



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 Canberra Health Services (CHS) on Monday 12 February 2024 and rescoped on **Wednesday 14 February 2024**.

This application requested access to:

All Ministerial Briefs, Advisory notes and summaries provided by Canberra Health Services to the Minister for Health and/or the Minister for Mental Health/Population Health as well as any clinical incidents reports written concerning the 231 missing referrals to the DHR using the AETHER integration engine.

I am an Information Officer appointed by the Chief Executive Officer of Canberra Health Services (CHS) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. CHS was required to provide a decision on your access application by **Thursday 28 March 2024**.

I have identified one document holding the information within scope of your access application.

Decisions

I have decided to grant partial access to the one document.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment A to this letter.

Clinical incident reports concerning the missing referrals form part of personal medical health records. These records have not been released as per Section 12 of the FOI Act, which specifies that the Act does not apply to information in a health record as defined by the *Health Records (Privacy and Access) Act 1997* (the HR Act).

The HR Act defines a health record as any record containing personal health information. The HR Act defines personal health information as ‘any personal information (a) relating to the health, an illness or a disability of the consumer; or (b) collected by a health service provider in relation to the health, an illness, or a disability of the consumer.’ A ‘consumer’ is defined broadly and includes any individual who uses, or has used, a health service.

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; and
- The *Human Rights Act 2004*.

Partial Access

The document is partially comprised of information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act regarding the personal information.

Public Interest Factors Favouring Disclosure

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

- Schedule 2, 2.1 (a)(i) promote open discussion of public affairs and enhance the government's accountability; and
- Schedule 2, 2.1 (a)(ii) contribute to positive and informed debate on important issues or matters of public interest.

Public Interest Factors Favouring Non-Disclosure

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

- Schedule 2, 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*.

On balance, the factors favouring disclosure did not outweigh the factor favouring non-disclosure as the redacted information contains the mobile phone number of an ACT Government employee. Therefore, I determined 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, CHS maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you 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

My 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
Allara House
15 Constitution Avenue
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 read 'Janet Zagari', with a stylized flourish at the end.

Janet Zagari
Deputy Chief Executive Officer
Canberra Health Services

22 March 2024

From: Zagari, Janet (Health)
Sent: Friday, 9 February 2024 17:50
To: Bransgrove, Meagen; Canberra Health Services Media
Cc: Cook, Caitlin; CHS DLO; CHS, DCEO
Subject: RE: Urgent media request: DHR

I am so sorry, there is an omission in this.

I did not include the 13 NCH referrals which were received through other means (though I did include the 7 which were delayed).

Of the 231 referrals which were identified as not going through to the DHR via Aether, 115 were received through some mechanism before the issue was identified. There were therefore 116 referrals which were delayed in being received by CHS through the DHR. The delay in receiving these referrals varied between patients, and some patients remain on the waitlist. It is therefore not possible to definitively answer this question, only to say that it is up to 116 referrals. Some patients had more than one referral for the same patient, so 116 referrals does not mean 116 patients.

Kind regards, Janet

Janet Zagari | Deputy CEO
Phone: 02 5124 6799 | Email: janet.zagari@act.gov.au
Office of the Deputy CEO | Canberra Health Services | ACT Government
PO Box 11 Woden ACT 2606 | health.act.gov.au
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From: Bransgrove, Meagen <Meagen.Bransgrove@act.gov.au>
Sent: Friday, February 9, 2024 4:20 PM
To: Zagari, Janet (Health) <Janet.Zagari@act.gov.au>; Canberra Health Services Media <CHSmedia@act.gov.au>
Cc: Cook, Caitlin <Caitlin.Cook@act.gov.au>; CHS DLO <CHSDLO@act.gov.au>; CHS, DCEO <CHSDCEO@act.gov.au>
Subject: RE: Urgent media request: DHR

Thanks Janet, greatly appreciated!

