



[REDACTED]

Dear [REDACTED]

I refer to correspondence regarding the request made by you for information under the *Freedom of Information Act 1989* (the FOI Act):

Document related to adverse events at Canberra Hospital, including reports into inefficient, unexpected surgical events and medical malpractice in the past year (July 19, 2010 to July 19, 2011).

As Executive Director, Quality and Safety, ACT Government Health Directorate, I am an officer authorised under Section 22 of the Act to make a decision in relation to this matter.

After conducting a thorough search of all relevant ACT Government Health Directorate records, documents were identified that fall within the ambit of your request. I have decided to exempt certain documents, or part thereof, under the following provisions of the *Freedom of Information Act 1989* (the Act):

- S21 Deletion of exempt matter;
- S38 Secrecy provisions; and
- S41 Documents affecting personal privacy.

In making my decision I have considered the sections of legislation listed at **Attachment A** to this letter. In addition, I have provided a Statement of Reasons for my decisions, at **Attachment B**.

I refer to our discussion and your follow up email of 3 August 2011 withdrawing the request for medical malpractice information; our conversation on 7 October 2011, further clarifying your request, which is for documents, that is, Riskman reports related to 'unexpected surgical and medical events' for the period 19 July 2010 to 19 July 2011; and advise that I have provided Riskman reports related to the top three levels of adverse clinical events reported by the Health Directorate, namely catastrophic incidents, major significant incidents and high risk incidents.

A definition of each of the incident levels, relating to the Riskman reports that have been provided to you, is below.

CATASTROPHIC INCIDENTS

Category	Incident or event resulting in:
People	Death, serious permanent injury or multiple life threatening injuries of a worker/visitor following a workplace incident.
Clinical	Patient death unrelated to the natural course of the underlying illness and/or differing from the immediate expected outcome of patient management
Clinical National Core Sentinel Events	<ul style="list-style-type: none">• Procedures involving the wrong patient or body part resulting in death or permanent loss of function• Retained instruments or other material after surgery requiring re-operation or further surgical procedure• Medication error leading to the death of a patient reasonably believed to be due to incorrect administration of drugs

MAJOR INCIDENTS

Category	Incident or event resulting in:
People	Three or more staff requiring time off following an adverse event

HIGH RISK INCIDENTS

<p>A high risk incident can be defined as any:</p> <ul style="list-style-type: none">• Event that would have resulted in a significant incident should it have eventuated (a significant near miss); or• Possible significant incidents; (that is, significant incident status is unclear until further review is conducted).
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The Riskman reports related to 5 incidents have been provided as outlined in the schedule of documents. You should note that, in the interest of not providing you with repetitive information, I have provided the final report for each incident. As you would appreciate, there are varying edits for each of the incidents, commencing with the first entry and then any number of edits by various officers at various points in the process. The final report captures all of the information included throughout the life of the report and saves on printing and repetition of information.

The statement of reasons for the exemptions that have been applied to each report is provided in the schedule of documents.

Riskman reports

The exemption in Section 41 of the Act is applied as the information includes personal information about a person. The Riskman reports have been redacted for part release, pursuant to Section 21, to remove all personal health information. I note that there is no public interest test required for Section 41 of the FOI Act.

Clinical Review Committee information

These documents are exempt, pursuant to Section 38 of the FOI Act. The Canberra Hospital Clinical Review Committee (CRC) is an approved Quality Assurance Committee under Section 25 of the *Health Act 1993*, (NI2009-457). Part 8 of the Act contains secrecy provisions that operate to prevent certain persons in possession of 'protected information' from disclosing that information. These documents also contain personal health information.

If you wish to seek a review of this decision you should write to:-

The Principal Officer
c/- FOI Coordinator
Executive Coordination
Health Directorate
GPO Box 825
CANBERRA ACT 2601

You have 28 days from the date of this letter to seek a review of the outcome or such other period as the Principal Officer/ Secretary permits.

