



Australian Government
Productivity Commission

Melbourne Office

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Ms Shelley Wilkins
Executive Director
Citizens Committee on Human Rights Inc.
PO Box 6402
NORTH SYDNEY NSW 2059

16 March 2020

Dear Ms Wilkins

Your Freedom of Information Request – FOI Decision Letter

I refer to your letter of 25 February 2020 to the Productivity Commission (the Commission) seeking access to documents under the Freedom of Information Act 1982 (Cth) (FOI Act).

Your request had three parts, comprising of:

- 1. The documents that the Productivity Commission used, obtained/ were provided, since commencement of the Mental Health Inquiry for the proposal in the Draft Report regarding the expansion of the existing physical checks for 0-3 year olds (see Productivity Commission Draft Report Overview, p.11).*
- 2. Minutes of meetings held since the Productivity Commission Inquiry into Mental Health commenced covering children aged younger than school age. This would include minutes covering the proposals in the Draft Report for 0-3 year olds and the proposals for the use of the Enhanced Healthy Kids Check and early childhood education and care services (ECEC). The time period of these minutes would also include since the Draft Report was released.*
- 3. I was advised when I phoned the Productivity Commission on 5th November 2019, that the initial Draft Report was nearly double the length of the final Draft Report. Per this phone call, the gentleman informed me that the Productivity Commission Mental Health Inquiry staffs were advised the first draft was too long and to cut it back. CCHR requests copies of any sections related to 0-3 year olds proposal, Healthy Kids Check and early child hood educational and care services that were cut out of the final report.*

The Commission acknowledged your request, by email 27 February 2020. The statutory time period for processing your request will expire on 26 March 2020. I confirm that I have made a decision regarding access to the documents you requested.

Decision

I am authorised under section 23(1) of the FOI Act to make decisions in relation to FOI applications made to the Commission.

A search of the Commission's records was conducted and inquiries made to staff likely to know and identify relevant documents.

In making my decision, I had regard to: the terms of the request; the content of the identified document in issue; relevant provisions in the FOI Act; the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

For **part (1) of your request**, the Commission identified nine (9) documents that met the scope of your request. I have decided to provide access to all 9 documents in full. Eight of the documents are publicly available (these are the same 8 documents that were identified in your earlier FOI request response dated 12 March 2020); access to the documents is provided via links so as not to impinge on third-party copyright. Links to the 8 documents are provided at **Attachment A**. The ninth document is provided at **Attachment B**.

For **part (2) of your request**, no documents were identified and no documents were found. I am satisfied the Commission is not in possession of any document which would fall within the scope of your request.

Under subsection 24A(1) of the FOI Act, if all reasonable steps have been taken to find documents that are the subject of an FOI request, and the agency is satisfied that no documents can be found or exist within the agency, then the agency may refuse the request. Accordingly, my decision under the Act is to refuse part (2) of your request.

For **part (3) of your request**, the Commission identified five (5) documents that met the scope of your request. I have decided to deny access to the documents on the grounds that the material is conditionally exempt under Division 3 of Part IV of the FOI Act, and release would be contrary to the public interest.

- **Section 47C** conditionally exempts documents containing deliberative matter. That is, a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister.
 - Previous drafts of Commission's draft report clearly capture the Commission's deliberative process in the formulation of its position in the published Mental Health inquiry Draft Report.
- **Section 47E(d)** conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
 - The earlier drafts contain comments and questions from staff and Commissioners and cross-references to other work. The Commission is the Australian Government's independent research and advisory body on microeconomic policy and regulation. To continue to operate effectively, the Commission must be able to reflect on and debate its work thoroughly and candidly. The process of drafting and refining is a key way the Commission tests and enhances the rigour and quality of its advice.

The public interest test — section 11A of the FOI Act

Subsection 11A(5) of the FOI Act provides that conditionally exempt documents must be released unless, in the circumstances, access to the document at this time would, on balance, be contrary to the public interest. To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

There is a public interest in disclosure of documents that would promote the objects of the FOI Act including increasing public participation in Government processes to inform better decision-making and to increase scrutiny, discussion or review of the Government's activities (s 3(2) of the FOI Act).

In balancing the public interest, I do not consider the disclosing early drafts would substantively add to informed public debate. The Commission's inquiry processes are transparent and the Commission has already published a significant amount of information in relation to the Mental Health inquiry (including over 80 pages of references in the draft report, which provide a sense on the information the Commission used in the Inquiry). The Commission's inquiries are conducted with significant consultation and public input, including through holding public hearing and inviting submissions. The submissions and transcripts of the public hearings are published on our website.

I also consider that disclosing early deliberative drafts would inhibit frank and candid advice and debate in the Commission. This would substantively and adversely affect the efficient operations of the Commission, and strongly outweighs any benefit to the public in releasing the documents.

Accordingly, I have concluded that disclosure of the 5 documents relevant to the third part of your request would, on balance, be contrary to the public interest .

Internal Review

If you are dissatisfied with this decision, you have certain rights of review available to you. Under section 54 of the FOI Act, you may apply for an internal review of the decision. You must apply in writing for an internal review of the decision within 30 days of receiving this notice. There is no fee to make a request for an internal review.

