



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

Applicant:	Mr Alan Ashmore
Date of primary decision:	7 February 2019
FOI reference number:	FOI 26449
Internal review decision date:	25 March 2019
Internal review reference number:	FOI 27262
Sent by email:	foi+request-5215-97ff757d@righttoknow.org.au

Dear Mr Ashmore

Freedom of Information Internal Review Request: FOI 26815

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 decision made by Leia (Position Number 62210022), Information Law Section, Legal Services and Assurance Branch to create and grant part access to one document.

Authority to make this decision

1. I 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 14 January 2019, 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:

...The number of applications for Compensation for Defective Administration (CDDA) made to the Department of Veteran's Affairs, the number of CDDA claims accepted and the total value of the amount paid out in the following period...1 July 2018 to 31 December 2018...

3. On 7 February 2019, you were provided with a decision granting part access to one document created to meet the scope of your request.
4. On 23 February 2019, you requested an internal review of FOI 26449 (**primary decision**). Your internal review request was made in the following terms:

...I ask this as my request is incomplete in that it failed to include the dollar amount paid out in successful CDDA claims for the stated period.

Please note I have previously made two successful request for similar information covering earlier periods. On both previous occasions the information was provided in full, i.e. they both included the total dollar amount paid out in successful CDDA claims...

5. The Department has undertaken additional searches of its records and has identified no further documents or information falling within the scope of your request.

Decision

6. I have made a decision to affirm the primary decision made by Leia, Assistant Director, Information Law Section, Legal Services and Assurance Branch to create and grant **part access** to one document falling within the scope of your request.

Material taken into account

7. 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 grant part access to the documents follow.
8. I have taken the following material into account in making my decision:
 - the terms of your original request, dated 14 January 2019;
 - the terms of your internal review request, dated 23 February 2019;

- the types of documents that are in the possession of the Department;
- the content of the document that falls within the scope of your request;
- 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 guidelines issued by the Office of the Australian Information Commissioner (**OAIC**) under section 93A of the FOI Act; and
- 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 11B Public interest exemption – factors
 - Section 17 Requests involving use of computers etc.
 - Section 47F Public interest conditional exemptions—personal privacy

9. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 3**.

Reasons for decision

10. I have decided to affirm the decision to grant part access to one document falling within the scope of your request, subject to the following exemption in accordance with the FOI Act.

Public interest conditional exemptions—personal privacy (section 47F)

11. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

12. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (**Privacy Act**). Personal information is defined in section 6 of the Privacy Act as:

..information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not;
- (b) whether the information or opinion is recorded in a material form or not.

13. The elements of 'personal information' are:

- (a) it relates only to a natural person (not, for example, a company);
- (b) it says something about the individual;
- (c) it may be in the form of an opinion, it may be true or untrue, and it may form part of a database;
- (d) the individual's identity is known or is reasonably ascertainable using the information in the document.

14. If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources; and
- (d) any other matter I consider relevant.

15. Further, the Guidelines state (at 6.127):

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

16. The term 'personal information' is defined in section 4(1) of the FOI Act (by way of reference to section 6(1) of the Privacy Act 1988), as follows:

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

17. The information I have exempted is the total amount paid for CDDA claims. I have considered the above and am satisfied that due to the small amount of claims accepted for the period specified, the

total amount is personal information of claimants. The amount DVA has paid to claimants may be identifiable if they have shared their claim information with each in an advocacy/client-lawyer/ESO relationships and therefore their particular amounts may be able to be identified. Consequently, identities of these claimants could reasonably be ascertained due to the small number of claims.

18. Further, I am satisfied the exempt information is not publicly available, does not relate to your own affairs and is not well known.
19. In considering the above, I am satisfied the information is exempt in accordance with section 47F of the FOI Act.
20. Accordingly, I have decided that part of the document meets the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act.

Application of the public interest test:

21. Section 11A(5) of the FOI Act provides that an agency 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 would, on balance, be contrary to the public interest.
22. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
 - (a) disclosure would promote the objects of the FOI Act, including:
 - (b) disclosure would allow a person to access his or her personal information, or:
 - (c) disclosure could contribute to the administration of justice generally, including procedural fairness; and
 - (d) disclosure could contribute to the administration of justice for a person;
23. I also considered the following factors which do not favour disclosure:
 - (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
 - (b) disclosure could reasonably be expected to impede the administration of justice generally, including procedural fairness;
 - (c) disclosure could reasonably be expected to impede the administration of justice for an individual; and

(d) disclosure could reasonably be expected to harm the interests of an individual or group of individuals.

24. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
25. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Access to documents

26. The document is enclosed.

Your rights of review

27. Under section 54L of the FOI Act, if you are dissatisfied with my decision, you may apply to the 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

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

28. 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>

Contacts

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

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

Facsimile: (02) 6289 6337

Email: information.law@dva.gov.au

Yours sincerely

Nick (Position Number 62209913)

Acting Director

Information Law Section | Legal Services and Assurance Branch

Legal Assurance and Governance Division

25 March 2019



Schedule of documents

Applicant: Mr Alan Ashmore
Decision date: 25 March 2019
Reference number: FOI 27262

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	04/02/2019	The number of applications for Compensation for Defective Administration (CDDA) made to the Department of Veteran's Affairs, the number of CDDA claims accepted and the total value of the amount paid for the period 1 July 2018 to 31 December 2018.	1	Release in part	Section 47F of the FOI Act



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).

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).

47F Public interest conditional exemptions—personal privacy

General rule

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:
- qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:
- (a) a medical practitioner;
 - (b) a psychiatrist;
 - (c) a psychologist;
 - (d) a counsellor;
 - (e) a social worker.

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