



Australian Government
Department of Health and Ageing

Ms Shelley Wilkins
Executive Director
Citizens Commission on Human Rights
PO Box 6402

NORTH SYDNEY NSW 2059

Dear Ms Wilkins

Your Freedom of Information Request No. 058-1011

I refer to your letter dated 18 January 2011 and received in the Department on 24 January 2011 in which you requested an internal review of the decision of Mr Nick Henderson dated 1 December 2010 made under the *Freedom of Information Act 1982* (the FOI Act). Mr Henderson's decision related to the FOI request made by you on 31 August 2010 in which you sought access to:

- *The names of all people involved in the meetings convened by Department of Health and Ageing with the AMA, RANZCP and RACP to investigate prescribing of antidepressants to children and anyone else involved in the investigation.*
- *Minutes from these meetings.*
- *Any declaration of interest by these attendees of the meetings or those involved in the investigation, including any financial links to pharmaceutical companies.*

This letter sets out my decision on internal review. I am an authorised decision-maker under section 23 of the FOI Act.

I note that as your request was made prior to 1 November 2010, the FOI Act as it stood prior to that date applies.

Decision

I have examined each document subject to internal review and formed my own view and made my own decision with respect to each document. In coming to my decision, I have specifically addressed the contentions raised in your request for internal review.

On review, I have identified 15 documents relevant to your request and I have decided to release 10 in full and to release 5 in part. The effect of my decision is to vary the decision of the primary decision maker. My reasons for this decision are set out at Attachment A to this letter. At Attachment B is a schedule setting out each document and detailing my decision in relation to each document.

Review rights

You are entitled to seek review of this decision. Your rights are set out at Attachment C to this letter.

Relevant provisions

I have enclosed copies of the provisions of the FOI Act relevant to your request at Attachment D to this letter.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact Kimberley Evans on 6289 7945.

Please accept my apology for the delay in conducting the internal review of your request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Felicity McNeill', with a stylized, flowing script.

Felicity McNeill
Acting First Assistant Secretary
Pharmaceutical Benefits Division

10 March 2011

ATTACHMENT A – 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;
- Advice from Departmental officers with responsibility for matters relating to the documents to which you sought access;
- The relevant provisions of the FOI Act;
- The Department's guidance material on the FOI Act;
- Guidelines on FOI, available on the Department of Prime Minister and Cabinet website; and
- The contentions raised in your request for an internal review.

Findings of fact and reasons for decision

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

Section 22 deletion of exempt matter or irrelevant material

Section 22 of the FOI Act allows for the deletion of information which is either exempt or which is irrelevant to the scope of the request.

Section 22(1)(a)(i) – material which is exempt

Where a decision is made to refuse access to a document on the ground that it is an exempt document, section 22 allows an agency to make an edited copy of the document with the exempt material deleted. The schedule identifies the relevant section of the FOI Act under which the exempt material has been deleted. My reasons for claiming the particular exemption are set out below.

Section 24A – requests may be refused if documents cannot be found or do not exist

In your internal review letter at paragraph 2 you state that the FOI request was not fulfilled in its entirety as certain documents were not included with the primary decision nor was any mention of the documents included in the primary decision letter.

Section 24A of the FOI Act provides that access to documents may be refused if the documents do not exist or cannot be found. Before coming to the conclusion that the documents cannot be found the Department must take all reasonable steps to find the documents. The Department has undertaken the following searches to find the documents you requested in relation to any declaration of interest by those attendees of the meetings or those involved in the investigation, including any financial links to pharmaceutical companies.

- Interrogations of all files on which the documents may have been located, including searches of electronic filing systems in the Department, including within the Therapeutic Goods Administration;
- Searches of filing cabinets, draws, cupboards by staff in the Department, including within the Therapeutic Goods Administration.

Despite these searches the documents could not be found. I am satisfied that all reasonable steps have been taken to locate the documents in question, but that they cannot be located in the Department at this time. As a result of these searches I am satisfied that the documents to which you are seeking access are not in the possession of the Department or no longer exist. I am therefore refusing you access to the documents under section 24A of the FOI Act.

Section 41 – documents affecting personal privacy

Section 41(1) exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person.

Personal information

Personal information is defined in section 4 of the FOI Act as:

Information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The elements of ‘personal information’ are:

- it relates only to a natural person (not, for example, a company);
- it says something about the individual;
- it may be in the form of an opinion, it may be true or untrue, and it may form part of a database; and
- the individual’s identity is known or is reasonably ascertainable using the information in the document.

For those documents where section 41 is claimed, I have found that the information is personal information. The information is personal information as it relates to the personal contact information of a number of individuals.

Disclosure unreasonable

If information is personal information, it will be exempt if disclosure would be ‘unreasonable’. There are a range of factors in deciding whether or not disclosure would be unreasonable, including:

- the nature of the information, i.e. it should not be bland or common place;
- the circumstances in which the information was obtained;
- the current relevance of the information;
- the stated object of the legislation in section 3 of the FOI Act being to facilitate and promote the disclosure of information;