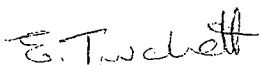
You also have the right to complain to the Ombudsman about the progression of your request. If you wish to lodge a complaint you should write to:-

The Ombudsman
GPO Box 442
CANBERRA CITY ACT 2601

In accordance with the recent ACT Government policy on open government I advise that all written material made available to an applicant under an FOI request will be published online within 15 days.

Should you have any queries in relation to this matter please contact Annette McGorm, Assistant Government Business Coordination on telephone 62051340 or Annette.mcgorm@act.gov.au

Yours sincerely



Ms Elizabeth Trickett
Executive Director
Quality and Safety Unit

7 October 2011

Sections of relevant legislation that have been considered by the Decision Maker in determining the status of each document:

Freedom of Information Act 1989 (FOI Act)

Section 21 of the FOI Act – Deletion of exempt matter

- (1) Where—
 - (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document; and
 - (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document and would not, because of the deletions, be misleading; and
 - (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy;

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

- (2) Where access is granted to a copy of a document in accordance with subsection (1)—
 - (a) the applicant shall be informed—
 - (i) that it is such a copy; and
 - (ii) of the provision of this Act by virtue of which any matter deleted is exempt matter; and
 - (b) section 25 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to give to the applicant a notice in writing in accordance with that section.

Section 38 of the FOI Act – Documents to which secrecy provisions of enactments apply

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

Section 41 of the FOI Act - Documents affecting personal privacy

- (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.
- (3) Where—
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request; and
 - (b) it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person;

the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to that person but is to be given instead to a doctor to be nominated by that person.

Health Act 1993 (Health Act)

Section 124 of the Health Act – What is *sensitive information*?

In this Act:

sensitive information means information that—

- (a) identifies a person who—
 - (i) has received a health service; or
 - (ii) is a health service provider; or
 - (iii) has provided information to a quality assurance committee under section 35 (Quality assurance committees—obtaining information) or otherwise in the course of the committee carrying out the committee's functions under this Act; or
 - (iv) has provided information to a scope of clinical practice committee under section 64 (Scope of clinical practice committees—obtaining information) or otherwise in the course of the committee carrying out the committee's functions under this Act; or
- (b) would allow the identity of the person to be worked out.

Section 125 of the Health Act – What is *protected information*?

- (1) An information holder commits an offence if—
 - (a) the information holder—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the information holder—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) This section does not apply to the making of a record or the divulging of information if the record is made or the information divulged—
 - (a) under this Act; or
 - (b) in the exercise of a function, as an information holder, under this Act.
- (3) This section does not apply to the making of a record or the divulging of information if—
 - (a) the protected information is not sensitive information; and
 - (b) the record is made or the information divulged—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.
- (4) This section does not apply to the divulging of protected information about someone with the person's agreement.
- (5) An information holder must not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act.

Note A quality assurance committee may give protected information to the Coroner's Court (see s 43).

- (6) In this section:
court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.
produce includes allow access to.

Statement of Reasons for decisions made in relation to documents within the scope of the applicant's request

Package	Explanation
1 - 5	<p>In considering the release, non-release or partial release of these documents I have determined the following:</p> <ul style="list-style-type: none"> • Section 21 of the FOI Act has been applied to allow the document to be partially released to you. • Section 38 of the FOI Act has been applied as the document contains information relevant to secrecy provisions in the Health Act. There is no public interest test in relation to this section of the Act. There is no public interest test in relation to this provision of the FOI Act. • Section 41 of the FOI Act has been applied as the document contains information that is personal health information as it forms part of a medical record. There is no public interest test in relation to this provision of the FOI Act. • Section 124 (a)(i) and (a)(ii) of the Health Act has been applied as the document contains sensitive information that identifies a person who has received a health service; or is a health service provider. • Section 125(1)(b)(i) and (ii) of the Health Act has been applied as I believe that divulging the protected information about someone else would be reckless and would be an offence under this section of the Health Act.