



Australian Government
Department of Health

Department Reference: FOI 185-1415

Right to Know

Via email: foi+request-960-83d9f58d@righttoknow.org.au

Attention: Tymecka

Dear Tymecka

NOTICE OF DECISION

I refer to your request of 20 February 2015 to the Department of Health (Department) seeking access under the *Freedom of Information Act 1982* (FOI Act) to:

“documentation of any kind regarding the findings of Hepatitis A in the product ‘Nanna’s Frozen Berries’:

- 1. I would like the first documentation revealing the outbreak*
- 2. The recall documentation that was sent for the products*
- 3. Any legal documentation regarding the berries and patrons whom have caught Hepatitis A from these products.”*

I am writing to advise you of my decision.

Decision

I have identified two documents falling within the terms of your request. The documents are set out in the schedule at Attachment A.

I have decided to release one document subject to the deletion of exempt material as identified in the schedule and have decided that one document is fully exempt from release.

My reasons for this decision are set out at Attachment B.

Charges

I have decided that there will be no charge to you for the processing of this request.

Review rights

If you are dissatisfied with my decision, you may apply for an internal review or Australian Information Commissioner (Information Commissioner) review.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the Department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this Department within 30 days. An application for an internal review should be addressed to:

Email: FOI@health.gov.au

Mail: FOI Coordinator (MDP 350)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review must be made in writing 60 days of this notice (if you do not request an internal review).

The Australian Information Commissioner can be contacted by:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>

You may also make a complaint to the Information Commissioner about action taken by the Department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions

The FOI Act, including the provisions relevant to your request can be accessed from the ComLaw website using the following link: <http://www.comlaw.gov.au/Series/C2004A02562>

Publication

You should be aware that as I have decided to release a document in part to you, the Department may also publish the released material on its Disclosure Log. The Department will however, not publish information (such as personal or business information) where it would be unreasonable to do so.

For your reference the Department's Disclosure Log can be found at:
<http://www.health.gov.au/internet/main/publishing.nsf/Content/foi-disc-log>

Contacts

If you require clarification of any of the matters discussed in this letter you should contact The FOI unit on (02) 6289 1666 or via email: foi@health.gov.au.

Yours sincerely



Rob Cameron
Assistant Secretary
Health Emergency Management Branch
Office of Health Protection

15 April 2015

ATTACHMENT A

SCHEDULE OF DOCUMENTS - FOI 185-1415

Doc. No.	No. of Pages	Date	Author	Addressee	Description of Document	Decision ¹	Portion Exempt
1	1	12.2.15	Department of Health and Human Services	Department of Health	Email relating to Hepatitis A	E	Entirety of document – s47B(a) and s47B(B)
2	2	14.2.15	Food Standards Australia and New Zealand	Department of Health	Email – For Information: cases of Hepatitis A linked to Nanna's frozen mixed berries	RE	Names and contact details of State/Territory and Commonwealth officers – s47F

¹ R = Release, RE = Release with Exemptions applied, E = Exempt in Full, I = Irrelevant

REASONS FOR DECISION

Material taken into account

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

- The terms of your request;
- The content of the documents to which you sought access;
- Consultation responses from third parties consulted in accordance with the FOI Act;
- The Department's guidance material on the FOI Act; and
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Findings of fact and reason for decision

Where the schedule of documents indicates an exemption claim has been applied to a document, my findings of fact and reasons for deciding that the exemption provision applies to that document are set out below.

Section 47B – Commonwealth-State relations

Document 1 is email correspondence between a State and Commonwealth and State and Territory Health Protection Services in relation to the Hepatitis A outbreak.

The State which sent the correspondence has contended that:

- disclosure of this document would damage Commonwealth-State relations
- disclosure of this documents would be reasonably likely to impair the ability to obtain similar information in the future
- disclosure would damage the ongoing investigation and management of the matter

Paragraph 47B(a)

Paragraph 47B(a) conditionally exempts a document (or part of document) from disclosure if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (including a Territory).

