NOTICE OF DECISION - INTERNAL REVIEW

I refer to your application received 23 October 2018, for an internal review of a decision dated 14 September 2018 in relation to your request to the Department of Health (Department) seeking access under the Freedom of Information Act 1982 (FOI Act) in the following terms:

'Any documents which show the amount of any payments made for any purpose to:
1. Immunisation Foundation of Australia; and
2. Catherine and/or Greg Hughes; and
3. Toni and/or David McCaffery; and
4. Any other entities controlled by the above.'

Although the application was sent on 22 October 2018, it was received on 23 October, so the due date for internal review decision is 22 November 2018. A one day extension for application for internal review is granted.

The primary decision was that two documents fell within the scope of your request and that access to the two documents listed in the Schedule of Documents attached to the primary decision should be refused.

This letter sets out my decision on your internal review application.

Decision and reasons for decision

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

In making a fresh decision on internal review, I have identified the same two documents as falling within the terms of your FOI request. The documents I have identified are set out in the schedule at Attachment A.
I have decided to affirm in part the primary decision dated 14 September 2018. My reasons for this decision are set out at Attachment B.

**Review rights**

If you are dissatisfied with my decision, you may apply for Australian Information Commissioner (Information Commissioner) review of the decision.

**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 within 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


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**


**Contacts**

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

Yours sincerely

Rachel Balmanno
First Assistant Secretary
People, Communication and Parliamentary Division

21 November 2018
<table>
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<tr>
<th>Page</th>
<th>Description</th>
<th>Date</th>
<th>No. of Pgs</th>
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<td>Artistic Deal Memo (contract) between Carbon Media &amp; Individuals of the MacKeller family</td>
<td>08/07/2017</td>
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<td>2</td>
<td>Artistic Deal Memo (contract) between Carbon Media &amp; Individuals of the Hughes family</td>
<td>08/07/2017</td>
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**Attachment A**

**Schedule of Documents - FOI 726**
REASONS FOR DECISION

Material taken into account

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

- the terms of your request;
- your internal review application;
- the content of the documents to which you sought access;
- advice from departmental officers with responsibility for matters relating to the documents to which you sought access;
- third party objections;
- the relevant provisions of the FOI Act; and
- guidelines issued by the Australian Information Commissioner under s93A of the FOI Act (the Information Commissioner’s Guidelines).

Finding of facts and reasons for decision

The schedule of documents indicates an exemption claim has been applied to the two documents. My findings of fact and reasons for deciding that the exemption applies to those documents are set out below.

Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing exempt material (22(1)(a)(i)) and irrelevant information (s22(1)(a)(ii)) and allows an agency to delete such material from a document.

In your internal review application you stated that there is no part of Documents 1 or 2 that contains irrelevant information as your request was not confined to only those parts of the documents showing payments to the relevant parties.

I have interpreted the scope of your request to include all documents that contains payments made to Immunisation Foundation of Australia, Catherine and/or Greg Hughes, Toni and/or David McCaffery and any other entities. The scope of your request is not confined to only the payment amounts to the relevant parties named in your request, but the other information contained within that document as well.

I am satisfied that Documents 1 and 2 contain relevant information under s 22(1)(a)(ii) of the FOI Act.
Section 47F – Personal privacy

Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person. Section 4 of the FOI Act provides that the term ‘personal information’ in the FOI Act has the same meaning as in the Privacy Act 1988.

In your internal review application, you contend that s 47F does not apply to Documents 1 and 2 because disclosure is not unreasonable as the McCaffery and Hughes families are public figures and disclosure of the documents would also advance the public interest in government transparency and integrity.

As per the Information Commissioner Guidelines [6.138], the personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The public interest of government held information needs to be balanced against the private interest of privacy of the third party.

In making my determination, I considered the following factors in favour of disclosure in s 11B(3) of the FOI Act:
- disclosure would promote the objects of the FOI Act, including to give the Australian community access to information held by the Government;
- inform debate on a matter of public importance; and
- promote effective oversight of public expenditure.

I have also considered the following matters when determining whether disclosure of the document would involve an unreasonable disclosure of personal information as set out in the Information Commissioner Guidelines [6.140]:
- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly accessible sources
- any other matters that the agency or minister considers relevant.

While it is well known that the McCaffery and Hughes families are associated with the immunisation campaign “Get the Facts”, I am satisfied that the documents are conditionally exempt from release on the grounds of personal privacy because the release of this information would be unreasonable, in line with the following key issues as set out in the Information Commissioner’s Guidelines at [6.142]:
- the documents contain third party personal information
- release of the documents would cause additional stress on the third party
- no public purpose would be achieved through release.

I am satisfied that Documents 1 and 2 contain personal information on the McCaffery and Hughes families as they provide details of the contractual arrangement between the McCaffery and Hughes families and Carbon Creative. The nature of the documents is not such as to usefully contribute to public debate about immunisation.
I am satisfied that the release of Documents 1 and 2 would cause unnecessary stress on the McCaffery and Hughes families due the sensitive nature of the immunisation campaign for the following reasons:

- the information contained in the documents is not well known;
- the information is not in the public domain;
- it could prejudice the protection of the individuals’ privacy;
- the safety of the McCaffery and Hughes families would, or could reasonably be at risk;
- high possibility that there would, or could be public backlash from a small but highly motivated sector of the public towards the McCaffery and Hughes families for taking part in the immunisation campaign;
- immunisation is a sensitive and emotional topic and releasing the documents would not contribute to constructive public debate on this topic, but would be likely to discourage individuals from contributing to discussion about immunisation due to privacy concerns; and
- the release of information could inflame tensions between parties who have differing views of the immunisation campaign and lead to harassment and negative comments between the parties.

For the above reasons, I am satisfied that the decision to exempt the documents under s 47F was appropriate. I find that disclosure of Documents 1 and 2 would involve disclosure of material that would be conditionally exempt from release as it would be an unreasonable disclosure of personal information.

**s47G – Business Information**

A document is conditionally exempt under s47G(1)(a) of the FOI Act if the document contains information concerning the business or professional affairs of an individual or the commercial, business or financial affairs of an organisation and its disclosure would, or could reasonably be expected to, have an unreasonable effect on the individual’s business or professional affairs or on the organisation’s commercial, business or financial affairs.

Disclosure of Documents 1 and 2 may reveal commercial and financial affairs of the businesses, Carbon Media Pty Ltd.

**Public Interest**

Section 47G is a conditional exemption. Pursuant to s11A(5) of the FOI Act, the Department is required to give access to a conditionally exempt document at a particular time unless access to the document at that time would, on balance, be contrary to the public interest.

In considering whether disclosure would be in the public interest, I considered the following factors favouring disclosure:

- Disclosure would promote the objects of the FOI Act;
- Disclosure would promote effective oversight of public expenditure; and
• Disclosure would provide the Australian people with access to government information.

I considered the following factors against disclosure:
• could reasonably be expected to undermine the economic value of the company by sharing commercially sensitive information with industry competitors, and can give competitors a financial advantage;
• could reasonably be expected to potentially expose the business to unnecessary criticism and impact on the business profile.

For the above reasons, I find that disclosure of Documents 1 and 2 would involve disclosure of material that would be conditionally exempt from release under s 47G as it would be an unreasonable disclosure of business information.

I have determined that disclosure of Documents 1 and 2 would, on balance, be contrary to the public interest. The documents are therefore exempt under s31B(b) of the FOI Act.