



Revised decision made under section 55G of the *Freedom of Information Act 1982*

Revised decision and reasons for decision of Molly (Position Number 62213164), Legal Officer, Information Law Section, Legal Services & Audit Branch, Department of Veterans' Affairs

Applicant: Verity Pane

Date of primary decision: 13 September 2018

Date of internal review decision: 15 October 2018

Date of first revised decision: 9 September 2019

FOI reference number: FOI 23543; IR 24470; IC review 26189

Revised decision date: 19 February 2020

Revised decision reference number: ICR 26189 (MR18/00789)

Sent by email: foi+request-4696-e0ac57f0@righttoknow.org.au

Dear Verity Pane,

Freedom of Information Request: FOI 26189

1. The purpose of this correspondence is to advise you of a revised decision the Department of Veterans' Affairs (**Department**) has made under section 55G of the *Freedom of Information Act 1982 (FOI Act)* in relation to FOI 24470.
2. I have decided to:
 - release one (1) additional document identified as falling within the scope of your request;
 - release additional material in documents 2 and 3 that was previously considered irrelevant to the scope of your request; and

- delete material which is 'outside of the scope of your request' under section 22(1)(a)(ii).

Revised Decision

3. I have made a decision to vary the original decision made by Jo, Position Number **62213164**, Legal Services and Assurance Branch, on 9 September 2019.
4. This revised decision dated 9 September 2019 decided to:
 - release in part of one (1) additional document identified as falling within the scope of your request; and
 - release additional material in Document 2 that was previously considered irrelevant to the scope of your request.
5. The Department has undertaken a reasonable search of its records and has identified one additional document relevant to your request (Document 4). I have made a decision to release this document to you in full, with irrelevant material deleted under section 22(1)(a)(ii).
6. The Department has also reconsidered material in documents 2 and 3 that was previously withheld on the basis that it was irrelevant to the scope of your request. The Department has decided that some additional material in documents 2 and 3 does fall within scope of your request and I have decided to release this additional material to you. The Department's decision regarding irrelevant material in the remainder of the document remains unchanged.
7. A description of documents released to you is provided at **Schedule 1**. Pursuant to section 22(2) of the FOI Act, I have provided access to an edited copy of the documents.

Authority to make decision

8. I, Molly (Position Number 62213164), Legal Officer, Information Law Section, am authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department, in accordance with section 23(1) of the FOI Act.

Summary

9. On 16 July 2018, you made a request for access to document in the possession of the Department. Your request sought access to:

...I seek under FOI copy of the client satisfaction survey (<https://www.dva.gov.au/consultation-and-grants/client-satisfaction-survey>) sample selection methodology (a survey it is claimed is carried out biannually).

According to DVA's website the sample is allegedly chosen 'randomly', but previous media reporting (<https://www.news.com.au/national/calls-for-royal-commission-into-department-of-veterans-affairs-after-client-survey-overlooks-the-young/news-story/aea46ea1cdfabad6c437899a4c3e001d>) and previous ANAO commentary affirms is overly weighed towards veterans over 85 years old and war widows, who will have little or no contact with DVA's liability and compensation areas, and will generally have little regular contact with the Department (their exposure mostly through using their DVA Gold Cards at external medical services).

As the survey, as a human research activity, would have had to have been properly formulated and cleared for use, a formal sample selection methodology as to how selection for the survey is determined must exist.

Also, I would seek any documentation recording or explaining as to why the survey is only carried out via the telephone via CATI (Computer-Assisted Telephone Interviewing) compared to online collection, using Survey Monkey or the other like platform (especially given the cost benefits).

As only a very small number of documents could possibly fall within this specific scope, assessment time would be minimal. The names of private individuals (which is not public servants performing their duties) and external commercial organisations may be redacted from the copy to be provided, should you wish to voluntarily devote time to that.

I seek this information to engage, with the necessary background information, in the public debate as to the reliability and suitability of the sample selection methodology DVA uses, given how it purports what those statistics represent (sample frame error seems to be significant problem based on current data, given sample is overly weighted to those with only peripheral engagement with DVA, and no engagement with DVA's liability and compensation functions for many years)...

10. On 13 September 2018, you were provided with a decision relating to your request which granted access to two (2) documents in part, with irrelevant matter deleted under section 22 of the FOI Act.
11. On 13 September 2018, you requested an internal review of the above decision.

12. On 15 October 2018, the Department affirmed the original decision.
13. On 20 December 2018, the Office of the Australian Information Commissioner (**OAIC**) sent the Department a notice under section 54Z of the FOI Act advising that the OAIC had commenced a review of the Department's decision. It is understood that in seeking the review you requested the OAIC investigate the searches undertaken by the Department. You also stated:

...The statement of reasons, in setting out the Internal Reviewer's reasons is perfunctory and opaque. Statements such as 'I am satisfied the Department has undertaken additional searches and have been unable to identify any further documents' but does not state what additional searches have been carried out in any way, nor provides any detail to support this claim in any way (the lack of any reasoning and detail, when required, infers inadequacy or no search took place). The cut and paste from considerations listed in the Guidelines is not evidence that additional searches were conducted and or that all relevant documents were captured.

Similarly, the internal reviewer uses the same self referential perfunctory and opaque conclusion as to the appropriateness of the redactions made by the original decision maker, simply cite the decision of the original reviewer, without any actual evidence of consideration. Simply pointing to the evaluation made by the original decision maker and saying I agree is not the role of an Internal Reviewer, who must consider the decision de novo. The role of the internal review officer is to bring a fresh, independent and impartial mind to the review, not to simply repeat the original decision...

