



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: Verity Pane
Date of primary decision: 2 October 2018
FOI reference number: FOI 24298
Internal review decision date: 1 November 2018
Internal review reference number: IR 24825
Sent by email: foi+request-4768-c0063d5a@righttoknow.org.au

Dear Verity Pane,

Freedom of Information Request: FOI 24825

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 Position Number 62210358, Legal Officer, Information Law Section, Legal Services and General Counsel Branch, to refuse your request in accordance with section 24A of the FOI Act on the basis that the documents you seek access to either cannot be found or do not exist.

Authority to make this decision

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).

Summary

4. On 31 August 2018, you made a request for access to documents in the possession of the Department. Your request sought access to:

"...Under FOI, I seek a copy for any document (including emails) received or sent by any SES level officer in the period 1 January 2018 – 30 April 2018 that relates to the replacement of delegate names in official correspondence with position number instead.

It is likely that such a document was sent to the Secretary for approval and also involved a Department brief for the Minister, but I provide this merely as pointers to where such documents in scope may be found.

TRIM and the G: drive of the Legal Services & Assurance branch should also be searched for such documents, in addition to the Department's email server (but again may be limited to SES level officers only)..."

5. On 2 October 2018, you were provided with a decision relating to access to documents within scope of your request. Access was refused in accordance with section 24A of the FOI Act as the documents you sought access to either could not be found or did not exist.
6. On the same day you requested an internal review of the primary decision. In your request, you specifically noted:

"...I seek internal review on the grounds that the search was inadequate, and clearly did exclude relevant documents..."

7. 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*.

Decision

8. I have made a decision to affirm the original decision made by Position Number 62210358, Legal Officer, Information Law Section, Legal Services and General Counsel Branch, to refuse your request in accordance with section 24A of the FOI Act on the basis that the documents you seek access to either cannot be found or do not exist.

Material taken into account

9. 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 findings were based and the reasons for my decision to refuse access to documents follow.

10. 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;
- 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 provision of the FOI Act relevant to my decision:
 - Section 24A Requests may be refused if documents cannot be found, do not exist or have not been received; 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 1**.

Reasons for Decision

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

12. Section 24A(1) 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.

13. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:

- the terms of your request;
- 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 information you seek access to.
2. Despite the reasonable searches undertaken, the Department has been unable to identify documents that fall within the scope of your request. A description of the searches undertaken to locate the documents which you are seeking to access is at **Schedule 2**.
3. For these reasons, I am refusing your request for access to documents as described in your request in accordance with section 24A of the FOI Act.

Your rights of review

14. 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.

15. 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

16. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section 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

Yours Sincerely,

Position Number 62209913

Director

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

1 November 2018



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).

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.

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.



Summary of document searches

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

1. Search of group drives for electronic documents

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

2. Department notification of FOI request

An email notification of the FOI request was circulated to relevant areas in the Department requesting that they conduct a search of their respective areas to identify whether documents relevant to the request exist. No relevant documents within the timeframe specified in your request were identified.