - 3.15, 3.16, 3.18 - 3.19 document found at link:

<https://www.pbs.gov.au/industry/listing/elements/pbac-meetings/psd/2019-07/files/cer-pneumococcal-psd-july-2019.pdf>

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 one document relevant to your request (Public Summary Document – July 2019 PBAC Meeting, 11.05 Cost-effectiveness review of pneumococcal vaccines for the National Immunisation Program). This document was in the possession of the department when your request was received.

I have decided to refuse access to the redacted material in the published document under section 47 of the FOI Act.

My reasons for not providing access to material that has been deleted from the document are set out in **ATTACHMENT A**.

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 B**.

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



Mary Warner
Acting Assistant Secretary
Office of Health Technology Assessment - Policy

26 October 2022

**REASONS FOR DECISION
FOI-3970**

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
- submissions from third parties consulted about documents which contain information concerning them
- 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 applies to the document are set out below.

3. Section 47 – Documents disclosing trade secrets or commercially valuable information

Subsection 47(1) of the FOI Act provides that a document is an exempt document if its disclosure would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Commercially valuable information

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body, and
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the information that has been deleted from the document:

- is only known to the department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something a genuine "arm's length" buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party, and
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

In accordance with the obligations under section 27 of the FOI Act, the department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the submissions made during that consultation process.

For the reasons outlined above, I have decided that the parts of the document that have been deleted pursuant to section 22 of the FOI Act are exempt from disclosure under section 47 of the FOI Act.

4. Section 22 - deletion of 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.

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 document(s) by deleting the exempt information from the documents under section 22 of the FOI Act as outlined above.

ATTACHMENT B.

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/
- 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