



Australian Government
Professional Services Review

Dr Anchita Karmakar
By email: anchitajuju@gmail.com

Dear Dr Karmakar

NOTICE OF DECISION

I refer to your request of 17 and 22 October 2018 to Professional Services Review (PSR) seeking access under the *Freedom of Information Act 1982 (FOI Act)* to:

(1) All Procedures and Policy documents for:

(a) Reviewing doctors

(b) Constitution of committee

(c) Key search parameters to review doctor.

(d) List of points PSR director uses during interviews and visits to doctor under review

(e) Training programs given to doctors engaged by PSR to form tribunals.

(f) Contract / Services agreements given to independent consultants for PSR

(2) Personal work contract between Government and Director Julie Quenliven (sic) for her appointment as PSR Director and past Director's work contract for the past three Directors

Any/all-policy documents that outline the use of counsel in general during review and evaluation of complaints, and specifically one from the PSR & Department of Human Services regarding the aspect of affording Natural Justice /due process to clinicians during referrals for audit/audit processes.

I am writing to advise you of my decision.

Decision

I am authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests. The evidence upon which I have based my decision is:

- correspondence from you outlining particulars of your request

PROFESSIONAL SERVICES REVIEW
PO Box 74, Fyshwick, ACT 2609
T: 02 6120 9100 F: 02 6120 9199

To find out more about the PSR Scheme visit: www.psr.gov.au
To provide feedback email: feedback@psr.gov.au

- consultations with relevant officers of PSR regarding information held by PSR and the searches undertaken by them
- the FOI Act and
- the FOI Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

Having taken all reasonable steps to find the requested documents, I have identified 17 documents falling within the terms of your request. The documents are set out in the schedule at Attachment A.

I have decided to give access to all of the documents that are capable of disclosure subject to redaction of exempt material as identified in the attached Schedule.

My reasons for this decision are set out at Attachment B.

Review rights

If you are dissatisfied with my decision, you may apply for an internal review or for the Australian Information Commissioner to review the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to PSR for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as PSR allows). Where possible, please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer within PSR within 30 days. An application for an internal review should be addressed to:

Email: FOI@psr.gov.au

OR

Mail: FOI Coordinator
Professional Services Review
PO Box 74
FYSHWICK ACT 2601

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review must be made in writing within 60 days of this notice (if you do not request an internal review).

The Information Commissioner can be contacted at:

Email: enquiries@oaic.gov.au

Phone: **1300 363 992**

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (**OAIC**) website at <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>

You may also make a complaint to the Information Commissioner about action taken by the PSR in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions

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/C2017C00102>

Publication

You should be aware that where I have decided to release documents to you, PSR may also publish the released material on its Disclosure Log. PSR will however, not publish information (such as personal or business information) where it would be unreasonable to do so.

For your reference, PSR's Disclosure Log can be found at:

<https://www.psr.gov.au/psr-agency-corporate-information/information-publication-scheme>

Contacts

If you require clarification of any of the matters discussed in this letter, you should contact me on **(02) 6120 9160** or kylie.neville@psr.gov.au or **Anastasia Andersen** on **(02) 6120 9145** or anastasia.andersen@psr.gov.au.

Yours sincerely



Kylie Neville
Principal Legal Officer
Professional Services Review
16 November 2018



Australian Government
Professional Services Review

ATTACHMENT A

Document No.	No of Pages	Date	Author	Description of Document	Decision	Portion Exempt
1	24	July 2018	Professional Services Review	'Your guide to the PSR process'. This is a publically available document providing information about the PSR process.	Public domain – produced outside the scope of the FOI Act	N/A
2	2	Undated	Professional Services Review	Template of file note created by the Director for each meeting that she attends with a person under review.	Release	N/A
3	4	Undated	Professional Services Review	Template of letters that the Director sends to persons under review ahead of each scheduled meeting.	Release	N/A
4	9	22 December 2016	Minister for Health	Commonwealth instrument of appointment (including attached Schedule) appointing Professor Julie Quinlivan as the Director of PSR.	Release with exemptions applied	Clause 11(2) is redacted on the basis of irrelevance and, in any case, exempted under ss 45 and/or 47 of the FOI Act.

