



Internal review decision made under the *Freedom of Information Act 1982*

Internal review decision and reasons for decision of Kristy Egan, Director, Information Law, Legal Services & Assurance

Applicant: Verity Pane
Date of primary decision: 3 May 2017
FOI reference number: FOI 14364, FOI 14365, FOI 14536
Internal review decision date: 13 June 2017
Internal review reference number: IR 15641

Dear Ms Verity Pane

1. The purpose of this letter is to give you a decision about your request for internal review under the *Freedom of Information Act 1982* (**FOI Act**).
2. I have made a decision to vary the original access refusal decision made by Nadia Vittoria, Legal Officer, Legal Services & Assurance, to release documents subject to your request in part by releasing additional parts of the documents and to vary the exemptions relied upon for redacting parts of the documents.

Background

3. I, Kristy Egan, Director, 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**).
4. On 4 March 2017 you made requests for access to documents in the possession of the Department (FOI 14364), the Minister for Veterans' Affairs (**the Minister**) (FOI 14365) and the Office of the Australian Information Commissioner (**OAIC**) (FOI 14536). Part of your request to the OAIC was transferred to us. In transferring the request, the OAIC provided the Department with a copy of all documents in the OAIC's possession within the scope of the transferred request, and these are included in the documents originally provided to you and set out at Schedule 1.
5. Your requests are described as arising in the context of the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*, which proposed, in Schedule 2, to amend the *Military Rehabilitation and Compensation Act 2004*, the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* and the *Veterans' Entitlements Act 1986* by allowing 'public interest disclosures' (**proposed amendments**). Your request refers to a statement by the Minister on the consultation undertaken on the proposed amendments and a privacy impact assessment having been made. In that context, you requested:

copy of all notes, records, minutes, and any and all other documents and records in the [Department's, Minister's or OAIC's] possession and/or control that can be legally obtained via FOI, that relate to this "consultations with the Privacy Commissioner, and the Commonwealth Ombudsman, and consultation with the ex-services community ... " that DVA and/or the Minister for Veterans' Affairs or any other Commonwealth official or Minister had with the the aforementioned parties (whether directly by [Secretary of the Department, the Minister for DVA, or the Privacy Commissioner] or any staff member ...).

6. In your request to the Department (FOI 14365) your request included:

In particular I seek copy of the Privacy Impact Statement, in full, that it was claimed by the Minister to have been done, and details as to who performed it, how much they were paid, and any records of correspondence between the party that carried out this activity and DVA, as to how this process was to be carried out, and any revisions or re-writes or modifications requested by DVA employees before the final version was provided.

7. Given your description of the context of your request, I have interpreted your request to relate only to those documents or parts of documents that relate to the public interest disclosure element of the proposed amendments. Where documents released to you have included content relating to other elements of the amendments I have redacted those parts of the documents as irrelevant to your request for access in accordance with section 22 of the FOI Act.
8. In your requests you also stated that you had '*no objection to the redaction of irrelevant (sic) information such as the telephone numbers or other contact details of Commonwealth officials or elected officials in any such record that falls within the scope of this FOI request.*' Such information has therefore also been redacted in the documents released to you as irrelevant to your request for access in accordance with section 22 of the FOI Act.
9. On 3 May 2017 you were provided with a decision relating to access to documents within the scope of your three requests (**access refusal decision**). 23 documents were listed in Schedule 1 to that decision as falling within the scope of your requests. Of these, you were refused access to one document on the basis of the exemption in section 42 of FOI Act. You were granted access to parts of 21 documents with redactions variously on the basis of exemptions in sections 47C, 47E(d) and 47F of the FOI Act. You were granted access in full to one document with no redactions.
10. On 14 May 2017 you requested an internal review from both the Minister and the Department of:
- [The Minister's or the Department's] handling of my FOI request 'Consultations relating to Waiver of Privacy Act Personal Information Disclosure Certificate - Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016'.*
11. On 19 May 2017 you confirmed that this request was a request for internal review under part VI of the FOI Act of the decision of 3 May 2017 in relation to your requests for access. This document sets out my decision on internal review and the reasons for that decision.
12. As you provided no indication of the reasons for your request for review I have reconsidered all aspects of the decision which lead to a refusal to part or all of a document within the scope of your requests. The Department has not, however, undertaken any additional searches for documents that may fall within the scope of your requests. I am satisfied that the Department undertook reasonable searches of its records and identified all documents that fall within the scope of your request in response to your original requests. The documents relevant to your request are listed in the schedule of documents at Schedule 1.

