



Australian Government

Department of Health

Department Reference: FOI 2427

[REDACTED]

[REDACTED]

NOTICE OF DECISION

I refer to your request of 4 June 2021 to the Department of Health (the department), seeking access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to the following:

Any written recommendations or reports by the Chief Health Officer to the Health Minister or Premier recommending the declaration of the State of Emergency in January 2020 and each extension thereof.

Informal Consultation

On 10 June 2021, the department wrote to you to clarify the scope of your request. On 15 June 2021, you wrote to us to confirm that your request refers to the national human biosecurity emergency period declared by the Governor-General as of March 2020.

On 25 June 2021, the department sought your agreement to extend the processing period by an additional 30 calendar days. On 28 June 2021, you declined the department's request for an extension. On 29 June 2021 the department applied to the Office of the Australian Information Commissioner (OAIC) for a 30-day extension. On 2 July 2021, you agreed to an extension of 30 days. The department thanks you for your confirmation.

FOI decision

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

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

I have decided to refuse access to all six documents in their entirety. My reasons for this decision are set out at Attachment B.

FOI review rights

If you are dissatisfied with my decision, you may apply for a review.

Internal review

Under section 54 of the FOI Act, you may apply for internal review of this decision.

In accordance with section 54B of the FOI Act, an application for internal review must be made in writing within 30 days after the day you are notified of this decision (or such further period as the department allows). To assist in the internal review process, please provide reasons you consider the review of my decision is necessary.

The internal review will be carried out by another officer of this department within 30 days of receipt of your application.

An application for an internal review should be addressed to:

Email: FOI@health.gov.au
Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner review

Alternatively, under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (OAIC) for review of my decision by the Information Commissioner.

In accordance with subsection 54S(1) of the FOI Act, an Information Commissioner (IC) review application in relation to a decision covered by subsection 54L(2) (access refusal decisions) must be made in writing within 60 days after the day you are notified of this decision (if you do not request an internal review).

More information about IC review is available on the OAIC website at:

<https://www.oaic.gov.au/freedom-of-information/reviews/>

The OAIC can be contacted by:

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

Complaints

If you are dissatisfied with action taken by the department, you may also make a complaint.

Complaint 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:

<https://www.health.gov.au/about-us/contact-us/complaints>

Complaint to the IC

Information about making a complaint to the IC about action taken by the department is available on the OAIC website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>

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/C2021C00219>

Additional information

While the department has refused access to the documents you have requested, I can provide the following information outside the FOI Act, which I trust will be of assistance to you.

The human biosecurity emergency period was declared under the *Biosecurity Act 2015* (Cth) by the Governor-General on 17 March 2020. Following successive extensions, the emergency period was extended to 17 June 2021. The Australian Health Protection Principal Committee (AHPPC) has advised the Australian Government that the COVID-19 situation overseas continues to pose an unacceptable public health risk to Australia, including the emergence of more highly transmissible variants. The ongoing risks posed to the Australian community by the COVID-19 pandemic forms the basis upon which the emergency period has been extended.

Below are links to publicly available information that may also be of interest to you:

- Media Release on the Extension of the human biosecurity emergency period
<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/extension-of-the-human-biosecurity-emergency-period>
- Minister for Health's advice to the Governor-General on the Declaration of a State of Emergency in relation to the COVID-19 pandemic

<https://www.health.gov.au/resources/foi-disclosure-log/foi-request-2268-release-documents-advice-to-the-governor-general-of-Health>

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



Ms Rhonda Owen
Assistant Secretary
NIR Health Emergency Management Branch

7 July 2021

ATTACHMENT A**SCHEDULE OF DOCUMENTS - FOI 2427**

Document no.	Date	Pages	Description	Decision on access¹	Exemption/s applied
1	16.3.2020	2	Letter from the Chief Medical Officer to the Minister for Health	E	s 47E
2	8.5.2020	2	Letter from the Chief Medical Officer to the Minister for Health	E	s 47E
3	18.8.2020	2	Letter from the Acting Chief Medical Officer to the Minister for Health	E	s 47E
4	12.11.2020	2	Letter from the Acting Chief Medical Officer to the Minister for Health	E	s 47E
5	9.2.2021	2	Letter from the Chief Medical Officer to the Minister for Health	E	s 47E
6	28.5.2021	5	Letter from the Chief Medical Officer to the Minister for Health	E	s 47E

¹ E = Exempt.

ATTACHMENT B

REASONS FOR DECISION - FOI 2427

Material taken into account

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

- the scope of your request,
- the content of the documents sought,
- advice from departmental officers with responsibility for the current matters relating to the documents sought,
- the relevant provisions of the FOI Act, and
- FOI Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Section 47E - operations of an agency

Paragraph 47E(d) of the FOI Act conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The six documents identified within the scope of your request contain certain operational information pertaining to the declaration and extensions of the Human Biosecurity Emergency Period under the *Biosecurity Act 2015 (Cth)* (the Biosecurity Act). The Biosecurity Act enables the Minister for Health to determine the requirements and issue directions that are necessary to manage the entry, emergence, establishment and spread of COVID-19 in Australia.

Substantial adverse effect on the proper and efficient conduct of an agency

Paragraph 6.120 of the Guidelines provides that an agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. Paragraph 6.123 of the Guidelines provides that the effect must bear on the agency's 'proper and efficient' operations.

Document 1 contains operational information pertaining to the declaration of the human biosecurity emergency period in March of 2020. The document outlines proposals for the management of the COVID-19 outbreak in Australia relying on expert clinical recommendations from the AHPPC. Documents 2 to 6 contain operational information pertaining to the ongoing management of the COVID-19 pandemic and successive extensions of the emergency period thereof, based on expert clinical recommendations, domestic and international evidence of the public health crisis.

Disclosure of this information could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the department in managing

the immediate and medium-term risks associated with, and ongoing impact of, the COVID-19 pandemic in Australia. The substantial adverse effect in this instance would be prejudicing the department's ability to frankly discuss the operational activities with public health officials during the present public health crisis. Disclosure of this information could also hinder the department's operations in providing expert medical advice to public health officials. Furthermore, this hindrance could substantially undermine the department's ability to perform its obligations and responsibilities to the Australian community in health protection policy.

On this basis, I am satisfied the disclosure of the relevant material in those documents would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency within the meaning of paragraph 47E(d) of the FOI Act and is therefore conditionally exempt.

Public interest test

Having decided that certain information contained in the documents is conditionally exempt, I am now required under section 11B of the FOI Act to determine if 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 may:

- promote the objects of the FOI Act by providing the Australian community with access to information held by the Commonwealth Government,
- inform debate on matters of public importance, and
- enhance the scrutiny of government decision making.

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

- prejudice the department's ability to deliver proper and efficient advice to the Government during the ongoing COVID-19 pandemic,
- undermine the genuine exercise of official functions of this department in informing the decision making processes of the Government, and
- prejudice the department's ability to frankly discuss the operational activities for the purposes of approaching the ongoing COVID-19 pandemic.

I confirm I have not had regard to the irrelevant factors set out in subsection 11B(4) of the FOI Act.

On balance, I consider that disclosure of the information in the relevant documents would be contrary to the public interest. I am satisfied the relevant information in the documents is exempt under paragraph 47E(d) of the FOI Act.