



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

Decision and reason for decision of Position Number 62212962, Information Law Section, Legal Services and General Counsel Branch, Department of Veterans' Affairs

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**Applicant:** Verity Pane

**Decision date:** 12 October 2018

**FOI reference number:** FOI 24588

Dear Verity Pane,

### Freedom of Information Request: FOI 24588

1. I have made a decision to create and grant access to one (1) document falling within the scope of your request in full.

### Summary

2. I, Position Number 62212962, 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**).
3. On 19 September 2018, you made a request for access to documents in the possession of the Department. Your request sought access to:

*"...I seek copy of the the first page only (cover page is fine), of all current, contracts DVA has, that contain a confidentiality clause within them.*

*I note that the first page of a contract, which is generally a cover page, would reveal the names of the parties to the contract and possibly the date the contract was signed or come into existence, but generally nothing else.*

*Notably, such information of this type of information in such a cover page would typically be required to be disclosed as part of mandatory Commonwealth procurement disclosures, and thus would have no confidentiality obligations that could apply to it (and given prior public disclosure, no reasonable grounds to engage in third party consultation over).*

*If the first page contains additional information beyond this, it may be redacted with consent under s 22(2)..."*

4. After being advised by the Department that it held information in a different format and could use that to provide the information you sought access to, on 8 October 2018, you advised by email that you agreed to the Department to “...compile one document (spreadsheet) in lieu...”
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. The Department has undertaken a reasonable search of its records and has created one (1) document in accordance with section 17 of the FOI Act that meets the scope of your request, as set out above. The document relevant to your request is listed at Schedule 1.

### **Decision and reasons for decision**

7. I have made a decision to create and grant access to the document that fall within the scope of your request in full. The document that I have chosen to release under the FOI Act are set out in Schedule 1.

### **Material taken into account**

8. I have taken the following material into account in making my decision:
  - the terms of your request;
  - the types of information and documents that are in the Department’s possession;
  - the availability of information relevant to your request, in so far as it determines the practicality and ease in which the Department can create a document under section 17 of the FOI Act;
  - 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.; and
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).
9. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

### **Access to documents**

10. The documents released to you in accordance with the FOI Act is 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 have determined that information relating to your request will be published on the Department's disclosure log which can be found on the Department's website at <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>

## Your rights of review

12. If you are dissatisfied with the searches the Department did to locate documents related to your request, 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

13. 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.
14. 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.law@dva.gov.au](mailto:information.law@dva.gov.au)

## Information Commissioner review

15. Under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the 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.

16. 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

17. 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](mailto:information.law@dva.gov.au)

Yours sincerely

**Position Number 62212962**

Legal Officer

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

12 October 2018



## Schedule of documents

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**Applicant:** Verity Pane

**Decision date:** 10 October 2018

**FOI reference number:** FOI 24588

<b>Doc ref</b>	<b>Date of document</b>	<b>Document description</b>	<b>Pages</b>	<b>Decision</b>	<b>Exemption provision</b>
1	No date	Current contracts that contain a confidentiality clause - Tenders (pages 1-16) - Consultants (page 17)	17	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).

## **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.