



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of Nadia Vittoria, Legal Officer, Information Law, Legal Services & Assurance

Applicant: Mr Stuart McCarthy

Decision date: 18 April 2017

FOI reference number: FOI 13937

Dear Mr McCarthy

Freedom of Information Request: FOI 13937

1. I have made a decision to refuse access to the documents relevant to your request.

Summary

2. I, Nadia Vittoria, Legal Officer, Information Law, Legal Services & Assurance, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).
3. On 14 February 2017 you made a request for access to documents in the possession of the Department. Your request sought access to:

In December 2016 the Department of Veterans Affairs conducted a series of information sessions regarding the adverse health effects of the anti-malarial drug mefloquine. The Minister for Veterans Affairs stated:

"The information sessions have been developed by the DVA–Defence Links Steering Committee in consultation with other Department of Veterans' Affairs (DVA) forums, including the Ex-Service Organisation Round Table and the Younger Veterans – Contemporary Needs Forum." [1]

I hereby request to be provided with documents relating to the "consultations" on the development of these information sessions, including minutes of the relevant meetings of the DVA–Defence Links Steering Committee, the Ex-Service Organisation Round Table and the Younger Veterans – Contemporary Needs Forum.

4. On 17 March 2017, the Office of the Australian Information Commissioner (OAIC) granted a further 30 day extension to process this request, in accordance with section 15AB of the FOI Act.
5. I have decided not to impose a charge in relation to this request, in accordance with regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*.

6. The Department has undertaken a reasonable search of its records and has identified six (6) documents relevant to your request, as set out above. The documents relevant to your request are listed at Schedule 1.

Decision

7. I have made a decision to refuse access to the documents relevant to your request. The documents that I have chosen to refuse access to are set out in Schedule 1, together with applicable exemption provision.

Material taken into account

8. 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 refuse access to the documents follow.
9. I have taken the following material into account in making my decision:
 - 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 11B Public interest exemption – factors
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 47C Public interest conditional exemptions--deliberative processes
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).
10. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

Reasons for Decision

11. I have decided to refuse access to documents within the scope of your request in accordance with the following exemption in the FOI Act:

Public interest conditional exemptions--deliberative processes

12. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.
13. The documents contain deliberative matter (opinion, analysis, advice, and/or recommendation) that is related to a deliberative process (advising the committees on issues for its consideration). These matters are conditionally exempt under section 47C. This includes factual material that is an integral part of the deliberative content and that is impractical to excise.
14. Accordingly, I have decided that the documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as

conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

15. Section 11A(5) provides that an agency 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 would, on balance, be contrary to the public interest.
16. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
 - (a) disclosure would promote the objects of the FOI Act (including matters set out in sections 3 and 3A);
 - (b) disclosure would inform debate on a matter of public importance.
17. I also considered the following factors which do not favour disclosure:
 - (a) disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth;
 - (b) disclosure could reasonably be expected to prejudice the ability for the committees to obtain similar information in future;
 - (c) disclosure of communications would contradict the principle of the Ex-Service Organisation Round Table (ESORT) 'Terms of Reference' requiring members (and their proxies) to observe 'Chatham House' rules and the confidentiality of sensitive discussions during meetings.
18. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
19. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Public interest conditional exemptions--certain operations of agencies

20. Section 47E(d) provides conditional exemption for a document if its disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. I consider that disclosure of parts of the minutes would compromise the ability of committee members and others presenting to the committees to provide frank and honest advice and engage in further discussions. Should such material be disclosed, this would likely result in future advice/recommendations/discussions being tailored to a different audience, thereby compromising the quality of advice/recommendations. It is my view that these consequences would substantially and adversely affect the proper and efficient conduct of DVA's operations.
21. Accordingly, I have decided that parts of the documents meet the criteria for conditional exemption pursuant to section 47E(d).

22. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

19. Section 11A(5) provides that an agency must give an applicant access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.
20. In order to assess whether release of the conditionally exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
- (a) disclosure would promote the objects of the FOI Act (including matters set out in sections 3 and 3A);
 - (b) disclosure would inform debate on a matter of public importance.
21. I also considered the following factors which do not favour disclosure:
- (a) disclosure would be likely to impact the ability of meeting members and others presenting to the meetings to provide frank and honest advice and recommendations in future meetings;
 - (b) disclosure would be likely to result in future advice/recommendations being tailored to a different audience thereby compromising the quality of advice/recommendations;
 - (c) the minutes are documents prepared for circulation to a limited audience – members of the various forums/committees and some agency staff. If it is known that the minutes will be disclosed publicly under the FOI Act, there is a risk that they will be tailored to a different audience or with different interests in mind. This may lead to future minutes being less comprehensive or may otherwise compromise the quality and value of future minutes;
 - (d) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
22. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
23. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Your rights of review

23. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

24. 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.
25. You can make your application for internal review in one of the following ways:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: foi@dva.gov.au

Information Commissioner Review

26. Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:
27. You can make your application for Information Commissioner review in one of the following ways:

Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street, Sydney NSW.

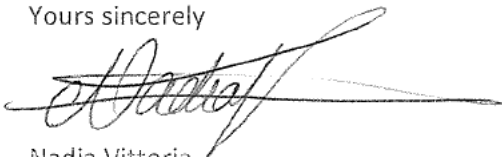
28. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

29. If you wish to discuss this decision, please do not hesitate to contact me using the following details:

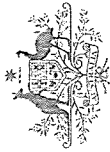
Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: foi@dva.gov.au

Yours sincerely



Nadia Vittoria
Legal Officer
Information Law
Legal Services & Assurance

18 April 2017



Schedule of documents

Applicant: Mr Stuart McCarthy

Decision date: 18 April 2017

FOI reference number: FOI 13937

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	01-11-2016	Defence DVA Links Steering Committee Minutes November 2016	11	Refused	ss 47C & 47E
2	29-11-2016	National Aged and Community Care Forum Minutes	6	Refused	ss 47C & 47E
3	12-04-2016	Ex-Service Organisation Round Table Minutes, Meeting 33	11	Refused	ss 47C & 47E
4	10-06-2016	Ex-Service Organisation Round Table Minutes, Meeting 34	12	Refused	ss 47C & 47E
5	10-11-2016	Ex-Service Organisation Round Table Minutes, Meeting 35	13	Refused	ss 47C & 47E
6	17-11-2016	Younger Veterans – Contemporary Needs Forum Minutes	14	Refused	ss 47C & 47E



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).

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).

Public interest conditional exemptions

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
 - (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth; or
 - (d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:
 - (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
 - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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