If you make an application for internal review, it will be conducted by another officer of the Commission. That person will make a fresh decision on the merits of the case. 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 emailed to foi@pc.gov.au or mailed to:

Head of Office
Productivity Commission
Locked Bag 2, Collins Street, East
Melbourne VIC 8003
Attention: Corporate Services Branch – Office Services

Review by Information Commissioner

You have the option of seeking a merits review by the Information Commissioner. For more information, please refer to FOI Fact Sheet 12, published by the Office of the Australian Information Commissioner.

Complaints to the Australian Information Commissioner and the Commonwealth Ombudsman

If you are not satisfied with the way your request has been processed, you can complain to the Australian Information Commissioner or the Commonwealth Ombudsman. Generally, the Ombudsman will consult the Office of the Australian Information Commission to avoid the same matter being investigated twice.

Contact person

If you require clarification of any of the matters discussed in this letter, please do not hesitate to contact the Commission's FOI Coordinator 03 9653 2100 or email foi@pc.gov.au.

Yours sincerely

Executive Manager

FOI Decision maker (in accordance with s23(1) of the FOI Act)



Ms Shelley Wilkins
Executive Director
Citizens Committee on Human Rights Inc.
national@cchr.org.au

Melbourne Office
Level 8, Two Melbourne Quarter
697 Collins Street
Docklands VIC 3008
Locked Bag 2, Collins Street East
Melbourne VIC 8003
Telephone 03 9653 2100
Canberra Office
Telephone 02 6240 3200
www.pc.gov.au

22 October 2021

Dear Ms Wilkins

Freedom of Information Request – Notice of Decision

1. I refer to your letter of 25 September 2021 to the Productivity Commission (the Commission) seeking access to documents under the *Freedom of Information Act 1982 (Cth)* (FOI Act).
2. Your request is for:
 1. *Minutes of all the meetings held by the Productivity Commission during its Mental Health Inquiry completed that covered proposals for children younger than school age (and since completion if any more meetings were held).*
The time period for these minutes would only be since the last time CCHR requested them under the Freedom of Information Act on 25 February 2020.
 2. *The documents that the Productivity Commission used, obtained/were provided regarding the expansion of existing physical checks for children aged 0-3 years old since CCHR last requested them on 25 February 2020.*
Please see Productivity Commission Draft Report Overview & Recommendations, pages 11 & 12 and Productivity Commission Final Report Overview, Vol 1, p.20.
 3. *The documents that the Productivity Commission used, obtained/were provided regarding the expansion of existing physical checks for children aged 4-5 years old for their Mental Health Inquiry. The time period would be since the commencement of their Mental Health Inquiry.*
3. The Commission acknowledged your request, by email, on 5 October 2021.
4. The statutory time period for processing your request will expire on 25 October 2021.
5. I confirm that I have made a decision regarding your request.

Decision

6. I am authorised under section 23(1) of the FOI Act to make decisions in relation to FOI applications made to the Productivity Commission (the Commission).
7. A search of the Commission's records was conducted, and inquiries made to staff likely to know and identify relevant documents.

8. In relation to **part 1**, no documents were identified, and no documents were found. Staff have undertaken a search of emails and relevant folders on the shared drives and confirm that no documents falling within the scope of part 1 of your request were identified. I am satisfied the Commission is not in possession of any document which would fall within the scope of your request.
9. In relation to **part 2**, the Commission has identified 166 documents within the scope of your request. I have decided to provide access to all 166 documents in full. All of the documents are publicly available. Access to the documents is provided via links so as not to impinge on third-party copyright and to avoid system limitations in sending a large volume of files electronically. Links to the documents are provided at **Attachment A: 1-166**.
10. In relation to **part 3**, the Commission has identified nine (9) documents within the scope of your request. I have decided to provide access to all nine (9) documents in full. All of the documents are publicly available. Access to eight (8) documents is provided via links so as not to impinge on third-party copyright; the links are included in **Attachment A – 166-173**. The last document is provided at **Attachment B** (this is the same document released to your earlier FOI request response dated 12 March 2020).
11. There was no charge associated with completing this request.

Review Rights

12. If you are dissatisfied with this decision, you have certain rights of review available to you.

Internal Review

13. Under section 54 of the FOI Act, you may apply for an internal review of the decision. You must apply in writing for an internal review of the decision within 30 days of receiving this notice. There is no fee to make a request for an internal review.
14. If you make an application for internal review, it will be conducted by another officer of the Commission. That person will make a fresh decision on the merits of the case. 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.
15. An application for a review of the decision should be emailed to pcfoi@pc.gov.au or mailed to:

Head of Office
Productivity Commission
Locked Bag 2, Collins Street, East
Melbourne VIC 8003
Attention: Corporate Group – Office Services

Review by Information Commissioner

16. You have the option of seeking a merits review by the Information Commissioner. For more information, please refer to the Freedom of Information - Reviews and Complaints page, on the Office of the Australian Information Commissioner (OAIC) site: www.oaic.gov.au/freedom-of-information/reviews-and-complaints/.