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5	3	10 November 2015	Minister for Health	Commonwealth instrument of appointment (including attached Schedule) reappointing Dr William Coote as the Director of PSR from 14 November 2015 to 13 November 2016.	Release	N/A
6	6	27 August 2014	Minister for Health	Commonwealth instrument of appointment (including attached Schedule) reappointing Dr William Coote as the Director of PSR from 14 November 2014 to 13 November 2015.	Release	N/A
7	6	1 November 2011	Minister for Health	Commonwealth instrument of appointment (including attached Schedule) appointing Dr William Coote as the Director of PSR from 14 November 2011 to 13 November 2014.	Release	N/A
8	4	15 May 2008	Minister for Health	Commonwealth instrument of appointment (including attached Schedule) reappointing Dr Anthony Webber as the Director of PSR from 14 May 2008 to 13 May 2011.	Release	N/A
9	8	7 December 2014	Minister for Health	Commonwealth instrument of appointment (including	Release	N/A

				attached Schedule) appointing Dr Anthony Webber as the Director of PSR from 14 February 2005 to 13 February 2008.		
10	N/A	N/A	Minister for Health	Commonwealth instrument of appointment reappointing Dr Alan John Holmes as the Director of PSR from 1 January 2005 until 14 February 2005.	Document cannot be found	N/A
11	1	22 October 2003	Minister for Health	Commonwealth instrument of appointment reappointing Dr Alan John Holmes as the Director of PSR from 22 October 2003 to 31 December 2004.	Release	N/A
12	1	18 June 2003	Minister for Health	Commonwealth instrument of appointment reappointing Dr Alan John Holmes as the Director of PSR from 21 July 2003 to 21 October 2003.	Release	N/A
13	1	17 October 2003	Minister for Health	Commonwealth instrument of appointment reappointing Dr Alan John Holmes as the Director of PSR from 19 October 2000 to 20 July 2003.	Release	N/A
14	1	24 June 2000	Minister for Health	Commonwealth instrument of appointment reappointing	Release	N/A

				Dr Alan John Holmes as the Director of PSR from 28 June 2000 to 19 October 2000.		
15	16	15 February 2000	Minister for Health	Commonwealth instrument of appointment varying the terms of the appointment of Dr Alan John Holmes as the Director of PSR from 21 July 1997 to 20 July 2000.	Release	N/A
16	1	21 July 1997	Minister for Health	Commonwealth instrument of appointment appointing Dr Alan John Holmes as the Director of PSR from 21 July 1997 to 20 July 2000.	Release	N/A
17	1	21 July 1994	Minister for Health	Commonwealth instrument of appointment appointing Dr Alan John Holmes as the Director of PSR from 21 July 1994 to 20 July 1997.	Release	N/A



ATTACHMENT B

REASONS FOR DECISION

1. The following documents have been sought by the Applicant in her Freedom of Information request:

(1) All Procedures and Policy documents for:

(a) Reviewing doctors

(b) Constitution of committee

(c) Key search parameters to review doctor.

(d) List of points PSR director uses during interviews and visits to doctor under review

(e) Training programs given to doctors engaged by PSR to form tribunals.

(f) Contract / Services agreements given to independent consultants for PSR

(2) Personal work contract between Government and Director Julie Quenliven (sic) for her appointment as PSR Director and past Director's work contract for the past three Directors

Any/all-policy documents that outline the use of counsel in general during review and evaluation of complaints, and specifically one from the PSR & Department of Human Services regarding the aspect of affording Natural Justice /due process to clinicians during referrals for audit/audit processes.

2. Documents exist and should be produced for some, but not all, aspects of the Applicant's request. Each category or item of documents sought is addressed below under separate headings.

Item 1(a): 'All procedures and policy documents for reviewing doctors'

3. The Director's review of the provisions of services by a person referred by the Chief Executive Medicare is conducted under Division 3A of Part VAA of the *Health Insurance Act 1973 (HI Act)*. Among the Director's responsibilities is to form a view as to whether there are insufficient grounds on which a Committee could make reasonable findings of inappropriate practice about

that person in respect of services that they provided during a review period. Committees examine services referred by the Director, applying the test of inappropriate practice in s 82(1) of the HI Act. The only policy or procedure document relevant to these statutory functions that could be identified is a publically available guidebook provided to persons under review by the Director after she decides to undertake a review. This outlines how the Director's review is to be conducted. Being in the public domain, this documentation is provided to the Applicant outside of the *Freedom of Information Act 1982 (FOI Act)*.

