



Our reference: MR14/00081

Agency reference: 2013/1

Mr Felix Barbalet

By email: felix@pv.tl

Dear Mr Barbalet

Your application for Information Commissioner review of Private Health Insurance Ombudsman's decision

I refer to your request for Information Commissioner review (IC review) of the decision made by the Private Health Insurance Ombudsman (PHIO) on 18 February 2014 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Discretion not to conduct an IC review

I am a delegate of the Information Commissioner.

Under paragraph 54W(a) of the FOI Act, I may decide not to undertake a review, or not to continue to undertake a review, if I am satisfied that the review application is lacking in substance.

Section 38 of the FOI Act applies to documents covered by certain 'secrecy provisions' in other legislation. Schedule 3 of the FOI Act lists the Acts to which this provision applies. One such secrecy provision is sections 323-1 and 323-40 of the *Private Health Insurance Act 2007* (the PHI Act). This prohibits disclosure of 'protected information'. Where s 38 applies to a document, an agency is not required to release the document in response to an FOI request.

It appears that the information you requested is protected because s 323-10 prohibits disclosure of information obtained in the course of performing the duties of functions as listed under s 238-5 of the PHI Act. Section 238-5 includes information collected and published (in written form and on the internet) about complying health insurance products. In this case, it is the requirement of the private health insurers under s 96-10 of the PHI Act to give a copy of the standard information statement to the PHIO.

However, there are circumstances where protected information can be an authorised disclosure.

PHIO wrote to all the insurers asking for their authorisation to provide you with the information. You were provided with the data from those who responded providing permission. Those who responded that they did not authorise the release of the data were withheld.

It appears clear that those documents withheld as the insurer did not authorise release are exempt under s 38.

Where a document is exempt under s 38, public interest considerations are not relevant. This is because s 38 is a 'non-conditional' exemption under the FOI Act. On the basis of the information you have provided, and the information provided by the PHIO, I consider that your application is lacking in substance, as I am satisfied that the refusal to provide access to documents from insurers who have not authorised the release is grounds for exemptions under s 38.

As such I intend to finalise your application for IC review unless you provide me with reasons to reconsider this decision.

I invite you to provide these reasons by **27 May 2014**. If I do not hear from you by this date your review request will be closed and you will be notified of your review rights.

If you would like to discuss this, please contact Elizabeth Zatschler, the officer handling this matter, on (02) 6239 9121 or elizabeth.zatschler@oaic.gov.au. In all correspondence please quote MR14/00081.

Yours sincerely



Paul Hansen
Director
FOI Dispute Resolution
Office of the Australian Information Commissioner

14 May 2014