

Our reference: **FOI20/53**

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 ACT Health Directorate (ACTHD) on Thursday 15 October 2020.

This application requested access to:

“Australian Health Protection Principal Committee papers by or circulated to the Chief Health Officer, or their representative, between 1 May and 31 July 2020 concerning the following matters in Victoria:

- *Contact tracing*
- *Testing approaches*
- *Hotel Quarantine*
- *Elimination/suppression strategies*
- *Public Health workforce capacity.”*

On 31 March 2021, you wrote to ACTHD noting as a result of information you have received from another jurisdiction with representatives on the Australian Health Protection Principal Committee (AHPPC), you are aware of a paper authored by the Victorian Chief Health Officer that could have been included in ACTHD’s response to your initial request, reference FOI20/53.

I have identified one additional document that matches the description in your 31 March 2021 correspondence. I am not of the view that it falls within the scope of your original application. However, given your request of 31 March 2021 for the document and that the intent of the FOI Act is to facilitate access to government information I have decided to treat it as falling within the scope of your original application. In accordance with section 36 of the ACT FOI Act, Deciding access-additional government information, I have decided to refuse access to this information under section 35.

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

- The FOI Act;
- The contents of the documents that fall within the scope of your request;
- Views of relevant third parties; and
- The *Human Rights Act 2004*

Refuse Access

I have decided to refuse access to the additional information.

Public Interest Factors Favouring Disclosure

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

- Schedule 2.1(a)(i) promote open discussion of public affairs and enhance the government's accountability. While the release of the information might promote open discussion of public affairs, as no decision, action or inaction of the ACT Government flowed from the paper it is difficult to conceive how release of the information will enhance the government's accountability. In terms of the additional element to the factor "enhance the government's accountability", the ACT Government is not mentioned or referred to in the information in any capacity. For this reason, and because of the nature of the information itself and its relationship to the ACT Government, I do not consider release of the information can enhance the government's accountability. Accordingly I give this factor no weight.
- Schedule 2.1(a)(ii) contribute to positive and informed debate on important issues or matters of public interest. The information at issue relates to a matter of public interest and could contribute to informed debate. I consider the extent to which disclosure of the information could promote this public interest factor is moderate.
- Schedule 2, 2.1(a)(xi) reveal environmental or health risks or measures relating to public health and safety. The information relates to health risks and measures relating to public health and safety. However, as much the information is publicly available, the extent to which the public interest factor could be promoted is somewhat mitigated. On balance, I give this factor moderate weight.

Public Interest Factors Favouring Non-Disclosure

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

- Schedule 2, 2.2(a)(x) prejudice intergovernmental relations;
- Schedule 2, 2.2(a)(xii) prejudice an agency's ability to obtain confidential information;
- Schedule 2, 2.2(a)(xvi) prejudice the deliberative process of government.

This information was circulated for deliberation at AHPPC and the material was communicated in confidence between governments of each jurisdiction in response to the coronavirus public health emergency. There is a clear mutual expectation of confidentiality of shared information amongst committee members in particular noting that this information is classified committee-in-confidence and is not publicly available information. As the information contained in AHPPC documents retains its confidentiality, the release of this information could reasonably be expected to:

- damage the intergovernmental relationships between the ACT Government and other jurisdictions. It is clear that all jurisdictions expect the information to be managed in a confidential manner. The documents containing the information are clearly marked accordingly and discussions between jurisdictions reinforce this expectations. Some of the information is sensitive and is not publicly available to my knowledge and releasing this information is inconsistent with the expectation of other jurisdictions and would damage intergovernmental relations in relation to health matters. It is reasonable to expect other jurisdictions' confidence in future that their information will be held confidentially will be based on whether this sensitive information is released (irrespective of the sensitivity of the information released). It is not the sensitivity of the information released that will determine the impact on intergovernmental relations but the fact that confidential information is released at all. Accordingly, I give this factor substantial weight.
- prejudice an agency's ability to obtain confidential information. It is reasonable to expect that other jurisdictions will be reluctant to prepare (or contribute to) written documents containing confidential material that will be provided to the AHPPC and subsequently potentially be made public via FOI. It is reasonable to expect that there will be a much

greater dependence on information being conveyed orally at AHPPC, which will inhibit the availability of confidential information to the ACT Health Directorate. I give this matter substantial weight.

- prejudice the deliberative process of government. Without the free flow of confidential written information (currently generally provided in advance of meetings) the directorate's ability to appropriately consider and brief relevant ACT officials on these matters will be adversely affected. Furthermore, the quality of discussion and consideration of these complex matters at AHPPC will be compromised and the deliberative processes of government will be adversely affected. There could be a significant adverse impact on the health of people in Australia if there is any diminution in AHPPC's capacity to consider these matters thoroughly and comprehensively. Accordingly, I give this matter substantial weight.

In balancing the factors, I am of the view that the substantial weight given to the three factors favouring non-disclosure significantly outweighs the two factors favouring disclosure.

I have determined that the release of the information identified is contrary to the public interest and I have decided not to disclose this information.

Charges

Processing charges are not applicable to this request.

Disclosure Log

Under section 28 of the FOI Act, ACTHD maintains an online record of access applications called a disclosure log. My decision 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

The decision on your access request 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:

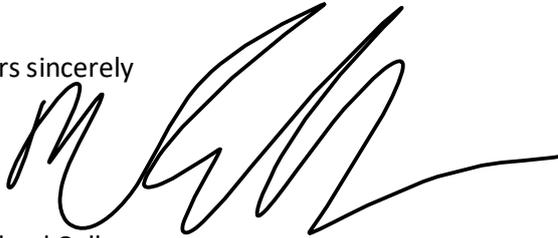
ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601

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

A handwritten signature in black ink, appearing to be 'M Culhane', written over a white background.

Michael Culhane
Executive Group Manager
Policy, Partnerships and Programs

22
April 2021

FREEDOM OF INFORMATION SCHEDULE OF DOCUMENTS

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided to you will be released to the public through the ACT Government's Open Access Scheme. The Open Access release status column of the table below indicates what documents are intended for release online through open access.

Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the contact officer immediately.

Information about what is published on open access is available online at: <http://www.health.act.gov.au/public-information/consumers/freedom-information>

| APPLICANT NAME | | WHAT ARE THE PARAMETERS OF THE REQUEST | | | | FILE NUMBER |
|----------------------------------|-------------|--|----------|-----------------|--|----------------------------|
| | | Australian Health Protection Principal Committee (AHPPC) papers by or circulated to the Chief Health Officer, or their representative, between 1 May and 31 July 2020 concerning the following matters in Victoria: | | | | FOI20/53 |
| | | <ul style="list-style-type: none"> • Contact tracing • Testing approaches • Hotel Quarantine • Elimination/suppression strategies • Public Health workforce capacity. | | | | |
| Ref Number | Page Number | Description | Date | Status Decision | Factor | Open Access release status |
| 1. | 1-4 | Agenda Item 4 – Potential alternative models to hotel quarantine | 01/05/20 | Not for release | Schedule 2, 2.2(a)(x) prejudice intergovernmental relations; Schedule 2, 2.2(a)(xii) prejudice an agency's ability to obtain confidential information; Schedule 2, 2.2(a)(xvi) prejudice the deliberative process of government. | No |
| Total Number of Documents | | | | | | |
| 1. | | | | | | |