From: Zagari, Janet (Health) <Janet.Zagari@act.gov.au>
Sent: Friday, February 9, 2024 3:49 PM
To: Bransgrove, Meagen <Meagen.Bransgrove@act.gov.au>; Canberra Health Services Media <CHSmedia@act.gov.au>
Cc: Cook, Caitlin <Caitlin.Cook@act.gov.au>; CHS DLO <CHSDLO@act.gov.au>; CHS, DCEO <CHSDCEO@act.gov.au>
Subject: RE: Urgent media request: DHR
Importance: High

- How many patients waited longer than clinically recommended timeframes due to the referral error?

Of the 231 referrals which were identified as not going through to the DHR via Aether, 102 were received through some mechanism before the issue was identified. There were therefore 116 referrals which were delayed in being received by CHS through the DHR. The delay in receiving these referrals varied between patients, and some patients remain on the waitlist. It is therefore not possible to definitively answer this question, only to say that it is up to 116 referrals. Some patients had more than one referral for the same patient, so 116 referrals does not mean 116 patients.

- Was there a deterioration of patient health due to the error

All of the identified referrals were assessed by CHS to determine the urgency of the referral. Those identified as urgent were assessed by the specialty area and either seen urgently or categorised appropriately after review. No deterioration of patient health due to the Aether issue has been identified to date.

- Have any patients affected taken legal action?

CHS is not aware of any legal action which has been taken.

- What were the specific steps taken by CHS when the referral issues were identified – were patients contacted or made aware of the issue, were doctors contacted

All of the identified referrals were assessed by CHS to determine the urgency of the referral. Those identified as urgent were assessed by the specialty area and either seen urgently or categorised appropriately after review. The 116 referrals were then pushed through to DHR. Patients and referring doctors received system generated messages to say that their referrals had been received. All referrals were backdated to the date they were originally sent, so as not to disadvantage patients.

Janet Zagari | Deputy CEO

Phone: 02 5124 6799 | Email: janet.zagari@act.gov.au

Office of the Deputy CEO | Canberra Health Services | ACT Government

PO Box 11 Woden ACT 2606 | health.act.gov.au

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From: Bransgrove, Meagen <Meagen.Bransgrove@act.gov.au>

Sent: Friday, February 9, 2024 2:33 PM

To: Zagari, Janet (Health) <Janet.Zagari@act.gov.au>

Cc: Cook, Caitlin <Caitlin.Cook@act.gov.au>; CHS DLO <CHSDLO@act.gov.au>; CHS, DCEO <CHSDCEO@act.gov.au>

Subject: FW: Urgent media request: DHR

Importance: High

Hi Janet,

Caitlin has questions she needs urgently answered regarding the referrals questions in QT this week. I recognise this is going outside process slightly and I understand Caitlin will loop in the media team when we have sorted to go back to CT. I have received the attached remaining dot point today as well, but need to be able to incorporate this into answers for the below.

We need to get this back this afternoon by 4pm for Minister to clear.

Thanks,

Meg

From: Cook, Caitlin <Caitlin.Cook@act.gov.au>

Sent: Friday, February 9, 2024 12:34 PM

To: Bransgrove, Meagen <Meagen.Bransgrove@act.gov.au>; Inman, Mick <Mick.Inman@act.gov.au>

Subject: Urgent media request: DHR

Hey –

Below q's from Lucy on the issue, including QTONs from Thursday. As discussed, we'll need to respond clearly and with as much info as we can share. Lucy is already working on the story so we'll need to move quickly. Otherwise, we end up with some comments at bottom of an already written story!

@Inman, Mick this is one from before you took over so I'll explain shortly and handover.

- How many patients waited longer than clinically recommended timeframes due to the referral error?
- Was there a deterioration of patient health due to the error
- Have any patients affected taken legal action?
- What were the specific steps taken by CHS when the referral issues were identified – were patients contacted or made aware of the issue, were doctors contacted

Thanks,

Caitlin Cook

Deputy Director Strategic Communications, Government Communications Unit

Communications Adviser – Minister Rachel Stephen-Smith

Office of the ACT Chief Minister

T: (02) 6207 8731 | M: [REDACTED] | E: caitlin.cook@act.gov.au