



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

Decision and reason for decision of Position Number 62210022

Applicant: Julie
Decision date: 17 September 2018
FOI reference number: FOI 24057

Dear Julie

Freedom of Information Request: FOI 24057

1. I have made a decision to refuse access to the documents relevant to your request.

Summary

2. 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).
3. On 17 August 2018, you made a request for access to documents in the possession of the Department. You specifically sought access to:

"...I request under FOI any document (not including emails or other informal documents relating to just general administrative activity) held by the Department about the formal services agreement or other establishing formal documents that relate to the purpose and/or scope and/or outcomes to be delivered by the 'Veteran Mates', excluding all marketing material and general advice/information material distributed to pharmacists, GP or veterans.

Any document not involving sign-off/approval below SES level (or equivalent) is excluded from scope (looking at the primary documents only, not ancillary material).

Any financial expenditures within documents in scope, if sensitive, may be redacted with consent.

Any proprietary IP, within documents in scope, if sensitive, may be redacted with consent.

Any individual names below SES level (or equivalent), within documents in scope, if sensitive, may be redacted with consent.

Any email addresses or other contact information equivalent), within documents in scope, if sensitive, may be redacted with consent.

Any ethics approval and any privacy impact assessment about or on Veterans Mates program is also in scope..."

4. On the same day you made a correction to your request, noting:

"...Correction to scope - REMOVE

Any document not involving sign-off/approval below SES level (or equivalent) is excluded from scope (looking at the primary documents only, not ancillary material).

REPLACE WITH

*Any document not involving sign-off/approval *at* SES level (or equivalent) is excluded from scope (looking at the primary documents only, not ancillary material)..."*

5. As no extensions of time have been applied to process your request, a decision is due by 17 September 2018.
6. 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*.
7. The Department has undertaken a reasonable search of its records and has identified three (3) documents relevant to your request, as set out above. Although the documents are not signed by Senior Executive staff, the main document was issued to the relevant third party alongside a letter authorised by a Senior Executive staff member. For this reason only, I have considered the documents to fall within the scope of your request. The documents relevant to your request are listed at Schedule 1.

Decision

8. I have made a decision to refuse access to the documents relevant to your request. The documents that I have chosen to refuse access to are set out in Schedule 1, together with the applicable exemption provisions.

Material taken into account

9. 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 refuse access to the documents follows.
10. I have taken the following material into account in making my decision:
- the terms of your request;
 - the types of documents that are in the Department's possession;
 - 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 section 45 of the FOI Act (Documents communicated in confidence); and

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

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

Reasons for Decision

12. I have decided to refuse access to documents within the scope of your request in accordance with the following exemptions in the FOI Act:

Documents containing material obtained in confidence (section 45)

13. I have found all three (3) documents to be exempt from disclosure in accordance with section 45 of the FOI Act, on the basis that the documents contain material obtained in confidence.

14. Section 45 of the FOI Act provides that a document is an exempt document if its disclosure under the FOI Act would found an action by a person for a breach of confidence. The FOI Guidelines provide that, to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- (a) it must be specifically identified;
- (b) it must have the necessary quality of confidentiality;
- (c) it must have been communicated and received on the basis of a mutual understanding of confidence;
- (d) it must have been disclosed or threatened to be disclosed, without authority; and
- (e) unauthorised disclosure of the information has or will cause detriment.

It must be specifically identified

15. The documents comprise a 2015 Deed of Agreement (Agreement) and two variations to that Agreement (2017 and 2018 respectively). The contents of these documents are confidential and are specifically identified as such.

It must have the necessary quality of confidentiality

16. The Agreement contains a confidentiality clause (clause 15), wherein the parties agreed, by signing the agreement, that parties must not, without the prior consent of the other party, disclose to third party information about the terms or the performance of the Agreement which is by its nature confidential. Any variations made to the Agreement are covered by this confidentiality clause.

It must have been communicated and received on the basis of a mutual understanding of confidence

17. By signing the Agreement, all parties accepted the inherent confidentiality of the Agreement. For example, the Department was aware that the Agreement was to be shared and used only by individuals within the Department, or with another agency, where it serves the legitimate interests of the Commonwealth or where details regarding the procurement were required to be published. Whilst the confidentiality clause provides that confidentiality may not apply in certain circumstances, such as if the information comes into the public domain or where it is required or authorised by law; disclosure under the FOI Act is not identified as being one of those exceptions. At the time the

parties executed the Agreement, they were aware of its terms including clause 15, and would have expressly understood and accepted a mutual obligation of confidence.

It must have been disclosed or threatened to be disclosed, without authority

18. The contents of the documents have not been disclosed outside the terms of the Agreement. The contents are known to a limited number of individuals on a need to know basis. Further, the wider terms of the Agreement, other than for example what is required for procurement purposes, has not entered the public domain and has not been distributed more widely. The information contained in the documents is only known to a limited number of individuals.
19. If the information was disclosed, it would be without the authority of the parties to the Agreement.

Unauthorised disclosure of the information has or will cause detriment

20. If I am of the view that a document is exempt from disclosure on the basis of confidentiality, I need to also be of the view that disclosure of the material will cause detriment.
21. Through this Agreement, the Department has developed the Veterans' Medicines Advice and Therapeutics Education Services (Veterans' MATES) project; a consumer health literacy and prescriber education program designed to improve quality use of medicines and reduce adverse medication events within the veteran community. As noted on the Veterans' MATES website, to date more than forty topics have been delivered involving more than 290,000 veterans, 32,000 doctors and 8,500 pharmacies and accredited pharmacists. There is a high degree of participant satisfaction and it is important that this work can continue.
22. The information contained within the documents has the necessary quality of confidentiality as it contains commercially valuable information that is not common knowledge or in the public domain. The documents as whole, detail the manner in which research would be targeted, prepared, disseminated and evaluated. If this information were to be released it would provide competitors with an unfair advantage over the contracted party. The Agreement has not concluded and the work is still underway.
23. Given the confidential nature of the Agreement, along with the express confidentiality clause, it is reasonable to adduce that if the documents were to be disclosed under the FOI Act without authorisation, the disclosure would found an action, by a person other than the Commonwealth, for breach of confidence. The documents that I have exempted under section 45 contain information that is confidential in nature and their release would constitute an unauthorised use of the information. They contain information that was communicated to the Department on the basis of a mutual understanding of confidence between the Department and a third party. The Department has a consistent practice of carefully protecting information as it is provided by third parties. In this instance, I have considered that whilst the public have a right to request access to information under the FOI Act, this must be balanced against the rights of parties who provide confidential information to the Department, and as such I have decided that these documents are exempt from release.
24. As I have found the documents to be exempt under section 45 of the FOI Act, I am not required to consider any public interest considerations.

Your rights of review

25. If you are dissatisfied with my decision, 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

26. 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.
27. 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: information.access@dva.gov.au

Information Commissioner Review

28. 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:
29. You can make your application for Information Commissioner review 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.

30. 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

31. 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.access@dva.gov.au

Yours Sincerely,

Position number 62210022
Authorised officer

17 September 2018



Schedule of documents

Applicant: Julie

Decision date: 17 September 2018

FOI reference number: FOI 24057

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	23 December 2015	Deed of Agreement between the Commonwealth of Australia and the University of South Australia for the provision of the Veterans; Medicines Advice and Therapeutics Education Services Program	49	Access Refused	s 45
2	13 February 2017	Deed of Variation No. 1 to document 1 above	13	Access Refused	s 45
3	14 March 2018	Deed of Variation No. 2 to document 1 above	5	Access Refused	s 45



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).

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.

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).

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency, the Commonwealth or Norfolk Island.