Item 1(b): 'All procedures and policy documents for [the] constitution[s] of committee[s]'

4. There is no procedure or policy documentation in relation to the appointment of Panel members and Chairpersons to PSR Committees. The Minister for Health, following consultation with the Australian Medical Association or other relevant professional body or organisation,³ appoints health and medical practitioners to the PSR Panel. Certain Panel members are also appointed as Deputy Directors under the HI Act.
5. A Committee is comprised of at least two Panel members and a Deputy Director, who serves as Chairperson of that Committee.⁴ The Director selects, in his or her discretion, which members of the PSR Panel to appoint to a particular Committee in accordance with ss 93 and 95 of the HI Act.
6. The constituting of a Committee is prescribed by statute and conducted by the Director in her discretion. No policy or procedure documents exist in relation to this process.

Item 1(c): 'All procedures and policy documents for key search parameters to review doctor'

7. No documentation exists. PSR's decision-makers do not conduct own-motion investigations. Individual practitioners are reviewed by the Director following the referral of a practitioner by the Chief Executive Medicare. As such, there are no policy or procedure documents existent in relation to the 'searching' of medical or health practitioners by PSR's decision-makers. Additionally, there are no policies or procedures regarding any 'search parameters' used in reviewing a practitioner's provision of services by the Director or a Committee.

Item 1(d): 'List of points PSR director uses during interviews and visits to doctor under review'

8. The Director may choose to meet with persons under review in the course of conducting his or her review under the HI Act. The documents that relate to the Director's 'talking points' for meetings with persons under review that she conducts comprises:

³ *Health Insurance Act 1973* ss 84 and 85.

⁴ *Health Insurance Act 1973* s 95.

- a. A general review meeting file note template. This is a template that the Director customises for each meeting. The template contains some general 'talking points', which do not concern a particular person under review's case but rather general information about the scheme and the Director's review.
 - b. A general review meeting letter template. This letter is sent to the person under review prior to meeting with them, informing them about the meeting and the possible topics to be discussed at it. This template, similarly, contains general information about each meeting the Director conducts, including an 'agenda' of issues discussed at each meeting.
9. These templates are customised for each individual case. Being templates, they do not contain information about any individual practitioner's case. The documents are not subject to any exemption under the FOI Act. In particular, they do not contain any information about a particular person or information that was obtained in confidence.
10. The content of each document interprets or restates the HI Act and its legislative instruments, as well as providing general information about the PSR scheme similar to that contained in the agency's publications. The documents contain general information and do not contain opinions, advice, recommendations, or any other information pertaining to the Director's deliberative processes. As such, the deliberative processes conditional exemption (s 47C) does not apply.
11. As these documents are within the scope of the Applicant's request and not exempt, they are to be disclosed to the Applicant.

Item 1(e): procedures and policies relating to training programs given to doctors engaged by PSR to form tribunals

12. There are no 'procedures or policies' in existence concerning the training of PSR Panel members. As the agency's annual reports reveal, training of panel members is held yearly. In 2017-2018, this training concerned privacy legislation, procedural fairness, and strategies to manage difficult situations in hearings.

Item 1(f): 'policy or procedure documents for Contract / Services agreements given to independent consultants for PSR'

13. Medical or healthcare practitioners are, from time-to-time, engaged by the Director under ss 90 and 106ZP of the HI Act to assist in conducting his or her review. Their engagement is subject to the *Public Governance, Performance and Accountability Act 2013*. There are no procedure or policy documents concerning the contractual engagement of such consultants.

Item 2: The '[p]ersonal work contract between Government and Director Julie Quenliven (sic) for her appointment as PSR Director and past Director's work contract for the past three Directors'

14. The position of Director of PSR is an independent statutory officeholder. The Director's appointment is subject to the Act and its obligations. There is a public interest in disclosing the terms and conditions of a Director's appointment. The HI Act specifies terms in relation to the Director's appointment.⁵ The Director may hold office subject to any additional terms or conditions determined in the Director's instrument of appointment,⁶ which means that it is open for the Minister of Health to specify additional terms in a Director's instrument of appointment.
15. In the history of the agency, four people have been appointed to the office of Director:
 - a. Dr John Holmes, who served as Director from 1994 to 2005.
 - b. Dr Anthony Webber, who served as Director from 2005 to 2011.
 - c. Dr William Coote, who served as Director from 2011 to 2016.
 - d. Professor Julie Quinlivan, the current Director, who has served as Director since February 2017.

