



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: Mr Alan Ashmore
Decision date: 7 March 2019
FOI reference number: FOI 26865
Sent by email: foi+request-4865-6c0867cf@righttoknow.org.au

Dear Mr Ashmore

Freedom of Information Request: FOI 26865

1. I have made a decision to grant full access to one document falling within the scope of your request, and refuse your request for "*The amount paid by the Department of Veteran's Affairs in 2017/18 to legal aid organizations, e.g. Legal Aid NSW, etc, and :The amount allocated by the Department of Veteran's Affairs in 2018/19 to legal aid organizations, e.g. Legal Aid NSW, etc.*" on the basis that the documents do not exist.

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 4 February 2019, you made a request for access to documents in the possession of the Department. Your request sought access to:

...The information I am seeking is:

:The amount paid by the Department of Veteran's Affairs to ESO's in 2017/18 for the provision of advocacy services through DVA's various schemes.

The list is to be by ESO'S and where applicable by States, e.g. RSL NSW, RSL VIC, etc.

:The amount paid by the Department of Veteran's Affairs in 2017/18 to legal aid organizations, e.g. Legal Aid NSW, etc, and

:The amount allocated by the Department of Veteran's Affairs in 2018/19 to legal aid organizations, e.g. Legal Aid NSW, etc..."

4. 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 and reasons for decision

5. I have made a decision to grant full access to one document falling within the scope of your request, and refuse your request for *"The amount paid by the Department of Veteran's Affairs in 2017/18 to legal aid organizations, e.g. Legal Aid NSW, etc, and :The amount allocated by the Department of Veteran's Affairs in 2018/19 to legal aid organizations, e.g. Legal Aid NSW, etc."* on the basis that the documents do not exist.

Material taken into account

6. I have taken the following material into account in making my decision:
- the terms of your request, dated 4 February 2019;
 - the types of information and documents that are in the Department's possession;
 - the content of the documents that fall 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 Australian Information Commissioner 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 section 24A of the FOI Act (Requests may be refused if documents cannot be found, do not exist or have not been received) relevant to my decision.
7. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

Reasons for decision

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

8. 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.

9. 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.

10. 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 2**.

11. For these reasons, I am refusing your request in accordance with section 24A of the FOI Act.

Access to documents

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

Information Publication Scheme

13. 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 have determined that information relating to your request will be published on the Department's disclosure log which can be found on the Department's website at <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>

Your rights of review

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

15. 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.
16. You can make your application for internal review in one of the following ways:

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

OAIC review

17. Under section 54L of the FOI Act, 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

18. 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

19. If you wish to discuss this decision, please do not hesitate to contact me 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

Julie (Position Number 62212962)

Legal Officer

Information Law Section | Legal Services and Assurance Branch

Legal Assurance and Governance Division

7 March 2019



Schedule of documents

Applicant: Mr Alan Ashmore

Decision date: 7 March 2019

FOI reference number: FOI 26865

Document reference	Date of document	Document description	Pages	Decision	Exemption provision
1	Undated	Approved BEST Grants (2017-18)	1-10	Release in full	N/A



Summary of document searches

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

1. Search of group drives for electronic documents

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

2. 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 business area has advised that legal aid funding does not come from the Department and therefore there are no documents for part of your request for "*The amount paid by the Department of Veteran's Affairs in 2017/18 to legal aid organizations, e.g. Legal Aid NSW, etc, and :The amount allocated by the Department of Veteran's Affairs in 2018/19 to legal aid organizations, e.g. Legal Aid NSW, etc. "*



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).