



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

Internal review decision and reasons for decision of Anne Anastasi, Acting Director,  
Information Law, Legal Services & Assurance

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Applicant: Verity Pane  
Date of primary decision: 23 October 2017  
FOI reference number: FOI 17991  
Internal review decision date: 20 November 2017  
Internal review reference number: IR 18950

Dear 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 affirm the original decision made by Vicki Guthrie, Assistant Director, Information Law, Legal Services & Assurance, not to release any documents subject to your request.

### Summary

3. I, Anne Anastasi, Acting Director, Information Law, Legal Services & Assurance, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to review decisions about access to documents in the possession of the Department in accordance with section 54C of the FOI Act.
4. On 10 September 2017 you sought:

*"... administrative access in the first instance, but under FOI should DVA refuse to release administratively the following:*

*... a copy of any internal Departmental policy documents/manuals regarding administration (including processing) of information access schemes, particularly with regards to requests from clients/customers the agency has flagged as "difficult", ...*

*...*

*I also understand the Commonwealth Department of Veterans' Affairs has a Unreasonable Complaint Conduct manual/policy that interacts with the above schemes and modifies those policies, so I seek copy of that too.*

*To summarise I request copy of all DVA internal policies/manual (produced by DVA or paid for by DVA, for internal DVA use) that relate to the information access schemes the agency processes requests/applications for, including any policy or manual that may intersect and modify those policies/manual, including the Unreasonable Complaint Conduct manual/policy. ..."*

5. By email dated 26 September 2017, you noted that the ANAO Report No 8 2017-18 found that the Department does not have a manual or other consolidated guidance material containing administrative procedural instructions and/or policy and procedural guidance to help ensure consistency of FOI process and practice across the agency. Your email stated *"That therefore just leaves any section of the UCC manual that deals with FOI requests"*. Ms Guthrie treated your email dated 26 September 2017 as refining the scope of your FOI request to:

*"any section of the UCC manual that deals with FOI requests"*.

6. On 23 October 2017, Ms Guthrie decided to refuse your request for access to documents under section 24A of the FOI Act, as the documents subject to your request cannot be found or do not exist.
7. Your email dated 23 October 2017 was treated as a request for internal review of the decision made on 23 October 2017 to refuse your request.

### **Decision and Reasons for Decision**

8. I affirm the original decision made by Vicki Guthrie, Assistant Director, Information Law on 23 October 2017, that in accordance with section 24A, the documents subject to your request do not exist or cannot be found.
9. I have taken the following material into account in making my decision:
- Your correspondence dated:
    - 10, 21 and 26 September 2017
    - 5, 9, 10, 17 and 23 October and
    - 8 November 2017
  - The delegate's decision subject to internal review;
  - The FOI Act – relevant provisions are at Schedule 1; and
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).
10. Section 24A of the FOI Act provides that an agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.
11. Having reviewed your emails dated 10, 21 and 26 September 2017, I understand the scope of your FOI request to be:

*"... any section of the UCC manual that deals with FOI requests"*.

12. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:
- the subject matter of the documents;
  - the current and past file management systems and the practice of orderly destruction or removal of documents;
  - the Department's record management systems and practices; and
  - the individuals and areas within the Department who may be able to assist with the location of the documents.
13. Despite the reasonable searches undertaken, the Department has been unable to identify any documents relevant to your request. A description of the searches undertaken to locate the documents which you are seeking to access is at Schedule 2.
14. Having considered the searches undertaken in response to your request, I am satisfied that the Department does not have a departmental Unreasonable Complainant Conduct Manual, and is guided by the NSW Ombudsman Unreasonable Complainant Conduct Manual (NSW UCC Manual). A copy of the NSW UCC Manual was provided to you on 21 September 2017.
15. On that basis, I am refusing your request for access to "... any section of the UCC manual that deals with FOI requests" in accordance with section 24A of the FOI Act.
16. For the sake of completeness, I have also considered your initial request set out in your emails dated 10 and 21 September 2017. I understand the documents you originally sought in these emails to be as follows:

*... a copy of any internal Departmental policy documents/manuals regarding administration (including processing) of information access schemes, particularly with regards to requests from clients/customers the agency has flagged as "difficult" ...*

*...*

*I also understand the Commonwealth Department of Veterans' Affairs has a Unreasonable Complaint Conduct manual/policy that interacts with the above schemes and modifies those policies, so I seek copy of that too.*

*To summarise I request copy of all DVA internal policies/manual (produced by DVA or paid for by DVA, for internal DVA use) that relate to the information access schemes the agency processes requests/applications for, including any policy or manual that may intersect and modify those policies/manual, including the Unreasonable Complaint Conduct manual/policy. ..."*

#### **Information access schemes policy documents/manuals**

17. As you have been previously advised, the Department does not use an overall FOI Manual. The Department makes use of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act and other guidance materials and resources issued by the Information Commissioner.
18. Fact Sheet FIPO1 – Access to Information explains the various ways that the public can access information held by the Department. A copy of this fact sheet is available on the Department's internet site at [www.dva.gov.au](http://www.dva.gov.au).

## **Unreasonable Complainant Conduct Manual and Policy**

19. As set out above, the Department does not have its own Unreasonable Complainant Conduct Manual, but rather makes use of the Unreasonable Complainant Conduct Manual issued by the NSW Ombudsman.
20. The Department's Unreasonable Complainant Conduct Policy does not deal with FOI requests or requests for access to documents under other schemes. It therefore does not interact with or modify the policies you mention in your requests. As you have been previously advised, the Unreasonable Complainant Conduct Policy is not a published document as it is currently undergoing review.

## **Your rights of review**

### **Your rights of review**

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

### **Information Commissioner Review**

22. Under section 54L of the FOI Act, you may apply to the 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.

23. 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**

24. 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](mailto:foi@dva.gov.au)

Yours sincerely



Anne Anastasi  
A/g Director  
Information Law  
Legal Services & Assurance

20 November 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).

## **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.

(see section 11A).

## 24A Requests may be refused if documents cannot be found, do not exist or have not been received

### Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

### Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

## 54 Internal review—access refusal decision

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the **internal review**) of the access refusal decision.

### 54C Internal review—decision on internal review

#### *Scope*

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the **original decision**) is made in accordance with this Part.

#### *Decision*

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

#### *Notice of decision*

- (4) Section 26 extends to a decision made under this section.



## Summary of document searches

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The Department conducted the following searches to identify files and documents that fall within scope of your request ("relevant documents").

**1. File search**

A search of the Department's hard copy file index identified no files with potentially relevant documents.

**2. Search of group drives for electronic documents**

A search of the Department's electronic files did not identify any relevant documents.

**3. Department notification of FOI request**

The relevant areas in the Department were contacted and asked to conduct a search of their respective areas to identify whether documents relevant to the request exist. No relevant documents were identified.