Instruments of appointment for past directors (from 1994 to 2016)

16. From searching agency records, the instrument of appointment of each past Director has been identified as being within the scope of the Applicant's request. These instruments, including (where applicable) the schedule of additional terms of the Director's appointment, are not exempt. The principal instrument specifies the person appointed to the office of Director and their period of appointment. Some of the instruments also specify further terms of the Director's appointment in a schedule attached to the instrument.
17. The terms specified in each instrument of appointment and schedule (where applicable) do not contain any information divulged in confidence or information about the person appointed to the office of Director. The information contained in each schedule relates to the terms of each individual's appointment as Director, not the individuals appointed to the office themselves.
18. The schedules attached to the instruments of appointment of the first three Directors, in particular, are not exempt. Those schedules contain additional terms of appointment of individuals who have ceased to hold public office. I have considered whether disclosing this documentation would, or could reasonably be expected to have, a substantial adverse effect on the proper and efficient conduct of the operations of the agency.⁷

⁵ Health Insurance Act 1973 ss 106Y–106ZF.

⁶ Health Insurance Act 1973 s 106Z(2).

⁷ Freedom of Information Act 1982 s 47E.

19. In this case, properly and efficiently attracting and appointing individuals to the office of Director of PSR is a fundamental operation of PSR. It is possible that disclosing the terms of a Director's appointment, determined by the Minister when appointing a particular individual, will adversely affect the agency's ability to attract and appoint individuals to the office of Director. The fact that the FOI Act does not control the subsequent dissemination of documentation disclosed under that Act is a relevant consideration to this conditional exemption.
20. I am satisfied that a 'substantial adverse effect' would not occur by disclosing the documents. The instruments of appointments were available from time-to-time on the PSR website. While the schedule itself containing the further terms of the Director's engagement was not published, each instrument referred to an attached 'schedule' of additional terms. The disclosure of further terms in each instrument of appointment should not cause prospective applicants to the position of Director to be deterred from applying to the position. The office's public nature carries with it a public interest in the terms of appointment to the office, to the extent that the terms of appointment are reasonably expected to be publically known. As such, no substantial adverse effect could flow from the disclosure of this documentation that could mean s 47E applies.
21. It is open to the Minister of Health to include terms specific to a particular Director in a prospective instrument of appointment. If such terms contained personal information or information communicated in confidence, the terms may be partially or wholly exempt on that basis. That is not the case here.
22. In relation to the instrument of appointment of Dr Holmes for the period of 1 January 2005 to 14 February 2005, this document is known to exist but cannot be located in PSR's internal recordkeeping system. A search of the agency's backup system has not been conducted, as that system replicates the documents on the agency's principal recordkeeping system. Further, it is possible that this document was never in the possession of PSR, being a document that was signed by the Minister of Health to appoint the Director on a short-term basis over a summer period.

Instrument of appointment of Professor Julie Quinlivan

23. This document has previously been provided to the Applicant on 29 August 2018. Clause 11(2) in the schedule to the instrument of appointment is exempt. The redaction to cl 11(2) has been made under s 22 of the FOI Act, as it contains information about another person and was included in error, so is irrelevant to the Applicant's request.
24. Even if this were not so, it would be capable of being redacted because it is confidential information. The information is confidential in nature and was imparted in confidence. Disclosing this information may give rise to a general law action for breach of confidence, which enlivens the exemption in s 45 of the FOI Act.

25. Even if such an action could not be brought in relation to cl 11(2), disclosing this information would involve the unreasonable disclosure of personal information about the person to which it relates. The information is 'personal information', being information about an individual within the meaning of the *Privacy Act 1988*. The information is not well known or available from a publically accessible source. This means that the conditional exemption in s 47F of the FOI Act applies and disclosure of this information is not in the public interest.

Item 3: Any/all-policy documents that outline the 'use of counsel' regarding procedural fairness

26. No such documentation exists. PSR's decision-makers (the Director, Committees and the Determining Authority) do not have any statutory function in dealing with 'complaints' about procedural fairness, or otherwise. Further, no policy or procedure documents exist regarding the use of counsel (external or otherwise) regarding affording procedural fairness to persons under review.