



Request consultation process due to existence of a practical refusal reason under section 24AB of the *Freedom of Information Act 1982*

Information Law, Legal Services & Assurance, Department of Veterans' Affairs

Applicant: Verity Pane
Notice date: 15 August 2018
FOI reference number: FOI 23386

Requested documents:

"In light of recent media reporting and admissions by the Minister in Federal Parliament that the Department spent more than \$0.6m in external legal services fees in regards to just one veteran - Martin Rollins - in relation to DVA's deliberate backdating of a rewrite of a DVA policy to exclude Mr Rollins' receiving a benefit he was entitled to at the time of his applying for it (<http://www.abc.net.au/7.30/dva-secretly-changed-rules-to-deny-veterans-claim/9883774>) there is a public interest in understanding how the Department is expending public funds on external legal services.

While the Department reports just one summary total of expenditure on external legal services in its annual reports, this is clearly insufficient and far too opaque to understand what the Department is spending on external legal costs for individual matters. While this information does indicate the Department spends between \$7m - \$10m on external legal services roughly every financial year, it gives no indication whether it may relate to only a small number of individual veterans or many or what the Department roughly spends per legal issue - which is important to understand when considering if the claims that the Department is combative and litigious are overstated or not.

Certainly the recent admission (initially refuted) that the Department has spend in excess of half a million dollars, litigiously, to defend this backdated change of policy to deny Martin Rollins a benefit that existed at the time he applied for it (and ironically this legal expenditure many hundreds of thousands of dollars greater than the benefit he was otherwise entitled to receive), raises public interest questions whether such excessive external legal expenditure is endemic or is a one off isolated case.

To that end, under FOI, I seek under s 17 of the FOI Act for a summary document to be created (so as to avoid unnecessary disclosure of irrelevant Departmental information) from data in the Departments financial and information management systems, to break down these global external legal services expenditure, so that greater transparency is given.

I seek a breakdown to be provided for the last three financial years - FY17/18, FY16/17, and FY15/16 - and to be broken down to matters involving individual veterans and other. Where matters involved individual veterans, this should be further broken down to stating the cumulative external legal services expenditure per veteran involved (with each veteran referred to by pseudonym - so first veteran is Veteran A, next is Veteran B, and so on). In order to reduce burden, where external legal expenditure involving an individual veteran is below \$10K cumulative for each financial year, they may be reported as a group (as the interest is in excessive external legal expenditure). An example of the layout I seek is below:

.....FY17/18.....FY16/17.....FY15/16
.....\$.....\$.....\$
Other
Veteran A
Veteran B
etc
Veterans > \$10K”

Dear Verity Pane,

Freedom of Information Request: FOI 23544

I refer to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act) received 16 July 2018.

I, Position Number 62210022, 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).

This is a notice of an intention to refuse access to the documents you have requested because a 'practical refusal reasons' exist under section 24(1) of the FOI Act. I am issuing this notice under section 24AB(2) of the FOI Act.

The practical refusal reason applicable to your request is that the work involved in processing your request would substantially and unreasonably divert the resources of the Department from its operations as specified in section 24AA(1)(a)(i) of the FOI Act due to its size and complexity.

Section 24AA

Under section 24AA(2) of the FOI Act, the agency must have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the filing system of the agency;
- deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document (including resources that would have to be used for examining the document or consulting with any person or body in relation to the request);
- making a copy or an edited copy, of the document; and
- notifying any interim or final decision on the request.

I consider that all of the above factors have a bearing on your request. The reasons why a practical refusal reasons exists in relation to your request is set out below.

