



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

Decision and reason for decision of Brian (Position Number 62366718),
Information Access Officer, Information Access Unit,
Ministerial, International & Stakeholder Relations Branch, Department of Veterans' Affairs

Applicant: MS

Decision date: 13 September 2023

FOI reference number: LEX 59792

Sent by email: foi+request-10544-12c1ef84@righttoknow.org.au

Dear MS,

Freedom of Information Request: LEX 59792

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has identified one (1) document bundle relevant to your request.
2. I have made a decision to grant access in part to one (1) document bundle.
3. The documents that I have chosen to grant access to in part are set out in **Schedule 1**, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of the document, 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, Brian (Position Number 62366718), Information Access Officer, Information Access Unit, Ministerial, International & Stakeholder Relations 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 10 August 2023, you made a request for access to documents in the possession of the Department. Your request sought access to:

'...Please provide the relevant DVA policy around salary packaging for employees as described on page 8 of the DVA enterprise agreement...'

6. On 16 August 2023, the Department acknowledged your request via email.
7. As no extensions of time have been applied to process your request, a decision on your request was due by 11 September 2023.
8. In accordance with section 15AC of the FOI Act, the principal officer of the Department is taken to have made a decision personally refusing to give access to the documents on the last day of the initial decision period. Even where a decision has not been issued within the prescribed timeframe, the Department retains an obligation to process and finalise the FOI request. I would like to apologise for the delay in issuing this decision to you and any inconvenience it may have caused.
9. As a decision on your request was not made within the timeframe as prescribed in section 15(5)(b) of the FOI Act, regulation 7(2) of the *Freedom of Information (Charges) Regulations 2019* prescribed that no charge is payable.

Material taken into account

10. 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 documents are as follows.
11. I have taken the following material into account in making my decision:
 - the terms of your request on 10 August 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 provisions 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**).

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

Reasons for decision

13. I have decided to **grant access** to the document bundle within the scope of your request subject to the following exemptions in accordance with the FOI Act:

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

14. 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 (out of scope).

15. As explained above, the document subject to your request contains information that would reasonably be regarded as irrelevant to the request.

16. On this basis, I have prepared the documents 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 documents as well as at **Schedule 1**.

Access to documents

17. The document bundle released to you in accordance with the FOI Act is enclosed.

Information Publication Scheme

18. 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.
19. 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

Deemed refusal

20. 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**). In accordance with section 54E(b) of the FOI Act, internal review is not available as the Department did not finalise your FOI request within the prescribed statutory timeframe.

OAIC review

21. 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

22. 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

23. 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,

Brian (Position Number 62366718)

Information Access Officer

Information Access Unit

Ministerial, International and Stakeholder Relations Branch

Department of Veterans' Affairs

13 September 2023



Schedule of documents

Applicant: MS

Decision date: 13 September 2023

FOI reference number: LEX 59792

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	Various	Document Bundle from People Services Branch	1 – 27	Part Access	s 22



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 give the applicant a notice in writing in accordance with that section.

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.

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).