

2018

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LETTER TO OMBUDSMAN

SECTION 39 OF THE *FREEDOM OF INFORMATION ACT 2016* – FOI 18-17

**Presented by
Minister Fitzharris MLA
Minister for Health and Wellbeing
25 October 2018**



Ref: FOI18/17

Mr Ken Richards
Acting Director
ACT Freedom of Information
actfoi@ombudsman.gov.au

Dear Mr Richards

Freedom of Information Access Application FOI18-17 – Decision not made in time

I refer to an access application received by ACT Health on 10 April 2018 made under the Freedom of Information Act 2016 (the Act) requesting:

A copy of all "sent" and "deleted" emails, which the applicant including any variant, initials or mention of position held in the body or subject of the email, with or without the title of Dr from the ACT government email accounts of Mr Mark Duggan, Mr Chris Bone, Ms Nicole Feely and Dr Jeffery Fletcher between the dates of 1 September 2017 and 10 April 2018. Please note the applicants wish for Shared Services/ICT to perform this search electronically without involvement of the individuals named above.

I am writing to inform you that a decision in regards to release of the requested information was not made in the time allowed under section 40 or extended under section 41 of the Act.

On 14 May 2018 ACT Health sought an extension of time from the applicant under section 41(1) of the Act of 10 working days due to the complexity of conducting the search using shared services. This extension was agreed to.

A total of 7715 documents were identified by Shared Services ICT however, the documents required manual review as Shared Services ICT are only able to undertake a word search of an entire Outlook email account, and therefore cannot distinguish between sent and deleted account items, or where the searched words appear within the Outlook email account. On initial review of the 7715 documents it was evident that the method of searching the scope of the application returned emails containing medical records and personal information that were not relevant to the application. The emails would not have been identified as documents within the scope of the application, if the documents were requested direct from the ACT Health executives named in the scope of the application.

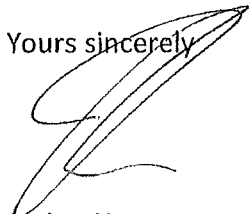
Due to the large number of documents returned from Shared Services ICT and the inefficient and ineffective method available to search Outlook email accounts, I wrote to the applicant on 29 May 2018 advising of my intention to refuse to deal with the application under Section 43(1)(a) of the Act. I provided the applicant with an opportunity to revise the scope of the request to enable the application to be processed. A revised scope was received on 8 June 2018. Consultation continued with the applicant as the revised scope did not meet Section 30 of the Act. On 26 June 2018 I wrote to the applicant advising that as the revised scope of the application did not meet the requirements of section 30 of the Act a reasonable amount of time would be provided to assist the applicant make application to comply with the Act. A revised scope was not received from the applicant.

As the Act does not provide an ability to alter the timeframe for a decision during the consultation process other than by agreement of the applicant, the time to process the access application elapsed.

ACT Health did not apply to the Ombudsman for an extension of time pursuant to section 42 (1) of the FOI Act, as the access application did not meet the requirements under section 42 (2) of the FOI Act.

ACT Health has now finalised processing the access application and the applicant has been given notice of a decision on the application

Yours sincerely



Janine Hammat
A/g Executive Director
People and Culture

27 September 2018