



Decision and Statement of reasons issued under the *Freedom of Information Act 1982*

Decision and reason for decision of Brett (Position Number 62331110),
A/g Director, Information Access Unit,
Client Access and Rehabilitation Branch, Department of Veterans' Affairs

Applicant:	Mr Arthur Jordan
Date of primary decision:	19 April 2023
FOI reference number (Primary):	LEX 56865
Internal review decision date:	19 May 2023
Internal review reference number:	LEX 57607
Sent by email:	foi+request-10105-b8f2e25d@righttoknow.org.au

Dear Mr Jordan,

Freedom of Information Internal Review Request: LEX 57607

Decision

1. The purpose of this letter is to give you a decision about your request for internal review for the decision made in LEX 56865 under the *Freedom of Information Act 1982* (Cth) (**FOI Act**)
2. I have made the decision to affirm the original decision made by Frankie (Position Number 62210799), Information Access Officer, Information Access Unit, Client Access Rehabilitation Branch. That decision was to refuse access to the document/s within the scope of your request.

Authority to make decision

3. I, Brett (Position Number 62331110), A/g Director, Information Access Unit, Client Access Rehabilitation Branch, am an officer authorised by the Secretary of the Department to make

decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Summary

Original Decision

4. On 25 March 2023 you made a request for access to documents in the possession of the Department. Your request sought access to:

'...Under FOI I request a list of all inward facing documents on the combined library of information and knowledge (CLIK). A list that is prepared under S. 17 will be acceptable. I do not require copies of any documents, just a list of the documents title names and categories they are listed under...'

5. On 27 March 2023, the Department acknowledged your request via email.
6. As no extensions of time were applied to process your request, a decision on your request was made on 19 April 2023.
7. On 19 April 2023 the Department made a decision to refuse access to the documents within the scope of your request, under the following provisions of the FOI Act:
 - Section 15 Request for Access;
 - Section 17 Requests involving use of computers etc. (e.g. requests for the Department to create a document)
 - Section 24A Request may be refused if documents cannot be found or do not exist

Internal Review

8. After receiving the Department's decision on 19 April 2023, you contacted the Department on 19 April 2023 requesting an internal review of the handling of this FOI request. Your internal review request was made in the following terms:

'...I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'A list of all inward facing documents on the combined library of information and knowledge (CLIK)...'

9. As your application was made within the 30 day of the original decision being made, the internal review decision is valid.
10. As no extension of time have been applied to process this internal review, a decision on your internal review application is due 19 May 2023.

Material taken into account

11. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to grant partial access to the document follows
12. I have taken the following material into account in making my decision.
 - the terms of your original request made on 25 March 2023 and the original decision made on this request on 19 April 2023;
 - the records of the searches carried out in processing your original request;
 - the terms of your internal review request made on 19 April 2023;
 - the types of information and documents that are in the Department's possession;
 - the content of the document that fall within the scope of your request;
 - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I have also considered the following provisions of the FOI Act relevant to my decision:
 - Section 15 Request for Access;
 - Section 17 Requests involving use of computers etc. (e.g. requests for the Department to create a document)
 - Section 24A Request may be refused if documents cannot be found or do not exist
 - Section 54C Internal review - decision on internal review
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);
13. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

Reasons for decision

14. I have decided to affirm the original decision made on 19 April 2023 to refuse access to the documents within the scope of your request, subject to the following provisions in the FOI Act.

Requests may be refused if documents cannot be found, do not exist or have not been received (section 24A)

15. Section 24A(1) of the FOI Act provides that an agency or Minister may refuse a request for access to a document if:

- a. all reasonable steps have been taken to find the document; and
- b. the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

16. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:

- the terms of your request;
- the subject matter of the documents;
- the current and past file management systems and the practice of orderly destruction or removal of documents;
- the Department's record management systems and practices; and
- the individuals and areas within the Department who may be able to assist with the location of the information you seek access to.

17. Despite the reasonable searches undertaken, the Department has been unable to identify documents relevant to your request. A description of the searches undertaken to locate the documents which you are seeking to access is at **Schedule 1**.

18. For these reasons, I am refusing your request for access to documents as described in your request in accordance with section 24A(1)(b)(ii) of the FOI Act, on the basis that the document do not exist.

Requests involving use of computers etc. (section 17)

19. In making my decision to refuse your request I also considered the application of section 17 of the FOI Act and whether a document could be created to meet the terms of this part of your request.
20. Subject to section 17(1)(c)(i), I decided that the Department was not in a position to create a written document via the use of a computer or other equipment that is ordinarily available to the department for the purposes of retrieving or collating stored information.
21. Subject to section 17(2), I decided that the Department was not in a position to create a written document, because to do so would substantially and unreasonably divert the resources of the Department from its other operations.

Your rights of review

22. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**).

OAIC review

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

Online: www.oaic.gov.au
Post: Director of FOI Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Phone: 1300 363 992
Email: FOIDR@oaic.gov.au

24. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

Contact us

25. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

Online: <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>

Post: Information Access Unit
Department of Veterans' Affairs
GPO Box 9998, Brisbane QLD 4001

Phone: 1800 838 372

Email: Information.Access@dva.gov.au

Yours sincerely,

Brett (Position Number 62331110)

A/g Director
Information Access Unit
Client Access and Rehabilitation Branch
Department of Veterans' Affairs

19 May 2023



Summary of document searches – conducted for the primary decision LEX 56865

The Department undertook the following investigations to determine if it is possible to create a list of all inward facing documents on the combined library of information and knowledge (CLIK), under section 17 of the FOI Act.

The team consulted Luke Brown directly about his comments that you referred to and details of the AAT hearing that could assist us in determining some basis and more understandings on this request. Luke advised that his comments about accessing inward facing documents in CLIK were made for two AAT appeals which relate to a different third party. There is no evidence suggesting that you have any direct relations to this third party individual and these AAT appeals. In addition, Luke's comments at these AAT hearings are not publicly available.

The Litigation team was also consulted to assist us in gathering more information about Luke's comments at the AAT appeals. Unfortunately it is not in that team's position to provide us a copy of the transcript of the hearings as there are strict requirements in terms of the use and distribution of this material. As a result, Information Access Unit is not able to ascertain how Luke's comments at the AAT hearings of a third party individual can influence the creation of the all inward facing documents in CLIK database in a list for the purpose of this request.

The Shared Services and Technology section within the Chief Operating Officer Division also considered the scope of your request. Their views on this matter remains the same as the previous decisions: request LEX 55381 and internal review LEX 56160, i.e. the work involved in creating a full list of the inward facing documents from CLIK would substantially and unreasonably divert the resources of this agency. Therefore the requested document list of the inward-facing CLIK does not exist and cannot be created.



Schedule of relevant provisions in the FOI Act

3 Objects - general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.
Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
 - (a) section 12 (documents otherwise available);
 - (b) section 13 (documents in national institutions);
 - (c) section 15A (personnel records);
 - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access - general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects - information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

17 Requests involving use of computers etc

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

- (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

24 Power to refuse request-diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists-the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

24AA When does a practical refusal reason exist?

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
 - (a) the work involved in processing the request:
 - (i) in the case of an agency-would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister-would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document,

the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
- (aa) in the case of a decision to refuse to give access to a conditionally exempt document - include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
(see section 11A).

54C Internal Review - decision on internal review

Scope

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the original decision) is made in accordance with this Part.

Decision

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

Notice of decision

- (4) Section 26 extends to a decision made under this section.