



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

Internal review decision and reasons for decision of Position Number 62209913,
Information Law Section, Legal Services and General Counsel Branch, Department of
Veterans' Affairs

Applicant: Alan Ashmore
Date of primary decision: 31 August 2018
FOI reference number: FOI 23794
Internal review decision date: 16 October 2018
Internal review reference number: IR 24510

Dear Mr Ashmore,

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 vary the original decision made by Position Number 62210022, Information Law Section, Legal Services and General Counsel Branch, to release one (1) additional document subject to your request.

Summary

3. I, Position Number 62209913, Acting Director, Information Law Section, 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 *Freedom of Information Act 1982* (the FOI Act).
4. On 1 August 2018, you made a request for access to documents in the possession of the Department of Veterans' Affairs (the Department). Your request sought access to:

"...BACKGROUND:

In relation to DVA calculating their error rates, page 113 of DVA's 2016/17 Annual report said in a note to these figures.

'New measure for 2016–17. The new measures have been established to be more

representative of the activity undertaken.'

WHAT INFORMATION AM I SEEKING?

Each and every document, email, minutes, correspondence etc. that were behind the decision to change the reporting of errors including the reasons and justification for changing and establishing these new measures.

Please note redaction of full email addresses of staff is fine with me..."

5. 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*.
6. On 31 August 2018, you were provided with a decision relating to access to seven (7) documents within scope of your request. You were granted full access to documents three to seven and were provided access in part to documents one and two, with redactions made to remove material exempt in accordance with sections 47E(d) and 47F of the FOI Act.
7. On 16 September 2018, you requested an internal review of the decision, on what has been considered to be an indication that you believed more documents should have been identified. You did not raise any objections or matters to consider relating to the application of exemptions to documents one and two. In your request for an internal review, you specifically noted:

"...Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'Changes to calculating critical error rates'.

At best what I have received is Attachment A, Outcome 1, that is a one paragraph brief highlighting the END result of the proposed changes to the calculation of DVA's KPI's including critical error rates.

I requested the specific details and specific reasons BEHIND DVA coming to and arriving at the decision it made including reasons on how these changes would be reported going forward.

That is why my initial FOI request of 28 June 2018 requested:

'each and every document, email, minutes, correspondence etc. that were behind the decision to change the reporting of errors including the reasons and justification for changing and establishing these new measures.'

What DVA have failed to provide is all emails, minutes, correspondence etc. from the genesis of reviewing, considering various options, and how DVA came to the END decision to change the

calculation and reporting of their high impact error rate from simply 'error rate' to 'correctness rate' for MRCA and SRCA. This would also include how the 'correctness rate' would be calculated.

I am requesting this internal review as I find it difficult to comprehend that DVA were unable to locate ANY documentation leading up to the END result of the proposed changes to the calculation of the critical error rates for MRCA and SRCA.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.righttoknow.org.au/request/changes_to_calculating_critical

8. The Department has undertaken a search of its records and has identified one (1) additional document that falls within the scope of your request, as set out above. As such, the Department has identified eight (8) documents in total that are relevant to your request are listed in the schedule of documents at Schedule 1.

Decision and Reasons for Decision

9. I have made a decision to vary the original decision made by Position Number 62210022, and decided to release one (1) additional document subject to your request. This document is identified as document 8 in the attached schedule.

Material taken into account

10. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to grant partial access to documents follow.
11. I have taken the following material into account in making my decision:
 - the terms of your primary request;
 - the terms of your request for an internal review;
 - 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 11B Public interest exemption – factors

- Section 22 Access to edited copies with exempt or irrelevant material deleted
- Section 47E Public interest conditional exemptions--certain operations of agencies
- Section 47F Public interest conditional exemptions--personal privacy; and

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

12. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

Reasons for Decision

13. I have decided to grant access to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Public interest conditional exemptions--certain operations of agencies (section 47E)

14. I have found that material in documents 1 and 2 contain information that is conditionally exempt from release under section 47E(d) of the FOI Act.

15. 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.

16. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. Where the document contains information exempt under s 47E(d), an edited copy has been prepared (pursuant to section 22 of the FOI Act) with these details redacted.

17. Because of the way the Department constructs the email addresses of individual officers, I have decided to redact the surnames of non-executive Departmental staff and direct contact details of staff to give effect to this conditional exemption.

18. The Department's role is to provide support and information to veterans and their dependents, Australian Defence Force personnel and other categories of people. The services and support which the Department provides include pensions and compensation, health care, rehabilitation and counselling services, inter alia.
19. It is important that the Department is able to continue to provide these services and to carry out the other legislative functions and administrative and operational processes required of them. Certain processes and specific channels of communication have been implemented which enable clients and other relevant stakeholders to contact the Department in a way that ensures all Departmental resources are managed as efficiently as possible.
20. Release of the surnames and direct contact details of individual staff in the circumstances would adversely affect the Department as the established lines of communication could then be bypassed. It is reasonable to expect that this would disrupt and adversely affect the operations of the Department.
21. Accordingly, I have decided that the parts of the 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:

22. 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.
23. 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.
24. I also considered the following factors which do not favour disclosure:
 - (a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; and
 - (b) disclosure could reasonably be expected to prejudice the management function of an agency.
25. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

26. 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 (47F)

27. I have found information contained within document 2 to contain personal information in the form of staff member signatures.
28. 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).
29. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable. Personal information can include an individual's signature. The Australian Information Commissioner suggests that generally, an individual's identity needs to be reasonably ascertainable by the applicant. The ability of an applicant to reasonably ascertain an individual's identity will depend on the context and circumstances. As the signatures are alongside the staff member names, it is reasonable to conclude that it is practically possible for an applicant to link that signature with that staff member.
30. 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:

31. 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.
32. 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.
33. 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; and
 - (b) disclosure could reasonably be expected to harm the interests of an individual or group of individuals.

34. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
35. 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

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

Information Publication Scheme

37. 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. 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

38. Under section 54L of the FOI Act, if you are dissatisfied with my decision, 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

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.

39. 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

40. 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: information.law@dva.gov.au

41. If you wish to discuss this decision, please do not hesitate to contact the Client Liaison Unit using the following details:

Telephone: 1300 735 464

Post: Client Liaison Unit, Department of Veterans' Affairs

GPO Box 9998, Melbourne VIC 3001

Facsimile: (03) 9284 6170

Email: clu@dva.gov.au

Yours Sincerely,

Position Number 62209913

Director

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

16 October 2018



Schedule of documents

Applicant: Alan Ashmore
Decision date: 16 October 2018
IR reference number: FOI 24510

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	May 2018	10 - Programme Performance Indicators (PPIs) - cleared by JS	3	Partial Release	s 47E(d)
2	9 November 2015	15698919E B15 0956 - Minister Signed Submission(3)	3	Partial Release	s 47E(d) & 47F
3	Undated	Attachment to document 2 - 15616091E B15 0956 - Rationale for Change(2)	2	Full Release	NA
4	Undated	Attachment to document 2 - 15616093E B15 0956 - PPIs Comparator Table 3(2)	9	Full Release	NA
5	3 November 2011	ESORT - PPI Paper	5	Full Release	NA
6	3 November 2011	ESORT - PPI Paper TPs	3	Full Release	NA
7	3 November 2011	ESORT Coversheet - PPI	2	Full Release	NA
8	21 May 2015	Talking notes for Programme Performance Indicators (PPI) meeting	5	Full Release	NA



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).

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).