



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

Decision and reason for decision of Alexander Gent, Legal Officer, Information Law, Legal Services & Assurance

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Applicant: Ms Verity Pane

Decision date: 26 May 2017

FOI reference number: FOI 15276

Dear Ms Pane

### Freedom of Information Request: FOI 15276

1. I have made a decision to grant access to the requested information falling within the scope of your request in full.

### Summary

2. I, Alexander Gent, Legal Officer, Information Law, Legal Services & Assurance, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).
3. On 21 April 2017 you made a request for access to information in the possession of the Department. Your request was set out as follows, and sought access to:

I request statistical information on the number of code of conduct complaints DVA receives, and how many are formally investigated.

As you would be aware, s 17(1) of the FOI Act provides that where information requested is not available in discrete documentary form, and the agency could produce a written document containing that information sought from records ordinarily available to the agency, the agency must produce the document (except in very limited circumstances otherwise).

For calendar years 2015, 2016, and 2017 year to date, I request:

- \* The number of Code of Conduct complaints received; and
- \* The number of Code of Conduct complaints actually investigated

5. In response to an email from the Department regarding the scope of your request, on 19 May 2017 you amended and clarified the scope of your request as follows:
- Just to clarify, to avoid confusion, when I referred to Code of Conduct complaints received by DVA, I was referring specifically to Code of Conduct breaches alleged by clients of DVA.
- And when I asked for the number of those complaints formally investigated, I was referring to DVA formally appointing an officer to investigate the Code of Conduct breach/es alleged.
- I am happy to receive this data by financial year, in lieu of calendar year, for 2013/14, 2014/15, 2015/16, and 2016/17 financial year to date.
6. In response to a further email from the Department regarding the scope of your request and seeking an extension of time to 1 June 2017, you agreed to the requested extension and stated the following:
- I do not object to an extra 10 days being taken. Given the extra ten days, it would be useful if DVA could also indicate if any of the Code of Conduct complaints relate to privacy related matters (this information would be relevant to the write-up on the abandoned Public Interest Disclosure Certificate piece I'm working on).
7. Consequently, the scope of your request is as follows:
- The number of Code of Conduct complaints alleged by clients of DVA; and
  - The number of Code of Conduct complaints alleged by clients of DVA in which DVA formally appointed an officer to investigate the Code of Conduct breach/es alleged;
  - Whether any of these Code of Conduct complaints (referred to above) relate to privacy-related matters.
8. 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*.
9. Pursuant to section 17 of the FOI Act (and in response to your request), the Department has produced a written document containing the information requested in discrete form.

## **Decision and Reasons for Decision**

10. I have made a decision to grant access to the requested information in full.

### **Material taken into account**

11. I have taken the following material into account in making my decision:
- the information falling within the scope of your request;
  - the 19 May 2017 correspondence between you and the Department regarding the scope of your request (totaling three emails from you on this date);
  - 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.
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines);
  - Section 17 of the FOI Act, regarding the compilation of requested information into a written document.
12. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

## Access to requested information

13. The information you requested and are being granted access to in accordance with the FOI Act is set out below. The Department has produced a table containing the requested information.

	Scope of FOI request	2013/2014	2014/2015	2015/2016	2016/2017 (to date)
1.	Number of people about whom Code of Conduct complaints have been alleged by clients of the Department	0	0	1	1
2.	Number of people about whom Code of Conduct complaints have been alleged by clients of DVA in which DVA formally appointed an officer to investigate the Code of Conduct breach/es alleged	0	0	1	1
3.	Number of Code of Conduct complaints (as set out at #1 and #2 of this table) that relate to privacy-related matters	0	0	1	0

## Information Publication Scheme

14. On 1 May 2011, the Information Publication Scheme commenced. The Department is now required under section 11C of the Act to publish information released in response to individual requests made under the Act, except in specified circumstances. This applies to requests received on or after 1 May 2011 and as such details of your request will be published by the Department on its disclosure log, which can be accessed at:

<http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>

## Your rights of review

15. If you are dissatisfied with the searches the Department did to locate the information related to your request (or the content of the information provided), 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

16. 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.
17. 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](mailto:foi@dva.gov.au)

## Information Commissioner Review

18. 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](http://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](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3, 175 Pitt Street, Sydney NSW.

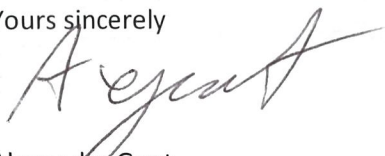
19. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

## Contact us

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

**Telephone:** (02) 6289 6581  
**Post:** Legal Services & Assurance, Department of Veterans' Affairs  
GPO Box 9998 CANBERRA ACT 2601  
**Facsimile:** (02) 6289 6337  
**Email:** [foi@dva.gov.au](mailto:foi@dva.gov.au)

Yours sincerely



Alexander Gent  
Legal Officer  
Information Law  
Legal Services & Assurance

26 May 2017



## Schedule of relevant provisions in the FOI Act

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### 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).

**17 Requests involving use of computers etc.**

- (1) Where
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

### **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.

