



Australian Government

Department of Health

Department Reference: FOI 1764

[REDACTED]

[REDACTED]

[REDACTED]

NOTICE OF DECISION

I refer to your request of 9 June 2020 to the Department of Health (department) seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

"The scientific studies and other scientific documents which were used by the Australian Government to make the recommendations to the Australian states to lockdown for the Covid 19 virus."

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.

Decision

I have identified two documents falling within the terms of your request. I have decided to refuse access in full to all documents.

The documents and the relevant exemptions applied are set out in the schedule at Attachment A. My reasons for this decision are set out at Attachment B.

Review rights

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

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

OR

Mail: FOI Unit (MDP 516)
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 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

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-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 referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2020C00110>

Publication

You should be aware that where I have decided to release documents 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:

<https://www.health.gov.au/resources/foi-disclosure-log>

Additional Information

Separate to my decision under the FOI Act, I can inform you that pages 47-59 of the document "Social Distancing: Evidence Summary", which is available on the internet, contains publically available information relevant to your FOI request. That document can be accessed here:

[https://www1.health.gov.au/internet/main/publishing.nsf/Content/519F9392797E2DDCCA257D47001B9948/\\$File/Social-2019.PDF](https://www1.health.gov.au/internet/main/publishing.nsf/Content/519F9392797E2DDCCA257D47001B9948/$File/Social-2019.PDF)

Contacts

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

Yours sincerely



Rhonda Owen
Assistant Secretary
National Incident Room and Health Emergency Management Branch

8 August 2020

SCHEDULE OF DOCUMENTS - FOI-1764**ATTACHMENT A**

Document no.	Date	Number of pages	Description	Decision on access	Exemption
1	20.03.2020	70	Go8 Social Distancing Expert Roundtable	Exempt in full	s 47B - whole s 47F - part s 22 - part
2	27.04.2020	3	20.04.27 AHPPC Emergency Teleconference Outcomes	Exempt in full	s 47B - whole s 47F - part

ATTACHMENT B

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 sought;
- advice from departmental officers with responsibility for matters relating to the documents sought;
- the relevant provisions of the FOI Act; and
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the relevant documents or parts of 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 (section 22(1)(a)(i)) and irrelevant information (section 22(1)(a)(ii)) and allows an agency to delete such material from a document.

I have deleted exempt and irrelevant material from the documents and prepared an edited copy for release. In particular, the names and telephone numbers of Department of Health employees have been deleted from document 1. As outlined when your request was acknowledged, this material is considered irrelevant to the scope of your request and I have deleted it.

Section 47B - Commonwealth-State Relations

Section 47B of the FOI Act conditionally exempts a document where disclosure:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State
- would divulge information or a matter communicated in confidence by or on behalf of the Government or State.

Damage to Commonwealth-State relations

The FOI Guidelines at paragraph 6.33 provide that disclosure of a document may cause damage by:

- interrupting or creating difficulty in negotiations

- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships

I have further considered that damage may be caused by the following factors:

- interrupting or creating difficulty in negotiations, discussions, and deliberations in response to the health protections measures
- adversely affecting the continuing administration of the AHPPC as a joint Commonwealth-State initiative
- adversely affecting the continued level of trust and co-operation within the existing Commonwealth-State health departments
- impairing or prejudicing the ongoing flow of information to and from the Commonwealth.

I have decided that the information you have requested would, or could reasonably be expected to, damage working relations with the Commonwealth. I have determined that this information is therefore exempt in full.

Information communicated in confidence

The FOI Guidelines at paragraph 6.41 provide that when assessing whether information was communicated in confidence, decision makers must consider whether the communication was thought to be confidential at the time of the communication. This also extends to the circumstances of the communication, including:

- whether the communication was ad hoc, routine, or required
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information
- how the information was subsequently handled, disclosed or otherwise published.

The documents you have requested were both recorded in confidence. I have determined that this information has been deliberated on by states and territories with the intention of remaining confidential. The documents are therefore exempt.

Public interest test

I am satisfied that the documents are conditionally exempt for the reasons set out above. I am now required by section 11B of the FOI Act to determine

whether access to the documents would, on balance be contrary to the public interest.

I have considered the following factors in favour of disclosure to the extent disclosure would:

- promote the objectives of the FOI Act
- inform debate on a matter of public importance
- provide the Australian community with access to government information.

I have also considered the following factors against disclosure to the extent disclosure would:

- be expected to prejudice public health by impeding the good relations between the States and the Commonwealth to continue to facilitate open and frank discussion necessary to negotiate about health protection matters in response to the COVID-19 pandemic
- be expected to prejudice the Commonwealth's ability to obtain confidential information that may be crucial to the coordinated health response to the COVID-19 pandemic
- prejudice the Commonwealth's ability to obtain similar information from the states in the future.

I have decided the factors against disclosing the information outweigh those in favour of disclosure, and that the exposure of the relevant information would be contrary to the public interest.

It is crucial that there is a transparent form of communication between health officials and the Government, where discussions are undertaken with an expectation and understanding that they remain confidential.

Section 47F – Personal Privacy

Documents may be fully or partially exempt if they disclose personal information about any person, which would be unreasonable to disclose.

Personal Information

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

The documents contain the names and professions of people who attended certain meetings.

Paragraph 6.130 of the FOI Guidelines identifies names and professions as personal information. I am therefore satisfied that the information is personal information for the purpose of the FOI Act.

Disclosure unreasonable

I have determined that it would be unreasonable to disclose the details of certain individuals whose identities and involvement in matters in relation to the COVID-19 pandemic are not publicly known. On this basis, I have decided that the information is conditionally exempt under section 47F of the FOI Act.

Public interest test

I am satisfied that the documents are conditionally exempt. I am now required by section 11B of the FOI Act to determine whether access to the documents would, on balance be contrary to the public interest.

I have considered the following factors in favour of disclosure to the extent disclosure would:

- promote the objectives of the FOI Act
- inform the public on matters of interest.

I have also considered the following factors against disclosure to the extent disclosure would:

- protect third parties' personal information
- adversely harm the interests of individuals
- not add any substance to the information being released
- not enhance accountability or transparency or promote oversight of the Department's personnel management and assessment activities.

I have concluded that the factors against disclosure outweigh the factors for disclosing the information on the basis that the release of the information may adversely harm the individuals involved. These parts of the document are therefore conditionally exempt under section 47F of the FOI Act.