



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

Decision and reasons for decision of Frankie (Position Number 62210799),
Information Access Officer, Information Access Unit, Client Access and Rehabilitation Branch,
Department of Veterans' Affairs

Applicant: Mr Arthur Jordan

Decision date: 25 May 2023

FOI reference number: LEX 56871

Sent by email: foi+request-10106-f27be182@righttoknow.org.au

Dear Mr Jordan,

Freedom of Information Request: LEX 56871

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and identified three (3) documents relevant to your request.
2. I have made a decision to grant full access to two (2) documents, and to grant access in part to one (1) document.
3. The documents that I have chosen to grant access in full and in part are set out in **Schedule 1**. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

Authority to make decision

4. I, Frankie (Position Number 62210799), Information Access Officer, Information Access Unit, Client Access and 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

5. On 26 March 2023, you made a request for access to documents in the possession of the Department. Your request sought access to:

'... Background:- Sworn evidence given by senior DVA staff before Commissioners Kaldas and Douglas regarding the composition of ESORT.

15 April 2022

More interesting evidence from Kate Pope (DVA) recently regarding the composition of the ESORT.

"CHAIR: Just a couple of brief points.

Ms Pope, you just discussed with Commissioner Douglas the issue of the ESOs, but I gather for your ESO Round Table, you have a smaller number than the 3,500 to 5,000 that we are hearing about. How are they selected?

KATE POPE: That is a good question. The ESO Round Table was established long before I joined the department six years ago, so -- but they are the organisations you would expect to see. So the RSL, the War Widows Guild, the Legacy. I could list them on the -- Vietnam Veterans' Associations, and so on and so forth, but I can't really say how they came to be the core of that group, but they are the established and recognised organisations.

We also have other forums, including the Younger Veterans Forum, that has representation from some of the newer organisations that are more focused on younger veterans, and we also have one focused on older veterans and issues of ageing, and so on. So there are some more sort of special interest focused forums under the banner of a National Consultative Forum that we operate, but the ESORT is the principal one with the established ex-service organisations.

CHAIR: I appreciate that, and I am not being critical in any way, but is it sort of a position for life? It is not assessed on a five-yearly basis, or something?

KATE POPE: Not that I am aware of, no.

CHAIR: So once you're in, you're in.

KATE POPE: You kind of in, yes."

It appears that the RC thinks that the ESORT membership is definitely in need of a refresher, at least every 5 years.

04 August 2022

...and once again:-

"CHAIR: Thank you.

Ms Pope, just in relation to the ESORT, the group that comes together, we have heard evidence about it previously on a number of occasions, and please forgive me if my memory is not the best, but I understand there is some work going on at the moment in terms of defining criteria for membership and possibly for tenure of how long membership is for. I understand at the moment there is no limited tenure; people are on there, effectively, for life. Can you let us know where that is at, if there is a work going on in that space?

KATE POPE: I'm sorry, I'm actually not aware of work going on in that space. There could be, but I'm not directly responsible for it. So I am sorry, I don't really know.

CHAIR: No problem. Are you able to take that on notice and perhaps the Department can get back to us on that issue? My memory, and I'm happy to be corrected, from previous evidence from other senior officers is that they were looking at that issue, because at the moment, as I understand it, both in terms of eligibility for membership and for tenure of membership, it's not clear.

KATE POPE: I can certainly confirm that what you just said is accurate, to my understanding, and yes, we would be happy to take the question for future on notice.

CHAIR: I'd be grateful if we can find out if there is work going on in terms of defining these issues more clearly or not.

KATE POPE: Yes, certainly."

CHAIR: Thank you. You mentioned earlier that legislation is an area crying out for reform. You would agree with that?

A. Yes.

CHAIR: You mentioned earlier and I think you stated clearly that you were surprised there hadn't been more legal legwork done to reform legislation?

A. Yes, it would have been useful to see some options

COMMISSIONER DOUGLAS: And then about ESORT, you mentioned it. And what we've heard before ESORT's composition seems to be fixed by DVA and to remain fixed. Is there any view that you have about whether ESORT should be -- have some more flexible and representative body?

A. Yes, I think so, that is one of the things that I think they should be looking at in terms of potentially opening it up.

I seen copies of all documents (including drafts) relating to changes by DVA to ESORT and its composition in line with the comments of DVA staff reproduced herewith.

I do not seek details of any private individuals. Details of any Commonwealth employees including but not limited to their work email address, work telephone numbers and names are to be treated as in scope and are not to be redacted. Follow the OAIC guidelines and policies...'

6. On 27 March 2023, the Department acknowledged your request via email.
7. The Governance & Ministerial Events Section within the Parliamentary and Governance Branch interpreted your original scope. The team prepared a written response to you on 12 April 2023 as they consider the initial scope was quite broad.
8. Within that response email, you were advised that the review of the National Consultation Framework (NCF) will be conducted later this year. The team recommended you consider withdrawing the request, and resubmit a fresh request when the NCF review work starts in the future.
9. On the same date, you provided the Department with the following response:

'... Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Veterans' Affairs' handling of my FOI request 'Planned ESORT changes in line with evidence at Royal Commission into Defence and Veterans Suicide.

