



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: Verity Pane
Decision date: 3 May 2017
FOI reference number: FOI 14364, FOI 14365, FOI 14536

Dear Ms Verity Pane,

Freedom of Information Request: FOI 14364, FOI 14365, FOI 14536

1. I have made a decision to refuse access to one document relevant to your request.
2. I have made a decision to release seventeen documents relevant to your request in part.
3. I have made a decision to release two documents relevant to your request in full.

Summary

4. 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**).
5. On 4 March 2017 you made a request for access to documents in the possession of the Department.¹ Your request (FOI 14364) sought access to:

I request copy of all notes, records, minutes, and any and all other documents and records in DVA's possession and/or control that relate to this "consultations with the Privacy Commissioner, and the Commonwealth Ombudsman, and consultation with the ex-services community [which the Minister claimed was extensive]" 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 the Secretary or Minister for DVA or any staff member of DVA). 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.

¹ This request was made via Right to Know, with all correspondence sent to: foi+request-3186-95b78a61@righttoknow.org.au.

6. On 4 March 2017 you made a further request for access to documents in the possession of the Department.² This request (FOI 14365) sought access to:

I request copy of all notes, records, minutes, and any and all other documents and records in the Office of the Minister of Veterans' Affairs, and the personal office of Dan Tehan MP, 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 [which you, as Minister, claimed was extensive]" 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 the Minister for DVA or any staff member of his offices).

7. On 4 March 2017 you made a request for access to documents in the possession of the Office of the Australian Information Commissioner (OAIC). This request (FOI 14536) sought access to:

All copy of notes, minutes and any and all other documents and records in the OAIC's possession and/or control that relate to this "consultation with the Privacy Commissioner" that DVA and/or the Minister for Veterans' Affairs or any other Commonwealth official or Minister had with the OAIC (whether directly with the Privacy Commissioner or any staff member of the OAIC).

8. The OAIC notified you of the partial transfer of this request (referred to at paragraph 7 above) to the Department. In transferring the request, the OAIC also 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 set out at Schedule 1.
9. 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*.
10. The Department has undertaken a reasonable search of its records and has identified twenty documents relevant to your request, as set out above. The documents relevant to your request are listed at Schedule 1.

Decision

11. I have made a decision to refuse access to one document relevant to your request. The document that I have chosen to refuse access to is set out in Schedule 1, together with the applicable exemption provision.
12. I have made a decision to release seventeen documents relevant to your request in part. The documents that I have chosen to grant access 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 documents, modified by deletions in accordance with section 22(2) of the FOI Act.
13. I have made a decision to release two documents relevant to your request in full, as set out in Schedule 1.

² This request was made via Right to Know, with all correspondence sent to: foi+request-3187-9cb4ab13@righttoknow.org.au.

Material taken into account

14. 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 or grant partial access to the documents follows.
15. 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);
 - the views of a third party consulted by the Department under section 27A.
16. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

Reasons for Decision

17. I have decided to refuse access to one document, and to grant access to the remaining documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

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 (LPP). The FOI Guidelines provide that,³ 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.
19. It is noted that the 'rationale for the creation of the privilege was to enhance the administration of justice and the proper conduct of litigation by promoting free disclosure between clients and

³ See FOI Guidelines at [5.129].

lawyers, to enable lawyers to give proper advice and representation to their clients' (as noted by the ALRC in Report 102).

20. In *Baker v Campbell* (1983) 153 CLR 52 at 128 the High Court stated:
'The restriction of the privilege to the legal profession serves to emphasize that the relationship between a client and his [or her] legal adviser has a special significance because it is part of the functioning of the law itself. Communications which establish and arise out of that relationship are of their very nature of legal significance, something which would be coincidental in the case of other confidential relationships.'

Lawyer-client relationship

21. The document relevant to this request consists of a document prepared by the Department's Legal Services & Assurance Branch. The document was reviewed, and parts of the document were authored, by solicitors at the Australian Government Solicitor.
22. In both cases, the requisite lawyer/client relationship existed. 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 an assessment of the privacy impacts of the Public Interest Disclosure provisions in the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016*.

