



## Decision and Statement of Reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of Lachlan, Position Number 62230915, Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

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**Applicant:** Mr Alan Ashmore

**Decision date:** 29 July 2019

**FOI reference number:** FOI 29698

**Sent by email:** [foi+request-5500-f562c661@righttoknow.org.au](mailto:foi+request-5500-f562c661@righttoknow.org.au)

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Dear Mr Ashmore,

### Freedom of Information Request: FOI 29698

#### Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has identified one (1) document relevant to your request.
2. I have made a decision to create and release the document in part.
3. The document that I have chosen to grant access in part is set out in **Schedule 1**, together with the applicable exemption provision. Where I have decided to grant access in part, I have provided access to an edited copy of the document, modified by deletions in accordance with section 22(2) of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

#### Authority to make decision

4. I, Lachlan (Position Number 62230915), Information Access Officer, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department, in accordance with section 23(1) of the FOI Act.

## Summary

5. On 7 July 2019, you made a request for access to a document in the possession of the Department. Your request sought access to:

*...The information I am seeking is in regard to Compensation for Defective Administration (CDDA) claims in 2018/19. This includes the following:*

- *The number of CDDA claims made*
- *the number of CDDA claims accepted, and*
- *the total amount paid...*

6. As no extensions of time have been applied to process your request, a decision on your request is due by 7 August 2019.

7. I have decided not to impose a charge in relation to this request, in accordance with Regulation 8 of the *Freedom of Information (Charges) Regulations 2019*.

## Material taken into account

8. 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 grant partial access to the document is as follows.

9. I have taken the following material into account in making my decision:

- the terms of your request;
- 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;
- 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 15 Request for Access
  - Section 17 Requests involving use of computers etc (e.g. request for the Department to create a document)
  - Section 22 Access to edited copies with exempt or irrelevant material deleted
  - Section 47F Public interest conditional exemptions--personal privacy and

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);

10. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

## **Reasons for decision**

11. I have decided to **grant access** to the document within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

### ***Public interest conditional exemptions--personal privacy (section 47F)***

12. I have found the document to contain personal information that I consider to be exempt from disclosure under the FOI Act. This information is the total value paid by the Department to claimants under the Compensation for Detriment caused by Defective Administration Scheme (**CDDA Scheme**) for the relevant period.

13. 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).

14. 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...*

15. 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.

16. 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.
17. The information I find to be exempt is not well known, does not relate to your own affairs and is not widely accessible through public sources. The amount paid to claimants relates to those individuals specifically and would identify how much those individuals received under the CDDA Scheme. It is possible that claimants could ascertain by the way of deduction through various means, how much other claimants may have received in response to their claims. Given the small number of claims, it is also possible that the claimants' identities could reasonably be ascertained.
18. As noted on the Department's website, the CDDA Scheme is designed to compensate persons who have experienced detriment as a result of defective actions or inaction of a department. It is a scheme that gives the Department the discretion to compensate a claimant in appropriate cases. In accordance with the principles of the Privacy Act, all aspects of an investigation are treated as confidential. This is to ensure appropriate protection of claimants' privacy. As noted above, release of this information could disclose personal information of people other than yourself, and it is unreasonable for this information to be disclosed.
19. Accordingly, I have decided that the part of the document which is listed as exempt in accordance with this provision in **Schedule 1**, meet 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).

*Application of the public interest test:*

20. Section 11A(5) 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.
21. 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; and

(c) disclosure would promote effective oversight of public expenditure.

22. 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;

(h) disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;

(i) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;

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

23. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

24. 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.

***Delete exempt or irrelevant material from documents and provide access to edited copies (section 22)***

25. The Department may refuse access to a document on the ground that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.

26. As explained above, some of the documents subject to your request contain exempt information. On this basis, I have prepared the documents for release by removing that exempt material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

**Access to documents**

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

## Information Publication Scheme

28. 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> . Please note that the Department does not publish details of FOI applicants, it is only details of the FOI request and the documents released in response to the request.

## Your rights of review

29. 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

30. 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.
31. You can make your application for Internal Review in one of the following ways:

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

**Facsimile:** (02) 6289 6337

**Email:** [Information.Law@dva.gov.au](mailto:Information.Law@dva.gov.au)

### OAIC review

32. 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](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

33. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAI: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights>

## Contact us

34. 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 Audit Branch, Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601

**Facsimile:** (02) 6289 6337

**Email:** [Information.Law@dva.gov.au](mailto:Information.Law@dva.gov.au)

Yours sincerely,

**Lachlan (Position Number 62230915)**

Information Access Officer

Information Law Section | Legal Services and Audit Branch

Integrity, Assurance and Communications Division

29 July 2019



## Schedule of documents

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**Applicant:** Mr Alan Ashmore

**Decision date:** 29 July 2019

**FOI reference number:** FOI 29698

Doc No.	Date of document	Document description	Pages	Decision	Exemption provision
1	26 July 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 30 June 2019.	1	Released in part	s 47F





## 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.

### 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).

**11B Public interest exemptions — factors**

*Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

*Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

*Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

*Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## **15 Requests for access (as related to the requirements for requests)**

### *Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

### *Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

## **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.

## **22 Access to edited copies with exempt or irrelevant matter deleted**

### *Scope*

- (1) This section applies if:

- (a) an agency or Minister decides:
  - (i) to refuse to give access to an exempt document; or
  - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
  - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
  - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
  - (i) the nature and extent of the modification; and
  - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

*Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

*Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

**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).

## Public interest conditional exemption

### 47F Public interest conditional exemption—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).