



Australian Government

Department of Health

Department Reference: FOI 170-1314

Mr Renai LeMay
Editor and Publisher
Delimiter

Via email: renai@delimiter.com.au

Dear Mr LeMay

NOTICE OF DECISION

I refer to your request of 10 February 2014 to the Department of Health (Department) seeking access under the *Freedom of Information Act 1982* (FOI Act) to:

“I refer to the media release issued by Health Minister Peter Dutton on 20 December, noting that the Government had received a review of the Personally Controlled Electronic Health Records system. This FOI request seeks the full text of that review of the PCEHR”.

I am writing to advise you of my decision.

Decision

I have identified one (1) document falling within the terms of your request. The identified document can be identified as:

- *The review of the Personally Controlled Electronic Health Record – December 2013*

I have decided to refuse access to this document. My reasons for this decision are set out at Attachment A.

Charges

I notified you of your liability to pay charges on 26 March 2014. As you have paid a deposit of \$61.05, the outstanding balance of your charges is \$182.99.

Your payment for the outstanding balance of charges should be received within 30 days by way of cheque or credit card and made payable to the Department of Health and provided to either:

FOI@health.gov.au

FOI Coordinator (MDP350)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Review rights

You are entitled to seek review of this decision.

Your rights are set out at Attachment B.

Relevant provisions

The FOI Act, including the provisions relevant to your request can be accessed from the Comlaw website using the following:

<http://www.comlaw.gov.au/Details/C2014C00041>

Publication

You should be aware that as I have decided not to release the document to you, the Department will not be publishing it on its disclosure log.

Contacts

If you have any queries throughout the process, you may wish to contact the FOI Unit on (02) 6289 1666 or via email at FOI@health.gov.au.

Yours sincerely



Linda Jackson
Assistant Secretary
eHealth Policy Branch
eHealth Division

16 April 2014

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 document to which you sought access;
- 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, and
- Guidelines issued by the Australian Information Commissioner under s93A of the FOI Act.

Findings of fact and reasons for decision

My findings of fact and reasons for my decision are set out below.

Section 47C – Public interest conditional exemption - Deliberative processes

Section 47C conditionally exempts a document if its disclosure would disclose opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the deliberative processes of an agency or Minister or the Government of the Commonwealth.

The *Review of the Personally Controlled Electronic Health Record* is the report of a review team commissioned by the Minister for Health. The review team was chaired by the Executive Director of the UnitingCare Health Group who was assisted by the President of the Australian Medical Association and the Chief Information Officer of Australia Post. The report was provided to the Minister on 20 December 2013.

The report addresses issues dealing with implementation and uptake of the PCEHR and includes analysis of those issues together with recommendations. The recommendations are presently under consideration.

Having regard to the content of the report there is no doubt that disclosure of it, or any part of it, would disclose deliberative matter within the meaning of section 47C(1) of the FOI Act. For this reason I have decided that the review is conditionally exempt under that section. Noting that the section 47C exemption is a conditional exemption, I have considered whether granting access to the report would be contrary to the public interest. This is because of the requirement in section 11A(5) that access must be given to a conditionally exempt document unless such access "would, on balance, be contrary to the public interest".

The public interest relates to the interests of the public as a whole and not to an interest particular individuals or sections of the community may have. In this respect, I note that there are likely to be individuals and groups who have an interest in electronic health issues

generally and a particular interest in the contents of the report. There will be many who are simply curious to know what is in the report. In making my decision I have taken these legitimate levels of interest into account, together with the fact that the objects of the FOI Act in section 3 include “increasing public participation in Government processes” and “increasing scrutiny, discussion, comment and review of the Government’s activities”.

If the contents of the review were to be made public, the matters presently under consideration (to which I have referred above) would be prematurely exposed to scrutiny which would undermine the integrity of the decision-making processes of government. It is in the interest of the Australian community as a whole that consideration of the report’s recommendations and analysis be conducted in circumstances of confidentiality to government and those public officials who need to know relevant details. I note in this context that key stakeholder groups, including peak clinical bodies, were given the opportunity to make submissions to the review team.

I have decided that, on balance, disclosure of the report would be contrary to the public interest. The importance of ensuring the report’s contents can continue to be considered within the confines of confidentiality to the Minister and to those public officials who have a need to know its contents is considerable. It outweighs the countervailing public interest in individuals’ and interest groups’ being given access to the document.

REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you. You can apply for either internal review or Australian Information Commissioner (AIC) review. You do not have to apply for internal review before seeking AIC review:

- if you choose internal review, you can still apply for AIC review if you are dissatisfied with the internal review decision;
- if you choose AIC review, you will not be able to seek internal review of that decision and your only avenue will then be AAT review.

Details of the review options are set out below.

Internal Review

Under section 54B of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:

30 days of you receiving this notice (or such further period as the agency allows), or
where access is granted to some documents and not others, 30 days after receiving this decision notice or 15 days of you receiving the documents to which you have been granted access (if any) – whichever is the longer period.

An internal review will be conducted by a different officer of this Department from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI Coordinator (MDP 350)
Department of Health and Ageing
GPO Box 9848
CANBERRA ACT 2601
Email: foi@health.gov.au

Australian Information Commissioner Review

Alternatively you may apply in writing for review by the Australian Information Commissioner.

The Australian Information Commissioner can be contacted by:

E-mail: enquiries@oaic.gov.au

Phone: 1300 363 992

In making your application you need to provide:

- An address for notices to be sent (this can be an email address); and
- A copy of this decision

Although not required, you can set out the reasons for review in your application

An application for AIC review must be made:

- Within 60 days of this notice (if you do not request an internal review) or within 60 days of notice of the internal review decision.

Administrative Appeals Tribunal review

You may also apply to the AAT for review of a decision made on Australian Information Commissioner review with which you are dissatisfied. (Note: if you are dissatisfied with an internal review decision you must apply for AIC review.)

The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by an application fee - currently \$816, which may be reduced in some instances. The fee may also be reduced by the AAT where financial hardship is shown.

The AAT has a help desk to advise on its procedures. More information is available on the AAT's website www.aat.gov.au.

The contact details of the AAT in the State of your mailing address are:

QLD and NT

District Registrar
Administrative Appeals Tribunal
GPO Box 9955
Brisbane QLD 4001
Ph: (07) 3361 3000
Fax: (07) 3361 3001

Complaints to the Australian Information Commissioner

You may also make a complaint to the Australian Information Commissioner about action taken by the Department in relation to your application. The complaint needs to be in writing and identify the agency against whom the complaint is made. The Australian Information Commissioner's contact details are above in paragraph 5.

There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.