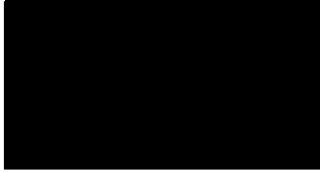




ACT
Government
Health

Ref FOI18-21



Dear 

I refer to your application received by ACT Health on 3 May 2018 in which you sought access to information under the *Freedom of Information Act 2016* (the Act).

In your application you have requested:

“I am seeking access to any documents relating to investigations conducted by ACT Health of sexual assaults by patients or staff on patients at The Canberra Hospital since December 2013.”

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

ACT Health was required to provide a decision on your access application by 1 June 2018.

Decision on access

During the period of the 1 December 2013 to 3 May 2018 there was one investigation conducted by ACT Health of an alleged sexual assault at The Canberra Hospital. The Australian Federal Police (AFP) investigated the allegation and concluded that there was insufficient evidence, and no charges were pursued.

Following the review of the documents identified relating to the investigation I have decided to refuse access to all documents. My reasons for deciding not to provide access to the identified documents are that a large proportion of the documents identified are health records, the Act does not apply to information in a health record under the *Health Records (Privacy and Access) Act 1997*. The small number of remaining documents are on balance contrary to the public interest to release under Schedule 2 of the Act.

In line with Schedule 2 of the Act, I have considered all factors favouring public interest disclosure, noting that 2.1 (iii), informing the community of the governments operations, including the policies, guidelines and codes of conduct followed by the government in its dealing with members of the community and the application of these could be in the public interest, however the factors favouring nondisclosure heavily outweigh benefits provided by this. Some of the factors favouring nondisclosure are as follows:

2.2 (ii) 'Prejudice the protection of an individual's right for privacy or any other right under the *Human Rights Act 2004*.'

2.2 (xii) 'Prejudice an agency's ability to obtain confidential information'.

2.2 (v) 'Is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair trade of an individual.'

The documents ACT Health holds in scope of this request are entirely made up of personal information about individuals. The documents would be easily identifiable unless heavily redacted, and given this I have decided that the right for an individual's right to privacy surrounding this investigation far outweighs the public's interest in this matter.

Charges

Processing charges are not applicable for this request.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the 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 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

ACT Civil and Administrative Tribunal (ACAT) review

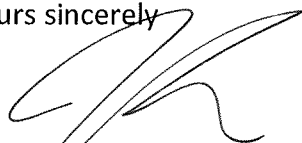
Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

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

Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on 6205 1340 or email HealthFOI@act.gov.au.

Yours sincerely



Janine Hammat
Executive Director
People and Culture

| June 2018