Purpose

23. The document relevant to this request was brought into existence for the dominant purpose of providing advice to both the Department and the Minister on the privacy impacts of the proposed legislative changes in the Bill. Consequently, I am satisfied that the document was prepared for the dominant purpose of giving legal advice on the privacy impacts of the proposed amendments.

Independence

24. The question of independence principally turns upon the nature of the relationship between the lawyer and the client. Relevant factors include whether the lawyer behaves in a way which demonstrates:
- professional detachment;
 - objective impartiality; and
 - an absence of fear or favour
- (*Rich v Harrington* [2007] FCA 1987).
25. The in-house and Australian Government Solicitor lawyers who prepared this document are legally qualified and were acting in their capacities as legal advisers when this document was prepared. There is no reason to believe that any of these individuals acted in any capacity other than independent legal advisers to the Department and the Minister.
26. The content of the document demonstrates that the lawyers maintained professional detachment and objective impartiality, as risks are clearly communicated in the document without fear of favour. Consequently, I am satisfied that the lawyers maintained the requisite level of independence as legal advisers.

Confidentiality

27. Apart from the Executive Summary, the document 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 LPP. Therefore, I am satisfied that the content of this document is confidential.

28. Section 42(2) of the FOI Act provides that a document is not exempt under s 42(1) if 'the person entitled to claim legal professional privilege in relation to the production of that document waives that claim.' It is not tenable for the Department to maintain a claim of privilege over the Executive Summary of the document, as this part of the document has been published on the Department's website.
29. Nonetheless, apart from the Executive Summary, I have seen no evidence to suggest that either the Department or Minister has handled the document 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.

Conclusion

30. It is my view that the nature of this material is such that it would attract privilege from production in legal proceedings. Its disclosure would be contrary to a fundamental aspect of the client-lawyer relationship.
31. Accordingly, I am satisfied that the document falls within the scope of the exemption for legal professional privilege under section 42 of the FOI Act.

Public interest conditional exemptions--deliberative processes

32. 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.
33. Deliberative matter does not include operational information or purely factual material.⁴
34. The deliberative matter in these documents, includes the exchange of opinions, advice, recommendations and consultations conducted in relation to the proposed Public Interest Disclosure provisions in the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 (Digital Readiness Bill), either internally within the Department, or between the Department and the Ex-Service Organisation Round Table (ESORT).
35. ESORT is a forum intended to enhance the capacity of the Repatriation Commission and Military Rehabilitation and Compensation Commission, and aims to address issues of strategic importance to the ex-service and Defence communities and assist in setting directions for the medium to long term.⁵ Members of the ESORT are National Presidents or equivalents drawn from various ex-service organisations. Page 2 of the Terms of Reference for the ESORT,⁶ states that "Members or their proxies are expected to observe 'Chatham House' rules and the confidentiality of sensitive discussions during a forum meeting".

⁴ See FOI Act, s 47C(2), FOI Guidelines [6.57].

⁵ For further details and the Terms of Reference, see: <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort> .

⁶ Available for download at <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort> .

36. Information for release in these documents confirms that the ESORT was consulted on the Digital Readiness Bill, including in relation to the proposed Public Interest Disclosure section of the Bill, and that various meetings were held and correspondence exchanged on this specific issue. Where documents contain information recording opinions, advice, recommendations or consultations about the Digital Readiness Bill, either from or attributable to an ESORT member or members, I consider that this material constitutes deliberative matter. I also consider draft and finalised Minutes of ESORT meetings to 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.
37. Certain other material I consider to be deliberative matter, includes internal deliberations or consultations conducted within the Department in relation to the proposed Public Interest Disclosure provisions of the Digital Readiness Bill, or in relation to the Privacy Impact Assessment conducted regarding these provisions. Specific examples are comments and tracked changes in draft Departmental documents, as well as a draft Minutes document prepared to record an ESORT meeting.
38. DVA'S functions include delivering government programs for war veterans, members of the Australian Defence Force and others, as well as administering certain pieces of legislation. I am satisfied that the deliberative processes recorded in these documents (both internally within the Department and externally with the ESORT) in relation to the proposed Digital Readiness Bill relate to DVA's functions.⁷
39. Accordingly, I have decided that the parts of 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:

40. 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.
41. 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

⁷ See the FOI Guidelines, [6.63], and see the Explanatory Memorandum and the Second Reading Speech for the Digital Readiness Bill, as contained in Document 12.

