



Australian Government

Department of Health

Department Reference: FOI 3565

Mr Robert Stepon

Dear Mr Stepon

NOTICE OF DECISION

Thank you for your correspondence to the Department of Health of 24 January 2022 seeking access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to the following:

Please can you advise on the pre-existing conditions of people who died due to COVID-19.

FOI Decision

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

Appropriate steps have been taken to find the documents you requested, including searches of departmental file management systems.

I have identified five documents falling within the scope of your request. The documents are set out in the schedule at Attachment A. I have decided to grant you access in full to two documents with irrelevant information removed, and access in part to three documents with exempt and irrelevant information removed. The reasons for my 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 (IC).

In accordance with subsection 54S(1) of the FOI Act, an 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 of the FOI Act

The FOI Act, including the provisions referred to in decision accompanying this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2021C00382>

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 - interpretation of comorbidity information from the National Interoperable Notifiable Diseases Surveillance System

The National Interoperable Notifiable Diseases Surveillance System (NINDSS) has implemented fields to capture data on the comorbidities of COVID-19 cases.

Most jurisdictions are collecting these data and are in the process of modifying their systems to be able to report these data to the NINDSS, however at this stage, data completeness for these fields are not considered nationally representative and therefore caution is urged when interpreting information extracted from the NINDSS.

Additional, more detailed information regarding deaths associated with COVID-19 (including pre-existing conditions and co-morbidities) is available from other sources, including the Australian Bureau of Statistics *Australian COVID-19 Mortality* article, accessible online at: [Australian COVID-19 Mortality | Australian Bureau of Statistics \(abs.gov.au\)](https://abs.gov.au).

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the department's Freedom of Information Unit at FOI@health.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Emily Harper', written in a cursive style.

Emily Harper
Assistant Secretary
Public Health & Surveillance Branch

25 March 2022

ATTACHMENT A

SCHEDULE OF DOCUMENTS - FOI 3565

Document no.	Date	Pages	Description	Decision on access ¹	Exemption
1	8 November 2021	8	Email - Data on COVID-19 hospitalisation/ICU and deaths	RI	s22
2	21 January 2022	3	Brief - Data on Omicron trends, deaths/ICU hospitalisation	RI	s22
3	23 January 2022	6	Brief - Analysis of Omicron cases	RE	s47C s22
4	01 February 2022	12	Brief - COVID-19 associated deaths	RE	s47C s22
5	02 February 2022	9	Brief - Analysis of Omicron cases	RE	s47C s22

¹ RI = Release with irrelevant information removed, RE = Release with exempt information removed.

ATTACHMENT B**REASONS FOR DECISION - FOI 3565****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 OAIC under section 93A of the FOI Act (the FOI Guidelines).

Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the sections of the FOI Act identified in the schedule of documents apply to the relevant documents are set out below.

Section 22 - Irrelevant material

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

I have deleted irrelevant information in accordance with the department's redaction policy as communicated to you when your FOI request was acknowledged. Irrelevant material deleted from those documents includes Commonwealth employee names and contact details below Senior Executive Service (SES) level.

I have also deleted exempt information from the documents. Further information about the exemptions applied is set out below.

Section 47C - Deliberative material

Subsection 47C(1) of the FOI Act provides that a document is conditionally exempt if it would disclose deliberative matter in the nature of, or relating to, opinion, advice or recommendations obtained, prepared or recorded; or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes in the functions of the department.

I have applied subsection 47C(1) of the FOI Act to three documents identified in the Schedule at Attachment A.

Do the documents contain deliberative matter?

In the Administrative Appeals Tribunal decision of Wood; Secretary, Department of the Prime Minister & Cabinet and (Freedom of Information) [2015] AATA 945, Forgie DP explained that the words 'opinion', 'advice' and 'recommendation' all involve consideration, followed by the formation of a view either about a certain subject or about a course of action and the subsequent transmission of that view.

The FOI Guidelines provide that a 'deliberative process' involves the exercise of judgement in developing and making a selection from different options. In particular, the Guidelines state at paragraphs 6.58 to 6.59 that:

... The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes - the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.64 of the FOI Guidelines further provides that a deliberative process may include the recording or exchange of opinions, advice and/or recommendations, as well as interim decisions or deliberations. As such, it is my view that three documents identified in the Schedule at Attachment A, contain consultative information and comments relating to draft documents.

This process is consistent with the definition of a deliberative process as described above and under the FOI Act.

Public Interest Test

Subsection 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B of the FOI Act lists the public interest factors favouring access. Of these factors, I consider the following are relevant to your request:

- 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.

However, I do not consider the above factors outweigh the reasons weighing against disclosure of these documents. I find that disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

Upon balancing all the above relevant public interest considerations, I find that it is inherent and vital to the functions of the department that they can undertake candid and free discussions regarding all draft documents before making a recommendation or a decision.

I have concluded that disclosure of the conditionally exempt deliberative information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under subsection 47C(1) and paragraph 31B(b) of the FOI Act.