Decision and Reasons for Decision

13. I have made a decision to vary the access refusal decision made by Nadia Vittoria, Legal Officer, Information Law, Legal Services & Assurance on 3 May 2017.
14. In accordance with section 22(2), I have decided to provide access to an edited copy, modified by deletions, to documents within the scope of your requests as set out in Schedule 1. Changes to the access refusal decision are also indicated.
15. In accordance with sections 54C(4) and 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based, and the reasons for my decision to grant partial access to documents follow.
16. 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 42 Documents subject to legal professional privilege
 - Section 47C Public interest conditional exemptions--deliberative processes
 - Section 47E Public interest conditional exemptions--certain operations of agencies
 - Section 47F Public interest conditional exemptions--personal privacy
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).
17. A full extract of all provisions I used to make my decision are provided in Schedule 2.

Documents subject to legal professional privilege

18. Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege. The FOI Guidelines provide that,¹ at common law, determining whether a communication is privileged requires a consideration of:
 - (a) whether there is a legal adviser-client relationship;
 - (b) whether the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation;
 - (c) whether the advice given is independent; and
 - (d) whether the advice given is confidential.

¹ See FOI Guidelines at [5.129].

19. The documents to which this exemption applies, as set out in Schedule 1, relate to an assessment of the privacy impacts of the Public Interest Disclosure provisions in the proposed amendments (the **Assessment**). They include interim and final drafts of the Assessment and comments relating to its development.
20. The Assessment was initially prepared by the Department's Legal Services & Assurance Branch. It was reviewed, and parts of the final draft were authored, by solicitors at the Australian Government Solicitor (**AGS**).
21. I am satisfied that both the in-house lawyers' in the Department's Legal Services & Assurance Branch involved in preparation of the Assessment and those from AGS were acting on the basis of the requisite lawyer/client relationship with the Department. The Department and Minister, as the clients, engaged the services of both the Department's in-house legal area, and the Australian Government Solicitor, to conduct the Assessment.
22. The dominant purpose of the Assessment was to advise both the Department and the Minister on legal issues under the *Privacy Act 1988* and other privacy impacts of the proposed amendments. Consequently, I am satisfied that the document was prepared for the dominant purpose of giving legal advice.
23. The lawyer's involved with preparation of the Assessment were acting in their capacities as independent legal advisors. As the content of the document demonstrates, the lawyers maintained the requisite level of professional detachment and objective impartiality. Consequently, I am satisfied that the lawyers were acting as independent legal advisors.
24. While the Executive Summary has been publicly disclosed, the remainder of the Assessment has not been disclosed outside the Department or the Minister's Office, and its circulation within the Department and the Minister's Office has been very limited. For this reason, this communication has the necessary level of confidentiality to satisfy a claim of legal professional privilege.
25. Section 42(2) of the FOI Act provides that a document is not exempt under section 42(1) if 'the person entitled to claim legal professional privilege in relation to the production of that document waives that claim.' Apart from the Executive Summary, which has been published on the Department's website, I have seen no evidence to suggest that either the Department or Minister has handled the Assessment inconsistently with the maintenance of legal professional privilege. As such, I am satisfied that section 42(2) does not apply to the remainder of the document, apart from the Executive Summary.
26. It is my view that the material redacted on the basis of the exemption in section 42 of the FOI Act would attract privilege from production in legal proceedings. Accordingly, I am satisfied that the documents fall within the scope of the exemption for legal professional privilege under section 42 of the FOI Act.
27. I note that I have varied the access refusal decision so that section 42 is no longer applied as a basis to refuse access to page 1 of document 8.

Public interest conditional exemptions--deliberative processes

28. 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.