I am NOT prepared to withdraw this FOI application. It has been almost 12 months to the day that Kate Pope gave sworn evidence to the Royal Commission into Defence and Veterans Suicide regarding suggestions from Commissioners Kaldas and Douglas indicating that changes were needed and that she would take that on notice and get back to that Commission. I am seeking documents relating to her sworn evidence. If nothing has been done for almost 12 months, then that needs to be advised to the Minister and the Royal Commissioners. It is now up to you to explain why you have not done anything since 15th April 2022 (yes, last year)...'

10. On 14 April 2023, the Department acknowledged that you did not wish to withdraw this request and were advised that the Department cannot process an internal review as the decision is yet to be finalised.
11. The Governance & Ministerial Events Section considered your response and recommended the Information Access Unit (IAU) liaise and consult with the Royal Commission Taskforce (RCT) within the General Counsel Division. RCT is responsible for providing evidence from

DVA to the Royal Commission. Any contact with Ms Pope, or with others about Ms Pope, in relation to ESORT was in connection with giving evidence to the Royal Commission.

12. RCT conducted searches of documents which originated from Ms Pope about the change of ESORT composition since 15 April 2022, and located two documents that were prepared as a response to a compulsory notice issued by the *Royal Commission into Defence and Veteran Suicide under the Royal Commissions Act 1902* (Cth): the 'Response to Notice to Give (NTF-DVA-030) ESORT dated 8 August 2022', and the 'Attachment A to Response to Notice to Give (NTG-DVA-030) (ESORT) dated 8 August 2022'.
13. The Governance & Ministerial Events Section reviewed the two documents and considered that some details of the historical ESORT member lists were out of date and incorrect. The team provided an updated version to IAU which is also being provided to you (document 3 in Schedule 1).
14. On 16 May 2023, the Department sought the Royal Commission into Defence and Veteran Suicide (DVSRC)'s comments on the release of the documents in scope of this request.
15. On 23 May 2023, DVSRC advised they do not object to the release of the documents.
16. As an extension of time was applied to process your request in accordance with section 15AA of the FOI Act, a decision on your request is due by 25 May 2023.
17. I have decided not to impose a charge in relation to this request, in accordance with Regulation 8 of the *Freedom of Information (Charges) Regulations 2019*.

Material taken into account

18. 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 access to the documents follow.
19. I have taken the following material into account in making my decision:
 - the terms of your request on 26 March 2023;
 - correspondences between you and the Department on 12 April 2023 and 14 April 2023;
 - correspondences between the Department and DVSRC on 16 May 2023 and 23 May 2023;

- the types of information and documents that are in the Department's possession;
- the content of the documents 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 also considered the following provision of the FOI Act relevant to my decision:
 - Section 15 Request for Access
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**)

20. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

Reasons for decision

21. I have decided to **grant full access** to documents 2 and 3, and **partial access** to document 1 within the scope of your request.

Delete exempt or irrelevant material from documents and provide access to edited copies (section 22)

22. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.

23. As explained above, document 1 contains irrelevant information, namely the qualification of the Chief of Staff member Ms. Liane Pettit, which is considered as irrelevant to the scope of the request.

24. On this basis, I have prepared the document for release by removing the irrelevant material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the document as well as at **Schedule 1**.

Access to document

25. The documents released to you in accordance with the FOI Act are enclosed.

Information Publication Scheme

26. The Information Publication Scheme requires the Department to publish information released in response to individual requests made under the FOI Act, except in specified circumstances.

27. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI Disclosure Log which can be accessed at <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>. Please note that the Department does not publish details of FOI applicants, it only publishes details of the FOI request and the documents released in response to the request.

Your rights of review

28. If you are dissatisfied with my decision, you may apply for internal review or request the Office of the Australian Information Commissioner (**OAIC**) review my decision. We encourage you to seek internal review as a first step to resolve any concerns you may have.

Internal review

29. Under section 54 of the FOI Act, you may apply in writing to the Department for an Internal Review of my decision. The Internal Review application must be made within 30 days of the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

30. You can make your application for Internal Review in one of the following ways:

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

Email: Information.Access@dva.gov.au

OAIC review

31. 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

32. 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

33. 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,

Frankie (Position Number 62210799)

Information Access Officer

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

25 May 2023



Schedule of documents

Applicant: Mr Arthur Jordan

Decision date: 25 May 2023

FOI reference number: LEX 56871

Document reference	Date of document	Document description	Page number	Decision	FOI Act provision
1	08/08/2022	Response to Notice to Give (NTG-DVA-030) (ESORT) dated 8 August 2022	1-8	Part Access	s 22
2	08/08/2022	Attachment A to Response to Notice to Give (NTG-DVA-030) (ESORT) dated 8 August 2022	1-14	Full Access	N/A
3	Undated	Updated document of attachment A, provided by the ESORT Secretariat team	1-14	Full Access	N/A



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.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:

- (i) to refuse to give access to an exempt document; or
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.

(4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to

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.