



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

Decision and reason for decision of Nick (Position Number 62209913), Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

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**Applicant:** Julie

**Decision date:** 26 March 2019

**FOI reference number:** FOI 24434

**Sent by email:** [foi+request-4798-cb04f8a0@righttoknow.org.au](mailto:foi+request-4798-cb04f8a0@righttoknow.org.au)

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Dear Julie

### Freedom of Information Request: FOI 24434

1. I have made a decision to grant **full access** to one document within the scope of your request.

### Authority to make this decision

2. I, Nick (Position Number 62209913), Acting Director, Information Law Section, am an officer authorised by the Secretary of the Department of Veterans' Affairs (**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 (FOI Act)*.

### Summary

3. On 11 September 2018, you made a request, under the FOI Act, for access to documents in the Department's possession. Your request was made in the following terms:

*... The following is an extract of ANAO's Performance Audit Report entitled "Efficiency of Veterans Service Delivery by the Department of Veterans' Affairs" published 27 June 2018 and therefore should be quite current:*

*3.35 Governance and oversight of R&C is the responsibility of a national business manager located in Melbourne. An extensive suite of reports and analysis is prepared on a monthly, weekly and daily basis containing metrics about R&C operations. The reports focus on the caseload, staffing, claims intake and TTTP broken down by locations and individuals. The*

*standard reports also include exception reporting of all cases with a TTTP of 240 days or longer, 365 days or longer and separate reporting of the 'top 20' oldest claims. Along with TTTP reporting, the standard suite of reports provide details of quality assurance activities and results.*

*It therefore is apparent that DVA has produced on a monthly basis a standard report that details the aforementioned summary statistics, along with a list of the top 20 oldest claims still outstanding, as a normal routine managerial report.*

*I therefore seek copy of each monthly report from July 2017 thru to and including June 2018 under FOI.*

*While summary statistics contain no personal information, it is possible the 'Top 20' list may refer to the individual names of veterans, so consent is given to redact the name of any private individual (as I'm only interested in the time they have been outstanding).*

*From what I understand, the monthly report doesn't drill down into details, being a summary report, but if any private individuals' personal information is contained within them, then this of course may be redacted with consent.*

*As the aforementioned ANAO report highlighted that despite the number of cases-on-hand / work-in progress files has fallen by 17.9 per cent (2,266) from the start of the 2015 to 2017 period to its end, but the DVA average TTTP (time taken to process) only fell between 3 per cent and 9 per cent across all R&C claim categories in the same period, inferring that DVA is considerably less efficient at processing liability claims than it used to be, it is hoped this information may shed some light on the causes of this loss of efficiency...*

4. As the Department did not issue you with a decision on your request within statutory timeframe, the Department was considered to have made a decision personally refusing to give access to the documents you sought. This is also known as a deemed refusal in accordance with section 15AC(3) of the FOI Act. Despite this, the Department maintained an obligation to continue processing your request.
5. The Department has undertaken a reasonable search of its records and has identified five documents falling within the scope of your request. The documents are listed at **Schedule 1**.

## **Decision**

6. I have made a decision to grant **full access** one document within the scope of your request.

## **Material taken into account**

7. 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 follow.

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

- the terms of your request, dated 11 September 2018;
- 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;
- the guidelines issued by the Office of the Australian Information Commissioner (**OAIC**) under section 93A of the FOI Act (**FOI Guidelines**); and
- 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.

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

### **Access to documents**

10. The document released to you in accordance with the FOI Act are enclosed.

### **Information Publication Scheme**

11. 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**

12. If you are dissatisfied with my decision, you may request the OAIC review my decision.

### **OAIC review**

13. Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by OAIC 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](http://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](mailto:enquiries@oaic.gov.au)

**In person:** Level 3, 175 Pitt Street, Sydney NSW 2000

14. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights>

## **Contact us**

15. 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 Assurance Branch, Department of Veterans' Affairs

GPO Box 9998, Canberra ACT 2601

**Facsimile:** (02) 6289 6337

**Email:** [information.law@dva.gov.au](mailto:information.law@dva.gov.au)

Yours sincerely

**Nick (Position Number 62209913)**

Acting Director

Information Law Section | Legal Services and Assurance Branch

Legal Assurance and Governance Division

26 March 2019



## Schedule of documents

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**Applicant:** Julie  
**Decision date:** 26 March 2019  
**FOI reference number:** FOI 24434

| Document reference | Date of document | Document description                        | Pages | Decision        | Exemption provision |
|--------------------|------------------|---|-------|-----------------|---------------------|
| 1                  | 06/03/2018       | Primary Claims National Performance Summary | 1     | Release in full | N/A                 |



## Schedule of relevant provisions in the FOI Act

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### 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.

**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.

## **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).

## **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).