

Dear [REDACTED]

DECISION ON YOUR ACCESS APPLICATION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (FOI Act), received by Canberra Health Services (CHS) on **Monday 20 February 2023**.

This application requested access to:

Copies of RISKMAN incident reports submitted by the applicant in 2021 and 2022 relating to two named staff.

I am an Information Officer appointed by the Chief Executive Officer of Canberra Health Services (CHS) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. CHS was required to provide a decision on your access application by **Tuesday 21 March 2023**.

Decisions

I have decided to refuse access to documents requested. My access decisions are detailed further in the following statement of reasons.

The identified documents contain information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

Public Interest Factors Favouring Disclosure

The following factors were considered relevant in favour of the disclosure of the documents:

- Schedule 2, 2.1 (a)(xiii) contribute to the administration of justice generally, including procedural fairness; and
- Schedule 2, 2.1 (a)(xiv) contribute to the administration of justice for a person.

Public Interest Factors Favouring Non-Disclosure

The following factors were considered relevant in favour of the non-disclosure of the documents:

- Schedule 2, Schedule 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*;
- Schedule 2, Schedule 2.2 (a)(iv) impede the administration of justice generally, including procedural fairness;
- Schedule 2, Schedule 2.2 (b)(v) the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual.

In reaching my access decision, I have taken the following into account:

- The FOI Act;
- The *Human Rights Act 2004*; and
- The *Information Privacy Act 2014*.

The Riskman documents requested contain personal employment information of individuals, and is protected under the *Human Rights Act 2004* and the *Information Privacy Act 2014*. Further, section 28 of the FOI Act requires that information provided as part of FOI access applications must be published on the agency's disclosure log, other than the personal information of the applicant. As these reports are comprised the personal information of other individuals, the Directorate would be required to publish the documents on the FOI Disclosure Log should these documents be disclosed in response to an access application under the FOI Act.

In accordance with the *Information Privacy Act* Part 1.3(6) TPP 6—use or disclosure of personal information states in terms of dealing with personal information;

- 6.1 *If a public sector agency holds personal information about an individual that was collected for a particular purpose (the primary purpose), the agency must not use or disclose the information for another purpose (the secondary purpose) unless—*
- (a) *the individual has consented to the use or disclosure of the information; or*
 - (b) *TPP 6.2 or TPP 6.3 applies in relation to the use or disclosure of the information.*

The Riskman reports were received for the primary purpose of staff management, and thus cannot be disclosed for a secondary purpose without the consent of the individuals identified in the reports. As such, the personal information held by the government cannot be provided to the general members of the public as TPP 6.2 and 6.3 do not apply.

Charges

Processing charges are not applicable to this request.

Disclosure Log

Under section 28 of the FOI Act, CHS maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you will be published in the disclosure log not less than three days but not more than 10 days after the date of this decision. Your personal contact details will not be published.

<https://www.health.act.gov.au/about-our-health-system/freedom-information/disclosure-log>.

Ombudsman review

My decision on your access application is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in ACT Health's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Via email: ACTFOI@ombudsman.gov.au

Website: ombudsman.act.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Further assistance

Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on (02) 5124 9831 or email HealthFOI@act.gov.au.

Yours sincerely



Kalena Smitham
Executive Group Manger
People and Culture
Canberra Health Services

21 March 2023