29. Section 47C has been applied to the following documents:

- Document 5 – This document is a draft of the Assessment, and includes various suggested changes to the draft. The redacted portions are therefore deliberative in nature.
- Documents 6, 7, 17 - The deliberative matter in these documents, includes the exchange of opinions, advice, recommendations and consultations conducted in relation to the proposed amendments within the Department or between the Department and the Ex-Service Organisation Round Table (ESORT). These documents include description of the proposed amendments in their preliminary form, the opinions of persons consulted in relation to those proposed amendments and discussion and evaluation of any changes proposed as part of the consultation process.
- Documents 12, 20 – These documents include draft and finalised Minutes of ESORT meetings. As set out in the access refusal decision, these documents contain deliberative matter, as they record discussions, recommendations and advice of the ESORT cohort, as well as issues raised by the Department for consideration by the ESORT. They were recorded as part of discussions conducted during consultation on the draft Bill, and their comments were part of a two way exchange between the ESORT and the Department.
- Document 13 includes various versions of a table summarizing the views held by members of ESORT as a result of consultations with them on the proposed amendments. The redacted parts set out the views, recommendations and advice of the ESORT members on possible changes to the proposed amendments. They include internal deliberation on the characterisation of those views, recommendations and advice.
- Document 19 includes a proposed provision of draft PID Rules being considered as part of the consultation process involving the proposed amendments. They are described as a redraft of earlier versions of those rules, and are therefore deliberative in nature.

30. As set out in the access refusal decision, the documents redacted on the basis of section 47C relate to development and consultation in relation to the proposed amendments as part of the Department's functions.

31. Accordingly, I have decided that the parts of documents which are listed as exempt on the basis of section 47C 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:

32. 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.

33. 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:
 - (i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;

- (ii) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;
 - (iii) reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;
 - (iv) reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - (v) enhance the scrutiny of government decision making.
- (b) disclosure would inform debate on a matter of public importance.

34. I also considered the following factors which do not favour disclosure:

- (a) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- (b) disclosure could reasonably be expected to harm the interests of an individual or group of individuals; and
- (c) disclosure could reasonably be expected to prejudice the management function of an agency.

35. As in the access refusal decision, I have specifically considered that the Digital Readiness Bill, and the Privacy Impact Assessment conducted in relation to part of that Bill are matters of public importance and public interest, and some of the information in these documents reveals the reason and context for government decision-making, and could enhance the scrutiny of this decision-making.

36. I have also considered the public interest in the Department continuing to engage with the ex-service and defence communities in a meaningful way, and in the importance of the ESORT working group continuing to provide advice to the Department and serve as the main body for consultation on the development of relevant legislative instruments. Release of this information would jeopardise the Department's working relationship with this group, which is not in the interests of the ex-service or Defence communities or the general community more broadly.

37. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

38. 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 it is in the public interest to withhold the exempt material.

Public interest conditional exemptions--certain operations of agencies

39. Section 47E(d) of the FOI Act provides that a document is conditionally exempt 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'.

40. Documents 7, 12, 13, 17 and 20 record opinions, advice, recommendations or consultations about the proposed amendments, either from or attributable to an ESORT member or members, as well as draft and final Minutes of an ESORT meeting. Document 6 includes material to be put to ESORT as part of the process of consultation. Providing access to that material would disclose sensitive material discussed or proposed to be discussed as part of that process.
41. As set out in the access refusal decision, the ESORT is one of the most important forums for consultation on the development of legislative instruments impacting members of these communities. It is an important element of that consultation process that members of the ESORT expect that their individual contributions to sensitive discussions during a forum meeting will not be made publicly available. Disclosing the attendance and contribution of the members of ESORT would, in my view, discourage the honest discussion of both personal and representative views of the members.
42. I agree with the access refusal decision that any disclosure of the contributions of members of ESORT would jeopardise the relationship between ESORT and the Department, adversely affecting the free flow of information and discussions and the quality of consultations able to be conducted with the ESORT in future, and could also affect the likelihood of ESORT members continuing to participate in the forum.
43. Document 19 includes a proposed provision of draft PID Rules being considered as part of the consultation process involving the proposed amendments. It was provided to attendees of a meeting between the Department, the Privacy Commissioner and others to solicit feedback on the privacy impacts of the proposed amendments and accompanying documents. That material was provided on the basis that it would be used to provide input into the proposed amendments and would not be publicly disclosed. Allowing access to that material would reduce the benefit to the Department of engaging with the Privacy Commissioner and other agencies at preliminary stages of legislative developments and providing as much information as possible to inform any feedback provided.
44. Accordingly, I have decided that the parts of documents which are listed as redacted in accordance with s 47E 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

45. 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.
46. 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:
 - (i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
 - (ii) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;
 - (iii) reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;

- (iv) reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - (v) enhance the scrutiny of government decision making.
- (b) disclosure would inform debate on a matter of public importance.

47. I also considered the following factors which do not favour disclosure:

- (a) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- (b) disclosure could reasonably be expected to harm the interests of an individual or group of individuals; and
- (c) disclosure could reasonably be expected to prejudice the management function of an agency.

