



## Internal review decision made under the *Freedom of Information Act 1982*

Internal review decision and reasons 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 via Right to Know

**Date of original decision:** 26 October 2018

**FOI reference number:** FOI 25071

**Internal review decision date:** 26 November 2018

**Internal review reference number:** IR 25411

**Sent by email:** [foi+request-4886-b69647a7@righttoknow.org.au](mailto:foi+request-4886-b69647a7@righttoknow.org.au)

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Dear Julie

### Freedom of Information Internal Review Request: FOI IR 25411

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 62210022, Assistant Director, Information Law Section, Legal Services and Assurance Branch to refuse access to the documents subject to your request, as the documents do not exist.

### Authority to make this decision

1. 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 review decisions about access to documents in the possession of the Department in accordance with section 54C of the FOI Act.

### Summary

2. On 13 October 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:

*I seek the minutes of the DVA People and Culture Committee for FY17/18.*

3. On 26 October 2018, you were provided with a decision refusing access to the documents subject to your request, as the documents do not exist (**primary decision**).
4. On 26 October 2018, you requested an internal review of the primary decision. In your request, you specifically noted:

*I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'People and Culture Committee'.*

*Yet another senior DVA executive committee identified by DVA's own Corporate Plan as existing, yet surprisingly no documentary record, apart from the Corporate Plan, exists...*

*Yet again the hostility of DVA towards FOI is on full display.*

*Either DVA has a unethical policy of breaching the Archives Act by destroying records, so as to avoid their capture by FOI, or is the most unique public sector agency in the world, in that its identified executive corporate governance committees never meet and never record anything, ever.*

*I seek internal review on the basis to claim such records do not exist approaches fantasy, given the existence of these committees is identified by DVA itself.*

*These types of committee simply do not exist in a vacuum, given the members are all at the SES bands, and they report to the DVA board.*

*It seems like intentional bad faith is in play here, and it is quite disturbing that DVA would go so far as to knowingly lie (but then again, I guess, your flam s 15AB application that the Oaic knocked back as being too ridiculous proves that your willingness to go that far).*

5. The Department has undertaken additional searches of its records and has been unable to identify any further documents that fall within the scope of your request, as set out above.
6. 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**

3. I have made a decision to affirm the original decision made by position number 62210022, Assistant Director, Information Law Section, Legal Services and Assurance Branch to refuse access to the documents subject to your request, as the documents do not exist.

## Material taken into account

4. 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 finding were based and the reasons for my decision to refuse access to documents follow.
5. I have taken the following material into account in making my decision:
  - the terms of your original request, dated 13 October 2018;
  - the terms of your request for an internal review, dated 26 October 2018;
  - 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
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).
6. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

## Reasons for decision

7. I have decided to refuse access to documents subject to your request in accordance with the following exemption in the FOI Act:

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

1. 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.

2. 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.
3. Despite the reasonable searches undertaken, the Department has been unable to identify documents relevant to your request. A description of the searches undertaken to locate the documents which you are seeking to access is at **Schedule 1**.
4. For these reasons, I am refusing your request in accordance with section 24A of the FOI Act.

## Your rights of review

8. Under section 54L of the FOI Act, if you are dissatisfied with my decision, 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 2000

9. 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

10. 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](mailto:information.access@dva.gov.au)

Yours sincerely

**Nick (Position Number 62209913)**

Acting Director

Information Law Section | Legal Services & Assurance Branch

Legal Assurance and Governance Division

26 November 2018



## Summary of document searches

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

### **1. File search**

A search of the Department’s hard copy file index identified no files with potentially relevant documents.

### **2. Search of group drives for electronic documents**

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

### **3. 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 were identified.

The relevant line area have advised that the People and Culture Committee was not yet established in the 2017/2018 financial year. Therefore, there are no minutes for the People and Culture Committee in the 2017/2018 financial year.



## 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.

### 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*

- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

ct of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A)