Disclosure of this document would reduce the willingness of the State which sent the correspondence, and potentially other States and Territories, to provide such full and frank information to the Commonwealth in the future. If the Commonwealth is not in a position to protect the confidentiality of the information being provided the States and Territories would not be as willing to co-operate in the future by providing such information due to a lack of trust in the Commonwealth being able to keep the information confidential causing damage to Commonwealth and State and Territory relations. In emergency situations, such as the Hepatitis A outbreak, maintaining a level of trust and co-operation between the States and Territories and the Commonwealth because the Commonwealth relies on the provision of information from the States and Territories in order to be able to provide assistance particularly in responding to the situation.

Based on the above I am satisfied that document 1 is conditionally exempt under paragraph 47B(a).

Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A of the FOI Act).

Disclosure would promote the objects of the FOI Act and inform the public on a matter of public importance. On the other hand there is a public interest in the Commonwealth maintaining good relations with the States and Territories to be able to achieve its objectives. As described above disclosure of document 1 would undermine those good relations. It is particularly important to maintain good relations with States and Territories as the response is continuing and ongoing co-operation will be necessary to ensure an effective response to the Hepatitis A outbreak.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release document 1. Document 1 is therefore exempt under paragraph 47B(a).

Paragraph 47B(b)

Paragraph 47B(b) conditionally exempts a document if its disclosure would divulge information or matter communicated in confidence by or on behalf of the Government of a State to the Government of the Commonwealth.

Document 1 comprises information provided by a State in relation to the Hepatitis A outbreak. Information provided in document 1 was provided to inform discussions on health protection between the jurisdictions in confidence. Document 1 includes a statement that the document contains confidential information.

Given this I am satisfied that document 1 is conditionally exempt under paragraph 47B(b).

Paragraph 47B(b) is a conditional exemption and therefore I have considered whether disclosure would, on balance, be contrary to the public interest.

As for paragraph 47B(a) disclosure would promote the objects of the FOI Act and inform the public on a matter of public importance. There is a compelling public interest in the Department maintaining the co-operation of the States and Territories. If any of the information contained in document 1 was disclosed at this stage without the consent of the jurisdiction to which this document originated there is a real risk that such disclosure would lead this State, and by example other States and Territories, to the conclusion that the Commonwealth was unable to maintain the integrity of confidential discussions between State and Territory officials and the Commonwealth and thereby undermining the level of trust and co-operation between the Commonwealth and the States and Territories.

For this reason I have decided that disclosure of document 1 would, on balance, be contrary to the public interest. That document is therefore exempt under paragraph 47B(b).

Section 47F – Personal privacy

Section 47F conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person.

Documents 1 and 2 contain the names, direct phone numbers and email addresses of the contact persons that sent the emails. They also contain the names and email addresses for a number of individual officers from the Department and other government agencies. In addition document 1 contains details of Hepatitis A cases. The individuals concerned are not named but the details provided could allow those individuals to be identified if disclosed. This is personal information for the purposes of section 47F.

The officers whose details are included in the documents are lower level officers not publicly known to be associated with these issues. It is unreasonable to disclose such information in circumstances where there is a real possibility of a person attempting to directly contact those individuals if their details are disclosed particularly given the media interest in this matter. In relation to the case details in document 1 it would be unreasonable to disclose the information given the sensitivity of some of the information. Those individuals would not wish to have such information put in the public domain without consent.

I am therefore satisfied that parts of documents 1 and 2 are conditionally exempt under section 47F.

As section 47F is a conditional exemption I have considered whether disclosure would, on balance, be contrary to the public interest.

There would be no public benefit in disclosure of the personal information. There is however a public interest in protecting the privacy of those individuals by disclosing their personal information, particularly in relation to the case details.

On this basis I am satisfied that disclosure of the personal information in documents 1 and 2 is, on balance, contrary to the public interest. Parts of documents 1 and 2 are therefore exempt under section 47F.