48. As in the access refusal decision, I have specifically considered that the Digital Readiness Bill, and the Privacy Impact Assessment conducted in relation to part of that Bill are matters of public importance and public interest, and some of the information in these documents reveals the reason and context for government decision-making, and could enhance the scrutiny of this decision-making.

49. As in the access refusal decision, I have also considered the public interest in the Department continuing to engage with the ex-service and Defence communities in a meaningful way, and in the importance of the ESORT working group continuing to provide advice to the Department and serving as the main body for consultation on the development of relevant legislative instruments. Release of the exempt material would jeopardise the Department's working relationship with this group, which is not in the public interest, for the ex-service or Defence communities or for the general community more broadly.

50. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

51. 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.

52. I note that parts of documents 3, 4, 6, 10, 11, 13, 15, 16, 17, 18, 19, 21, 22, and 23 which disclose contact details for Departmental staff were redacted in the access refusal decision under section 47E. These have now been redacted under section 22 as outside the terms of your request.

53. I also note that parts of document 6 which were exempted under section 47C and section 47E(d) in the access refusal decision have now been released to you.

Public interest conditional exemptions--personal privacy

54. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).
55. As in the access refusal decision, I consider the names of any ESORT members who are not listed on the public website as being on the ESORT working group² to be conditionally exempt under section 47F. These names, and the fact they participated in the ESORT working group on a particular issue is personal information within the meaning of the *Privacy Act 1988* (Cth).³
56. For the reasons set out in the access refusal decision, I have decided that the parts of documents which have been redacted as exempt in accordance with this provision 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

57. 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.
58. 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:
 - (i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
 - (ii) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;
 - (iii) reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;
 - (iv) reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - (v) enhance the scrutiny of government decision making.
 - (b) disclosure would inform debate on a matter of public importance.

² See Membership list at <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort>.

³ See FOI Act, section 4(1) which states that 'personal information has the same meaning as in the Privacy Act 1988'. The definition is found at section 6(1) of the *Privacy Act 1988* (Cth).

59. I also considered the following factors which do not favour disclosure:

- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- (c) disclosure could reasonably be expected to harm the interests of an individual or group of individuals.

60. As in the access refusal decision, I have considered the public interest in the release of this personal information, being the names of certain people who participated in the ESORT working group but who are not publicly known to have done so. The names of the organisations they represent are to be released, and release of these individuals' names would not further inform the debate on the Digital Readiness Bill or enhance the scrutiny of government decision-making in any way. Release could also adversely affect the Department's existing relationship with the ESORT, a relationship which it is in the public interest to maintain.

61. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

62. 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

Your rights of review

63. If you are dissatisfied with my decision, you may apply for Information Commissioner review of the decision.

Information Commissioner Review

64. 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:

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.

65. 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>

Contacts

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

Telephone: (02) 6289 1138

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6316

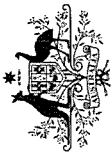
Email: foi@dva.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kristy Egan', with a long, sweeping horizontal line extending to the right.

Kristy Egan
Director
Information Law
Legal Services & Assurance

13 June 2017



Schedule of documents

Applicant:

Verity Pane

Internal review decision date:

13 June 2017

Internal review reference number:

IR 15641

| Doc ref | Date of document | Document description | Pages | Decision | Exemption provision |
|---------|------------------|---|-------|--|---------------------|
| 1. | 07/02/2017 | Email chain titled '2 page summary of DVA Digital Readiness Bill submission' Attachment: Draft Summary of DVA's Submission to the Senate Inquiry into the Digital Readiness Bill | 3 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 2. | 30/11/2016 | Email titled 'Brief on EWG Meeting 24 Nov. 16' Attachment: Briefing note on DVA Meeting 24 November 2016, by the RAAC Corporation <i>Should we consult RAAC Corp / exempt under s 47G or another exemption?</i> | 8 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 3. | 23/02/2017 | Email chain titled 'Consultation on Public Interest Disclosure Rule' | 2 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 4. | 20/01/2017 | Email chain titled 'Digital Readiness at 3 March ESORT' Attachment: ESORT Agenda Item Coversheet Template | 3 | Grant access in part (redactions for irrelevance under s 22) | s 47C s 47E(d) |
| 5. | 24/02/2017 | Email titled 'Digital Readiness Bill Privacy Impact Assessment - consolidated DVA and...' Attachment: Draft Digital Readiness Bill Privacy Impact Assessment, with comments (as at 24/02/2017 AM) | 35 | Grant access in part | s 42 s 47C |