14. On 6 August 2019, the OAIC issued the Department with a preliminary view on this matter.
15. On 9 September 2019, the Department issued a revised decision releasing additional material in document 2 and document 3 in part.
16. On 14 November 2019, the OAIC issued the Department with a further preliminary view on this matter.
17. Following further consideration, the Department has decided to release additional material in response to this request. For this reason, the Department has prepared this revised decision under section 55G of the FOI Act.

18. The Department will provide the OAIC with a copy of this revised decision.

Material taken into account

19. 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 grant partial access to the documents follows.

20. I have taken the following material into account in making my decision:

- the terms of your request;
- the terms of your request for an internal review;
- the terms of your request for external review through the OAIC;
- the types of documents that are in the possession of the Department;
- 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 15 Request for Access
 - Section 22 Access to edited copies with exempt or irrelevant material deleted;
and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

21. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 1**.

Reasons for decision

22. I have decided to **grant access** to four (4) documents within the scope of your request, with irrelevant matter deleted.

23. I have decided to:

- release one (1) additional document identified as falling within the scope of your request;
- release additional material in documents 2 and 3 that was previously considered irrelevant to the scope of your request; and
- delete material which is 'outside of the scope of your request' under section 22(1)(a)(ii).

Searches

24. I consulted with the Veterans' Services Design Division (**Division**) in relation to this request.

25. Paragraph 3.85 of the FOI Guidelines, provides that agencies must take 'all reasonable steps' to find the requested documents.

26. Further, paragraph 3.88 of the FOI Guidelines provides:

The Act is silent on what constitutes 'all reasonable steps'. The meaning of 'reasonable' in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

27. I am satisfied that the Division has undertaken comprehensive search and retrieval for documents falling within scope of your request.

28. The Client Satisfaction Survey (the **Survey**) is a project run by a small team within the Strategic Policy Directorate. Accordingly, I consider the Division to be the appropriate business area to undertake searches for this request. Further, I have no reason to believe that documents falling within the scope of the request would be stored in any other location.

29. The Division searched through documents relating to 2018 Client Satisfaction Survey project to identify any documents containing information on the sample methodology used in the 2018 Client Satisfaction Survey (**2018 Survey**).

30. The Department has engaged Orima Research Pty Ltd (**ORIMA**) to undertake the Survey since its commencement in 2014. With minor exceptions, the Survey's sampling methodology has remained unchanged. This has occurred so that the Department can

maintain the ongoing validity of results. For this reason, there are a very limited number of documents that relate to the sample methodology for the 2018 Survey.

31. The Division confirmed that all documents relating to the 2018 Survey are stored in identifiable folder locations in the Department's electronic file management system HPE Content Manager and on the shared business drive. Both of these locations were searched in identifying documents falling within the scope of this request. The Division undertook searches of these electronic locations for the requested documents.
32. Having reviewed the searches undertaken by the Division and the documents retrieved as a result of these searches, I am satisfied that the Department has taken 'all reasonable steps' to locate and retrieve documents falling within the scope of your request.

Publically Available Material

33. Documents that match the description of your request may be publically available.
34. The Department publishes a range of resources relating to the Survey, including previous survey results, at the following web address: www.dva.gov.au/survey.

Delete irrelevant material from documents and provide access to edited copies (section 22)

35. As explained above, some of the material contained in Documents 1 to 4 falls outside of the scope of your request. I consider this material, specifically information that does not relate to the sample selection methodology to be irrelevant to your request.
36. On this basis, I have prepared the documents for release by removing that irrelevant material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

Access to documents

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

Information Publication Scheme

38. The Information Publication Scheme requires the Department to publish information released in response to individual requests made under the FOI Act, except in specified circumstances. I am of the view that details of your request should be made available on the Department's disclosure log.

39. 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> . Please note that the Department does not publish details of FOI applicants, it is only details of the FOI request and the documents released in response to the request.

Application for Information Commissioner Review – request to withdraw application

40. I consider the Department to have satisfactorily resolved the issues you have identified and all information in relation to the Survey methodology has now been released to you. As such, I kindly ask you to consider withdrawing your application for review with the OAIC.

Your rights of review

41. If you are dissatisfied with my decision, you may advise the OAIC that you do not wish to withdraw your application for IC Review. You can contact the OAIC 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 2000

42. 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-factsheets/foi-factsheet-12-your-review-rights>

Contact us

43. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: Information.Law@dva.gov.au

Yours sincerely,

Molly (Position Number 62213164)

Legal Officer

Information Law Section | Legal Services and Audit Branch

19 February 2020



Schedule of documents

Applicant: Ms Verity Pane

Decision date: 19 February 2020

FOI reference number: FOI 26189

Doc No.	Date of document	Document description	Pages	Decision	Exemption	Provision
1	13.06.2018	Third Party Document – Word Order – ORIMA Research Pty Ltd	1-11	Released in full (out of scope material deleted under section 22)	N/A	ss 22(1)(b)(ii)
2	03.05.2018	ORIMA Research Ltd Proposal	12-53	Released in full (out of scope material deleted under section 22)	N/A	ss 22(1)(b)(ii)
3	12.07.2018	Secretary Brief	54-63	Released in full (out of scope material deleted under section 22)	N/A	ss 22(1)(b)(ii)
4	N/A	Indicative Sample Design	64	Released in full (out of scope material deleted under section 22)	N/A	ss 22(1)(b)(ii)



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).

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

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).

55G Procedure in IC review--revocation or variation of access refusal decision

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of:
 - (a) giving access to a document in accordance with the request; or
 - (b) relieving the IC review applicant from liability to pay a charge; or
 - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
 - (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
 - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.