- (v) enhance the scrutiny of government decision making.
 - (b) disclosure would inform debate on a matter of public importance.
42. 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.
43. 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.
44. 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 public interest, for the ex-service or Defence communities or for the general community more broadly.
45. The Department delivers services and provides support and information for veterans, Australian Defence Force personnel, war widows and widowers among others, which is of the utmost public importance. There is a significant public interest in deliberations and consultations being able to be conducted internally within the Department, so as to ensure proposed policy initiatives and Departmental processes are of the highest possible quality and efficiency, to maximise the public benefit to Departmental clients.
46. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
47. 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

48. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure 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.

49. I consider that section 47E(d) applies to conditionally exempt material in these documents. One of the types of information that this conditional exemption applies to, is the direct contact details of employees of the Department and of other Commonwealth agencies. In my view, disclosure of this information would have a substantial adverse effect on the proper and efficient conduct of the Department's operations.
50. The Department and other Commonwealth agencies have publicly available telephone numbers, email and postal addresses and single points of contact through which members of the public can make enquiries. If staff details were to be disclosed, members of the public would be able to circumvent the usual channels for doing business with the Department and the relevant other Commonwealth agencies, and seek preference to their own issues by directly contacting departmental officers. The Department and other agencies have protocols in place to ensure contact from members of the public is managed in the most efficient and appropriate way possible, and release of these direct contact details would substantially disrupt the legitimate contact restriction which the Department and other agencies have in place to ensure the efficient conduct of its operations.
51. Other information I consider conditionally exempt under section 47E(d), includes information recording opinions, advice, recommendations or consultations about the Digital Readiness Bill, either from or attributable to an ESORT member or members, as well as draft and final Minutes of an ESORT meeting. The ESORT is designed to be the main forum for dialogue between the Department and the leadership of the ex-service and Defence communities, and to serve as the main body for consultation on the development of legislative instruments impacting members of these communities.
52. As stated in the ESORT Terms of Reference (see paragraph 35 above), members are expected to maintain the confidentiality of sensitive discussions during a forum meeting. ESORT members expect confidentiality of this material to be maintained, and release would run counter to that agreement, and would reasonably be expected to jeopardise the Department's solid and productive working relationship with the ESORT. I consider that release of this information would adversely affect the Department's operations, as it would adversely affect 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.
53. The other type of information in these documents that I consider to be conditionally exempt under section 47E(d), is deliberations and consultations conducted within the Department in regards to the proposed Public Interest provisions of the Digital Readiness Bill, as well as about the Privacy Impact Assessment conducted for this Bill. It is vital that Departmental employees are able to have a free and unfettered exchange of ideas and opinions and consultations about draft legislation with other departmental officers, in order to maximize the quality of Bills being put forward. Release of this information would reasonably be expected to adversely affect the Department's operations, as it could reduce the quality of proposed policy initiatives in future, jeopardising the Department's ability to effectively carry out its functions in delivering programs and administering relevant legislation.
54. Accordingly, I have decided that the parts of 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:

55. 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.
56. 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.
57. 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.
58. 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.
59. 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 public interest, for the ex-service or Defence communities or for the general community more broadly.
60. The Department delivers services and provides support and information for veterans, Australian Defence Force personnel, war widows and widowers among others, which is of the utmost public importance. There is a significant public interest in deliberations and consultations being able to be

conducted internally within the Department, so as to ensure proposed policy initiatives and Departmental processes are of the highest possible quality and efficiency, to maximise the public benefit to Departmental clients.

