



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

Decision and reason for decision of Jo (Position Number 62210326), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Verity Pane
Decision date: 7 August 2019
FOI reference number: FOI 24561 (ICR 25407; MR18/00831)
Sent by email: foi+request-4820-2c435d2d@righttoknow.org.au

Dear Verity Pane,

Freedom of Information Request: FOI 24561

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and, in accordance with section 17 of the *Freedom of Information Act 1982* (Cth) (**FOI Act**), I have made a decision to create and grant access in full to one (1) document that meets the scope of your request.
2. The document that I have chosen to grant access to is set out in **Schedule 1**.

Authority to make decision

3. I, Jo (Position Number 62210326), Assistant Director, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department, in accordance with section 23(1) of the FOI Act.

Summary

4. On 18 September 2018, you made a request for access to documents in the possession of the Department. Your request sought access to:

Under s 17 of the FOI Act, I apply for a one page summary document to be compiled from information held in your agency's information systems, that sets out the number of DVA clients, by age group, that were referred to SPOC management by the Coordinated Care unit and Client Liaison Unit (to be listed separately) for the months of Jan 2018 to May 2018, by month.

....

DVA breaks veterans into age groups referred to as 'young veterans' (64 and under) and 'veterans' (65 and over), based on historical retirement age. For the purpose of this FOI, we will stick to this age split.

Format of compiled document:

Unit.....FY15/16.....FY16/17.....FY17/18
CLU - >65
CLU - 65+
CC - >65
CC- 65+ ...

5. On 28 September 2019, the Department issued you with a charges notice in relation to your request and advised that you had until 29 October 2018 to respond.
6. On 18 and 23 October 2018, you wrote to the Department and advised that you considered the Department was deemed to have refused you access to the documents requested as a decision had not been made in time.
7. On 23 October 2018, the Department wrote to you advising that a charges notice had been issued but inadvertently sent to the email address of another one of your FOI requests. The Department advised that you had until 28 October 2018 to respond to the charges notice.
8. On 7 November 2018, the Office of the Australian Information Commissioner (**OAIC**) advised the Department that you had sought Information Commissioner (**IC**) review and that it was undertaking preliminary enquiries into the concerns you had raised.
9. On 4 September 2019, the OAIC issued the Department with its preliminary view on this matter alongside a notice issued under section 55E of the FOI Act. In particular, the OAIC advised that it was of the view that the Department was deemed to have refused your request on 18 October 2018, and that the charges notice issued to you was not valid as it was sent to the incorrect address.
10. In accordance with section 15AC of the FOI Act, the principal officer of the Department is taken to have made a decision personally refusing to give access to the documents on the last day of the initial decision period. Even where a decision has not been issued within the

prescribed timeframe, the Department retains an obligation to process and finalise the FOI request. I would like to apologise for this delay.

11. As a decision on your request was not made within the timeframe as prescribed in section 15(5)(b) of the FOI Act, Regulation 7(2) of the *Freedom of Information (Charges) Regulations 2019* prescribed that no charge is payable.

Material taken into account

12. 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 grant full access to the document follows.
 - the terms of your request, dated 18 September 2018;
 - the types of information and documents that are in the Department's possession;
 - the availability of information relevant to your request, insofar 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 document 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 15 Request for Access
 - Section 17 Requests involving use of computers etc (e.g. request for the Department to create a document); and
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).
13. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

Access to documents

14. The document released to you in accordance with the FOI Act is enclosed.

Information Publication Scheme

15. 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> .
16. Please note that the Department does not publish details of FOI applicants, it is only details of the FOI request and the documents released in response to the request.

Your rights of review

17. If you are dissatisfied with my decision you may advise the OAIC that you wish for your application for review to remain open.
18. In accordance with section 54E(b) of the FOI Act, Internal Review is not available as the Department did not finalise your FOI request within the prescribed statutory timeframe. You can contact the OAIC 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 2000

19. 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-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

20. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details above.

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: Information.Law@dva.gov.au

Yours sincerely,

Jo (Position Number 62210326)

Assistant Director

Information Law Section

Legal Services and Audit Branch

20 September 2019



Schedule of documents

Applicant: Verity Pane
Decision date: 20 September 2019
FOI reference number: FOI 24561 (MR18/00831)

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	N/A	Document created under section 17 of the FOI Act		Release in full	N/A



Schedule of relevant provisions in the FOI Act

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.

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).