Why I intend to refuse your request

Request is substantial

Following initial enquiries, I estimate that 60 hours of processing time is required to deal with this request. The reasons for this are as follows:

- Your request asks the Department to create a document under section 17 of the FOI Act. To do so, the Department needs to retrieve data that is not readily available, review that data and assemble it in the manner you have requested. This requires, for example:

- a. initial searches and retrieval of data that may be relevant to your request;
 - b. extraction and sorting the data into Financial Years;
 - c. identification of each line item for each month to ascertain which payments are within the scope of your request;
 - d. further searches to clarify payments of line items where it is not apparently clear they fall within the scope of your request (for example, payments can range from, but are not limited to, cost recovery, matters in the AAT, the Federal Court and other related legal costs of the Department);
 - e. extraction of the relevant line items into a new document;
 - f. sorting the data to collate payments related to individual surnames/clients;
 - g. searches to ascertain the surnames identified are for the same individual and not for different individuals who share the same surname;
 - h. removal of identifying information;
 - i. sorting information so as to indicate which line items fall under or over the \$10,000 threshold.
- Approximately eight (8) hours was taken to identify relevant material. The data that was identified covers the 2015/16 and 2016/17 Financial Years. Data for the 2017/18 Financial Year is not yet readily available. Due to the voluminous nature of potentially relevant material and the broad scope of your request, manual verification of the data is and would continue to be required to ensure relevant information has been captured and that each payment is within the scope of your request. I conservatively estimate an additional two (2) hours would be required to ensure all relevant data has been identified and retrieved.
 - To assist in ascertain whether a document could be created as per your request, a sample of the available information was used to undertake the tasks noted above. This sample involved the assessment of 110 line items comprising a three (3) month period. This task took 3 hrs and 45 minutes to complete.
 - An assessment of available information for the 2015/16 and 2016/17 Financial Years indicates a total of 1,449 line items covering the 24 month period will need to be assessed. The processing time involved in undertaking this task, based on the time it took to undertake the sample above is estimated to be in excess of 48 hours.
 - The relevant document once finalised, will have to be analysed and a decision made before it can be released to you. Some of the information within the document, may be exempt from disclosure under the FOI Act.
 - Further to the previous point, a Statement of Reasons will still need to be provided to you. I anticipate that it would take approximately two (2) hours to draft the Statement of Reasons and Schedule of Documents for this decision, noting on initial review that any exemptions applied would need to be detailed.

The above estimate does not take into account the time taken to review and prepare the sample of documents or to issue this notice to you.

Taking these factors into account, I have concluded the request as it currently stands is substantial.

Request is unreasonable

For the purpose of providing this notice, I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 60 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants.
- High level data relating to the Department legal expenditure is already available to you and the public through reporting within the Department's Annual Reports.
- Due to the broad nature of your request and the fact that it covers legal expenses spanning several Financial Years, the volume of material to be assessed is high. There also exists complexity in determining which payments fall within the scope of your request.

Taking these factors into account, I have concluded the request as it currently stands is unreasonable, as well as substantial (as outlined above).

Further clarification about what is sought

In addition to the above, it is unclear precisely what payments you want identified in the document. As noted above, the payments identified range from cost recovery action, matters involving the AAT, the Federal Court and other related legal costs. In its current form those items do not provide such information concerning the documents you seek to access as is reasonably necessary to enable a responsible officer of the Department to identify. This is also called a 'practical refusal reason' (section 24AA).

What you should do?

You can revise the request in a form that would remove the grounds for refusal. Please note that even if you do modify your request, it is possible that a practical refusal reason under subsection 24AA(1)(a)(i) may still exist or the Department may need further time to process your revised request – this will depend on the terms of your final request. As far as is reasonably practicable, we are happy to provide you with further information to assist you in making your request in such a form that removes the practical refusal ground.

If you are able to pinpoint the specific information you seek to be included that would assist. In particular, you may wish to consider for example:

- limiting payments to specific activities such as costs related to matters before the Administrative Appeals Tribunal;
- narrowing the scope to a more specific timeframe, rather than a three year period;
- providing further information and clarification to explain what types of legal payments you want captured in the document.

Please note you have **14 days** from the date you receive this notice to either:

- withdraw the request;
- make a revised request; or
- indicate that you do not wish to revise the request.

If you do not respond in one of these ways within 14 days the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on resource grounds under section 24(1).

If you need more time to respond, please contact Information Law within the 14 day period to discuss your need for an extension of time.

Please note under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.

If you would like to revise your request or have any questions, please contact Information Law using the details listed below:

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

Yours sincerely

Position Number 62210022
Information Law
Legal Services & Assurance

15 August 2018