Complaints to the Australian Information Commissioner and the Commonwealth Ombudsman

17. If you are not satisfied with the way your request has been processed, you can complain to the Australian Information Commissioner or the Commonwealth Ombudsman. Generally, the Ombudsman will transfer the complaint to the Office of the Australian Information Commission unless it is part of a larger complaint they are investigating.

Contact person

18. If you require clarification of any of the matters discussed in this letter, please do not hesitate to contact the Commission's FOI Coordinator 03 9653 2100 or email pcfoi@pc.gov.au.

Yours sincerely

A/g Assistant Commissioner – Corporate Group
FOI Decision maker (in accordance with s23(1) of the FOI Act)



Australian Government

Department of Health

Department Reference: **FOI 3115**

Ms Shelley Wilkins
Executive Director
Citizens Commission on Human Rights
via email: national@cchr.org.au

Dear Ms Wilkins

**NOTICE OF DECISION UNDER SECTION 24A
OF THE FREEDOM OF INFORMATION ACT 1982**

I refer to your request of 25 September 2021 to the Department of Health (department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) in the following terms:

1. Copies of the minutes of all meetings that discussed the "development of national guidelines to include social and emotional and well-being indicators in early childhood checks.
2. Also requested are copies of all documents used in these meetings to specifically discuss these guidelines by attendees.

This would include such items as copies of screening instruments, screening guidelines, medical studies, journal articles, submissions, written advice from experts/external persons not attending the meetings and written advice from attendees given to others attending the meetings.

FOI decision

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

Appropriate steps have been taken to find documents you have requested including consultation with relevant departmental officers and searches of departmental file management systems. I am satisfied, on the basis of the consultation undertaken and the searches conducted, that there has been no progression to date on the initiative

referred to in your request and as a result there has been no formal meetings or minutes taken to discuss the development of the relevant guidelines. Therefore, at this point in time, the department does not hold any documents within the scope of your request.

As a consequence, relying on section 24A of the FOI Act, I cannot provide access to the documents you requested.

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:

Phone: 1300 363 992

Email: enquiries@oaic.gov.au

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 this letter, can be accessed from the Federal Register of Legislation website:

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

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

First Assistant Secretary
Mental Health Division
12 November 2021

To: CCHR Australia
Subject: RE: Freedom of Information Request 3115 - Notice of Decision [SEC=OFFICIAL]

From: FOI [mailto:FOI@health.gov.au]
Sent: Friday, 19 November 2021 4:14 PM
To: CCHR Australia
Cc: FOI
Subject: RE: Freedom of Information Request 3115 - Notice of Decision [SEC=OFFICIAL]

Dear Ms Wilkins

Thank you for your email.

Through the 2021-22 Budget, the Government is investing \$2.3 billion in the National Mental Health and Suicide Prevention Plan to deliver significant reform of the mental health system and ensure that Australia's recovery from the COVID19 pandemic continues. The Plan includes a number of initiatives that will support the mental health and wellbeing of children and their families, including \$0.5 million to develop national guidelines to support states and territories to include social and emotional wellbeing indicators in routine early childhood health checks.

This initiative stems from a recommendation made by the Productivity Commission in its 2020 Inquiry Report into Mental Health, where it recommended state and territory Governments expand the scope of voluntary early childhood health checks, such that they assess children's social and emotional development before they enter preschool. All recommendations from this report were accepted in full, part or in principle by the Government.

As outlined in the Department's initial response, the Department has not progressed this work yet and there have been no meetings on this to date. As this was a direct recommendation from the PC Report there was no need for any specific formal meetings to discuss the development of the Guidelines prior to the 2021-22 Budget announcement.

I hope the above information has been of assistance to you.

Kind regards

FOI Officer

Freedom of Information Section

Legal Advice & Legislation Branch
Legal & Assurance Division | Corporate Operations Group
Australian Government Department of Health
T: 02 6289 1666 | E: FOI@health.gov.au
GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

Please note that this email and attachments may contain confidential or legally privileged information. Please consult with Legal Division before disclosing any part of this email, or attachment, outside of the Department. If you receive this email in error, please delete it and contact the sender immediately.

From: CCHR Australia <national@cchr.org.au>
Sent: Monday, 15 November 2021 8:57 PM

To: FOI <FOI@health.gov.au>

Subject: RE: Freedom of Information Request 3115 - Notice of Decision [SEC=OFFICIAL]

REMINDER: Think before you click! This email originated from outside our organisation. Only click links or open attachments if you recognise the sender and know the content is safe.

Dear Sir/Madam,

Hi, I am uncertain that this request is complete and wanted to check with you before I request an internal review. The decision letter states: "**there has been no progression to date on the initiative** referred to in your request and as a result there has been no formal meetings or minutes taken to discuss development of the relevant guidelines."

CCHR's request did not just ask for minutes of meetings etc since it was announced this would occur, we requested copies of all minutes etc which would include the meetings held to discuss the development of the guidelines prior to the public announcement. It seems unbelievable that there were no meetings and subsequent minutes related to the suggestion/idea for the initiative that they should be written, that then lead to the announcement they would be done?

Kind regards
Shelley