



Australian Government

Private Health Insurance Ombudsman

Dear Mr Barbalet

Freedom of information request no. 2013/1

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, David McGregor, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to documents relating to the website www.privatehealth.gov.au on 1 October 2013. Specifically you requested:

- a full copy of all private health insurance Standard Information Statement data entered into the privatehealth.gov.au content management system- for both policies currently available for purchase and policies no longer available for purchase;
- to receive the documents, which currently exist on the website in PDF format, in an electronic tabular form (database table, rather than pseudo print form);
- you have clarified that you don't wish to receive a partial release of data from the website, for example, removing the data of health insurers who haven't authorised the release.

I am advised by our contractor that there are approximately 30,000 standard information statements currently on the website, which have been entered by 34 individual health insurers.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

With regard to the documents you requested (set out in the schedule attached), I have decided to withhold access to documents from health insurers who have not authorised the Private Health Insurance Ombudsman (PHIO) to release them in this format. You have indicated that you do not wish to proceed with a data release from the website if it does not include all health insurer's data.

DECISION AND REASONS FOR DECISION

With regard to the documents identified in the attached schedule, I have decided

- to grant access in full to documents from the insurers who have authorised the PHIO to release their data;
- to refuse access in full to documents from the insurers who have not authorised

PHIO to release their data.

Material taken into account

I have taken the following material into account in making my decision:

- PHIO wrote to the 34 registered health insurers and requested their authority to release data;
- PHIO holds the requested data as a result of private health insurers giving the information to PHIO as required by 96-10 *Private Health Insurance Act 2007* (attached);
- Private Health Insurers are not required by any legislation or regulation to make use of the PHIO's content management system to provide standard information statements to PHIO;
- The FOI Act exemptions as detailed below.

The exemptions

Section 38 - secrecy

1. The exempt documents contain information received from private health insurers and are claimed to be exempt in full under s38 of the FOI Act. Section 38 applies to exempt documents covered by secrecy provisions that are contained in Schedule 3 of the FOI Act. Schedule 3 contains sections 323-1 and 323-40 of the *Private Health Insurance Act 2007* (the PHI Act). Section 323-1 provides:

(1) A person commits an offence if:

- (a) the person has, or has at any time had, a duty, function or power under this Act; and
- (b) the person discloses information to another person; and
- (c) the information is * protected information; and
- (d) the disclosure is not an * authorised disclosure.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) Information is **protected information** if the information:

(a) either:

- (i) is obtained by a person in the course of performing duties or functions, or exercising powers, under this Act; or
- (ii) was information to which subparagraph (i) applied and is obtained by a person by way of an * authorised disclosure under section 323-10, 323-15 or 323-20; and

(b) relates to a person other than the person who obtained it.

(3) A disclosure of information is an **authorised disclosure** if the disclosure is one that the person may make under section 323-5, 323-10, 323-15, 323-20, 323-25, 323-30 or 323-35.

The penalty for disclosing protected information that is not an 'authorised disclosure' is imprisonment for 2 years or 120 penalty units, or both (s 323-40).

'Protected information' is broadly defined to include any information obtained in the course of performing duties, functions or in the exercise of powers under the PHI Act. Private Health insurers are required under section 96-10 of the *Private Health Insurance Act 2007* to give a copy of a standard information statement to PHIO as soon as it is updated. The information claimed to be exempt are those documents provided by health insurers to the Private Health Insurance Ombudsman by health insurers who have not authorised the release of the information to a third party.

By way of background, an "authorisation" process has been in place with insurers since the www.privatehealth.gov.au website was introduced, under which PHIO only releases data inputted into the content management system if authorised by the insurer. Insurers consider the information as commercially valuable and as part of negotiations with insurers for their cooperation in supplying data in the format requested, the Government agreed that information would not be released without authority being granted by the insurer.

Section 47E(d) - substantial adverse effect on the operation of the agency

I also consider that disclosure of the documents containing information obtained from insurers under the PHI Act would have a substantial adverse effect on the operation of the PHIO. Section 47E(d) provides that a document will be conditionally exempt if disclosure would, or could, reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operation of an agency.

It is submitted that disclosure of the documents would have significant implications for PHIO in terms of its ability to maintain cooperation with the health insurers who currently provide the information to the website www.privatehealth.gov.au. Whilst private health insurers are required to provide copies of standard information statements which comprise the information on the site; there is no requirement to supply it electronically via our interface. PHIO has obtained the co-operation of private health insurers to submit standard information statements in this format as it is easier for both parties and of benefit to consumers.

If PHIO no longer had the co-operation of some insurers due to their dissatisfaction with their data being released without their authority, there is a potential risk that some would no longer submit standard information statements via our website. They could choose to provide them as a bulk ZIP file of several thousand PDF documents. This would cause a considerable challenge to PHIO to translate the data into our website so that consumers can access it.

PHIO does not have coercive powers under the PHI Act and relies on its ability to work collaboratively with health insurers to provide information to consumers. This approach is very effective and has enabled PHIO to maintain the website for consumers since 2007 at a very low cost to Government and without placing unnecessary administrative costs on health insurers.

To the extent that there may be some public interest in providing data from the website I should point out that for the average consumer all the data on the website is already available in what PHIO considers, based on our experience and consultation with consumers, the best format for consumers to understand.

Even though you have expressed an individual interest in the documents, it is necessary to weigh this against the significant broader implications for the PHIO if the documents were to be disclosed.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or for an Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Private Health Insurance Ombudsman for an internal review of my decision by another officer. The internal review application must be made within 30 days of the date of this letter.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601


in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me at [david@phio.gov.au](mailto: david@phio.gov.au)

Yours sincerely



David McGregor

Director of Policy & Client Services

18 February 2014

Attachments

- 1. Schedule of documents
- 2. Section 90 of Private Health Insurance Act 2007 relation to standard information statements