



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

Decision and reason for decision of Julie (Position Number 62212962), Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

Applicant: Verity Pane
Decision date: 13 November 2018
FOI reference number: FOI 25057
By email: foi+request-4877-cc3a7616@righttoknow.org.au

Dear Verity Pane

Freedom of Information Request: FOI 25057

1. I have made a decision to refuse access to the creation of a document using information relevant to your request.

Summary

2. I, Julie (Position Number 62212962), Legal Officer, 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**).
3. On 12 October 2018, you made a request for access to a documents created by the Department using information in the Department's possession. Your request sought access to:

"...Under s 17 of the FOI Act, I apply for a compiled document from your financial management information system and human resource management information system (if necessary) data holdings, of all payments made by DVA to contracted medical advisors over FY17/18, listed by each contract medical advisor (detailing total money paid and the total number of hours it related to)...."
4. On 30 October 2018, the Department wrote to you providing a notice of intention to refuse your request under section 24AB(92) of the FOI Act as you have not provided such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify the documents sought, and to the extent that some documents can be identified, processing your

request would substantially and unreasonably divert the resources of the Department from its other operations. We gave you an opportunity to consult with the Department to revise your request so as to remove the practical refusal reasons.

5. On 1 November 2018, you clarified your request via email, in the following terms:

“...The term Contracted Medical Adviser (CMA) has a very specific meaning in DVA, distinct from Local Medical Officers (LMOs) and other health care providers which you have referred to, especially given DVA does not contract directly with these providers to provide services to it (as you are well aware).

...

the term CMA has an explicit meaning in DVA and only applies to those DVA has contracted as a Medical Adviser to provide opinions to the Rehabilitation & Compensation area...”

6. As no extensions of time have been applied to process your request, a decision on your request is due by 13 November 2018.

Decision

7. Section 24(1) of the FOI Act provides that if, after a consultation process, an agency is satisfied that a practical refusal reason still exists, the agency may refuse to give access to the document in accordance with the request
8. Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request processing the request would substantially and unreasonably divert the resources of the Department.
9. I have decided to refuse your request under section 24(1) of the FOI Act because, following the request consultation process pursuant to section 24AB of the FOI Act, a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied that section 24AA(1)(a)(i) of the FOI Act applies, in that processing your request would still substantially and unreasonably divert the resources of the Department.

Material taken into account

10. 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 your request as follows.
11. I have taken the following material into account in making my decision:
- the terms of your request, dated 12 October 2018;
 - the types of documents that are in the possession of the Department;

- 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;
- your email clarifying your request, dated 1 November 2018;
- 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 24 Power to refuse request--diversion of resources etc.
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

12. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 1**.

Reasons for decision

13. I have decided to refuse your request in accordance with the following provision in the FOI Act.

Section 24AA – when does a practical refusal reason exist?

14. Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the Department from its other operations.

Request is substantial

15. Following consultation with the line area, I estimate that over 100 hours of processing time is required to process your revised request. The reasons are as follows:

- Your request asks the Department to create a document under section 17 of the FOI Act. To do so, the Department needs to retrieve data that is not readily available, review that data and assemble it in the manner you have requested. This requires, for example:
 - a. initial searches and retrieval of data that may be relevant to your request;
 - b. extraction and sorting the data into Financial Years;
 - c. identification of each line item for each month to ascertain which payments are within the scope of your request;
 - d. further searches to clarify payments of line items where it is not apparently clear they fall within the scope of your request (for example, payments can range from, but are not limited to, cost recovery, matters in the AAT, the Federal Court and other related legal costs of the Department);
 - e. extraction of the relevant line items into a new document;
 - f. sorting the data to collate payments related to individual surnames/clients;

- g. searches to ascertain the surnames identified are for the same individual and not for different individuals who share the same surname;
 - h. removal of identifying information;
 - i. sorting information so as to indicate which line items fall under or over the \$10,000 threshold.
- Approximately two (2) hours was taken to identify relevant material so far relating to your request. The data that was identified covers payment to contracted medical advisors in the 2017/18 financial year.
- Due to the voluminous nature of relevant material regarding the number of hours the payments relate to for each entity, manual verification of the data is and would continue to be required to ensure relevant information has been captured and that each payment is within the scope of your request. I conservatively estimate an additional one hundred (100) hours would be required to ensure all relevant data has been identified and retrieved.
- To assess the hours worked by each advisor in the 2017/18 financial year, and relating this to which entity the advisor is contracted by would require the following work:
 - a. The line area be required to manually go through approximately 600 individual timesheets
 - b. Conservatively, each timesheet would take ten (10) minutes to:
 - i. search and retrieve documents;
 - ii. review and follow up with the contacts in the line area; and
 - iii. record the information into a discrete format, as requested by you.
- The relevant document once finalised, will have to be analysed and a decision made before it can be released to you. Some of the information within the document, may be exempt from disclosure under the FOI Act.
- Further to the previous point, a Statement of Reasons will still need to be provided to you. I anticipate that it would take approximately one (1) hour to draft the Statement of Reasons and Schedule of Documents for this decision, noting on initial review that any exemptions applied would need to be detailed.

The above estimate does not take into account the time taken to issue this notice to you.

Taking these factors into account, I have concluded the request as it currently stands is substantial.

Request is unreasonable

For the purpose of providing this notice, I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 100 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants;
- High level data relating to the Department's contracts with contracted medical advisors are available on AusTender;
- Would require the equivalent of 2.66 weeks for a full-time equivalent staff member to process your single FOI request; and
- The business area assisting with your request have and will be required to divert their resources to assist in the processing of your request, in particular, searching and collating the data into a discrete format per your request.

Taking these factors into account, I have concluded the request as it currently stands is unreasonable, as well as substantial (as outlined above).

Supporting or additional information

16. As advised to you in our email, dated 9 November 2018, the Department is able to provide you with a document containing the names of the entities and the payments made in the 2017/18 financial year. The part of your request for "...detailing the total number of hours payments relate to..." is what gives rise to a practical refusal reason under section 24AB of the FOI Act.
17. I also note that on 13 November 2018, the Department advised you we were seeking an extension of time from the Office of the Australian Information Commissioner (**OAIC**). As we have not received a decision from the OAIC, we have processed your request in accordance with the FOI Act and the statutory timeframe.

Your rights of review

18. If you are dissatisfied with my decision, you may apply for internal review or request the **OAIC** review my 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

19. 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.
20. You can make your application for internal review in one of the following ways:

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

Facsimile: (02) 6289 6337

Email: information.access@dva.gov.au

OAIC review

21. 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

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

22. 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

23. 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 Branch, Department of Veterans' Affairs

GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: information.access@dva.gov.au

Yours sincerely,

Julie (Position Number 62212962)

Legal Officer

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

13 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).

24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
- (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24AA When does a practical refusal reason exist?

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
- (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:

- (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
- (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.