



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: 4 December 2018
FOI reference number: FOI 25408
Sent by email: foi+request-4939-bcc28ce8@righttoknow.org.au

Dear Ms Pane

Freedom of Information Request: FOI 25408

1. I have made a decision to **grant full access** to one document relevant to your freedom of information request.

Authority to make this decision

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**).

Summary

3. On 6 November 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:

Under FOI I seek the terms of reference for the DVA Robert Cornell advocacy study, or if DVA claim they do not exist, I seek copy of any contract with Robert Cornell DVA currently has, and any document that DVA holds that refers to the commissioning of work from Robert Cornell about DVA's use of legal services.

There is a public interest in these documents given DVA legal services expenditure skyrocketed by another \$3.33 million in FY17/18, on top of the high \$10.27 million in the

previous financial year, with \$9.44 million of that (again another skyrocketing increase) on external legal services.

Taxpayers have a right to know why DVA, which is such a small agency, spends excessively on litigation and overuse of external legal service providers, especially when - again for a small agency - it has an in-house legal staff (including internal barristers) exceeding more than 20 legal practitioners.

The evidence certainly is that DVA does not act as a model litigant, but rather has relationships of benefit to three external legal services providers in particular, that have more to do with unofficial benefits certain individuals within DVA derive from overuse of these very expensive services.

4. As no extensions of time have been applied to process your request, a decision on your request is due by 6 December 2018.
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 identified one document relevant to your request. A description of this document is listed at **Schedule 1**.

Decision

7. I have made a decision to grant full access to the document.

Access to documents

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

Additional information

9. As this decision meets the scope for the first part of your request for the “*terms of reference for the DVA Robert Cornell advocacy study*”, as specified by you, we have not considered the second part of your request.
10. You can also access this information on the Department’s website at <https://www.dva.gov.au/consultation-and-grants/reviews/veterans-advocacy-and-support-services-scoping-study>

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 apply for internal review or request the Office of the Australian Information Commissioner (**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

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 Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

OAIC review

15. 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

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

Contact us

17. 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 & Assurance Branch

Legal Assurance and Governance Division

4 December 2018



Schedule of documents

Applicant: Verity Pane

Decision date: 4 December 2018

FOI reference number: FOI 25408

Document reference	Date of document	Document description	Page number	Decision
1	No date	Veterans' Advocacy and Support Services Scoping Study – Terms of Reference	1-2	Release in full



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).