61. I have also considered the public interest in the release of direct contact details of Departmental staff and employees of other agencies. The names of the relevant personnel are to be released, and release of employees' direct contact information would not further inform the debate on the Digital Readiness Bill in any way, and is very likely to adversely affect the productivity and efficiency of the Department (and other agencies) if these details were released.
62. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
63. 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--personal privacy

64. 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).
65. The information I have considered to be conditionally exempt under section 47F, is the names of any ESORT members, who are not listed on the public website as being on the ESORT working group.⁸ These names, and the fact they sat on the ESORT working group is personal information within the meaning of the *Privacy Act 1988* (Cth).⁹
66. Release of these names would involve the unreasonable disclosure of personal information about these people, as they are not (at least currently) publicly known to be participants in the ESORT. Other factors which I have considered which make disclosure of this information unreasonable, include the fact the documents contain third party personal information, no public purpose would be achieved through release,¹⁰ and that release of the names would not shed light on the working of government,¹¹ as the organisations they represent are clearly listed in the documents and on the DVA website.¹²
67. Accordingly, I have decided that the parts of 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:

68. 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.

⁸ See Membership list at <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort> .

⁹ 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).

¹⁰ See *Re McCallin and Department of Immigration* [2008] AATA 477.

¹¹ See *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429.

¹² See for example, Document #13, and <https://www.dva.gov.au/consultation-and-grants/consultation-ex-service-community/eso-round-table-esort> .

69. 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.

70. 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.

71. I have considered the public interest in the release of this personal information, being the names of certain people who sat on 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.

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

73. 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.

Access to documents

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

Your rights of review

75. 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

76. 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.

77. 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

78. 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:

79. 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.

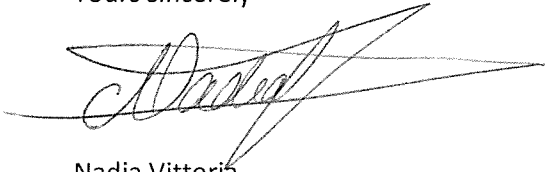
80. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

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

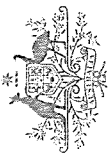
Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: foi@dva.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nadia Vittoria', with a long horizontal stroke extending to the right.

Nadia Vittoria
Legal Officer
Information Law
Legal Services & Assurance

3 May 2017



Schedule of documents

Applicant: Verity Pane
Decision date: 3 May 2017
FOI reference number: FOI 14364, FOI 14365, FOI 14536

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)	s 22
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 part	s 22 s 47F
3.	23/02/2017	Email chain titled 'Consultation on Public Interest Disclosure Rule'	2	Grant access in part	s 47E(d)
4.	20/01/2017	Email chain titled 'Digital Readiness at 3 March ESORT' Attachment: ESORT Agenda Item Coversheet Template	3	Grant access in part	S 22 S 47C 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
6.	01/12/2016	Email chain titled 'Digital Readiness Bill QAs' Attachment: Digital Readiness Bill Q&A's	15	Grant access in part	S 22 S 47C S 47E(d) S 47F
7.	24/11/2016	Email titled 'Digital Readiness Briefing and DRCA Briefing'	1	Grant access in part	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 part	S 47E(d)
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 part	S 22 S 47E
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	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	S 47C S 47E(d) S 47F
14.	03/03/2017	Email titled 'ESORT meetings on DR Bill'	1	Grant access in full	-
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 part	S 22 S 47E(d)
16.	23/01/2017	Email chain titled 'ESORT Working Group - 1 Feb 2017'	1	Grant access in part	S 47E(d)
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	S 22 S 47C S 47E(d)
18.	28/02/2017	Email chain titled 'Meeting with Commonwealth Ombudsman'	2	Grant access in part	S 47E(d)
19.	23/02/2017	Email chain titled 'New section 6 - Draft PID rules'	2	Grant access in part	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 part	S 47E(d)
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 part	S 47E(d)
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 part	S 22 S 47E(d)



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).