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| 6. | 01/12/2016 | Email chain titled 'Digital Readiness Bill QAs' Attachment: Digital Readiness Bill Q&A's | 15 | Grant access in part (redactions for irrelevance under s 22) | s 47C s 47E(d) |
| 7. | 24/11/2016 | Email titled 'Digital Readiness Briefing and DRCA Briefing' | 1 | Grant access in part (redactions for irrelevance under s 22) | s 47C s 47E(d) |
| 8. | 24/02/2017 | Email chain titled 'Digital Readiness PIA – Final' Attachment: Finalised Digital Readiness Bill Privacy Impact Assessment | 35 | Grant access in part | s 42 |
| 9. | 24/02/2017 | Email chain with AGS, titled 'DR Bill - Committee report' | 7 | Refuse access | s 42 |
| 10. | 21/02/2017 | Email chain, titled 'DVA Clarification on Ombudsman submission' | 3 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 11. | 08/02/2017 | Email chain, titled 'ESORT - 2 page summary of DVA submission to Senate inquiry' Attachment: Finalised Summary of DVA's Submission to the Senate Inquiry into the Digital Readiness Bill | 3 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 12. | 14/12/2016 | Email titled 'ESORT - Digital Readiness Bill Meeting 1 - Draft Minutes - 2 December 2016' Attachment: ESORT Draft Minutes – Digital Readiness - 2 December 2016 Attachment: Social Security (Public Interest Certificate Guidelines) (DSS) (Determination 2015 Attachment: Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 – Explanatory Memorandum Attachment: Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016, Second Reading Speech | 61 | Grant access in part (redactions for irrelevance under s 22) | s 47C s 47E(d) |
| 13. | 09/02/2017 | Email titled 'ESORT comments on DR Bill' Attachment: ESORT comments on DR Bill, Versions 1, 2 & 3 | 7 | Grant access in part (redactions for irrelevance under s 22) | s 47C s 47E(d) s 47F |
| 14. | 03/03/2017 | Email titled 'ESORT meetings on DR Bill' (note that this is not in issue for internal review as full access granted for original decision) | 1 | Grant access in full | N/A |
| 15. | 17/02/2017 | Email chain titled 'ESORT Minutes - Digital Readiness - 1 February 2017' Attachment: Improving Processing Systems Powerpoint presentation Attachment: Finalised Summary of DVA's Submission to the Senate Inquiry into the Digital Readiness Bill | 11 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 16. | 23/01/2017 | Email chain titled 'ESORT Working Group - 1 Feb 2017' | 1 | Grant access in full (redactions for irrelevance under s 22) | N/A |

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|-----|------------|---|----|--|-------------------|
| 17. | 20/01/2017 | Email chain titled 'Issues to discuss at Mon 23/01 3pm meeting re DR Bill and ESORT workshop' | 3 | Grant access in part (redactions for irrelevance under s 22) | s 47C s 47E(d) |
| 18. | 28/02/2017 | Email chain titled 'Meeting with Commonwealth Ombudsman' | 2 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 19. | 23/02/2017 | Email chain titled 'New section 6 - Draft PID rules' | 2 | Grant access in part (redactions under s 22) | s 47C s 47E(d) |
| 20. | - | ESORT Final Minutes – Digital Readiness – 2 December 2016 | 5 | Grant access in part | s 47C s 47E(d) |
| 21. | 21/02/2017 | Email chain titled 'Consultant with OAIC on Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016' | 2 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 22. | 22/02/2017 | Email chain titled 'Consultant with OAIC on Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016' (2) | 3 | Grant access in full (redactions for irrelevance under s 22) | N/A |
| 23. | 25/01/2017 | Email titled 'Departmental Submission - Senate Inquiry Digital Readiness Bill' Attachment: Covering letter to Senate Enquiry Attachment: DR Bill Senate inquiry submission Attachment: Minister's letter to the Senate Scrutiny of Bills Committee Attachment: Table comparing proposed DRCA information sharing powers with existing MRCA information-sharing powers | 25 | Grant access in full (redactions for irrelevance under s 22) | 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).

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).

42 Documents subject to legal professional privilege

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
 - (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
 - (b) the information is operational information of an agency.

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).

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (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 concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; 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 the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

 - (a) a medical practitioner;
 - (b) a psychiatrist;
 - (c) a psychologist;
 - (d) a counsellor;
 - (e) a social worker.

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