



Statement of reasons issued under the *Freedom of Information Act 1982*

Decision and reason for decision of Jo (Position Number 62210326), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore
Decision date: 7 August 2019
FOI reference number: FOI 29696
Sent by email: foi+request-5502-bd7fe075@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Request: FOI 29696

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and, in accordance with section 17 of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**), I have made a decision to create and grant access in full to one (1) document that meets the scope of your request.
2. The document that I have chosen to grant access to is set out in **Schedule 1**.

Authority to make decision

3. I, Jo (Position Number 62210326), Assistant Director, 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

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

“External legal costs associated with veteran appeals to the Administrative Appeals Tribunal for each of the following years, 16/17, 17/18 and 18/19.

This is to be broken down into the following:

- *Name of legal firm;*
- *Total amount paid to each legal firm, by financial year;*
- *Total number of cases by each legal firm, by financial year;*

Number cases by each legal firm, by financial year:

- *Won by the Repatriation Commission and MRCS;*
- *Won by the veteran;*
- *Settled by consent in the Repatriation Commission and MRCS favour;*
- *Settled by consent in the veterans favour;*
- *Withdrawn by the Repatriation Commission and MRCS and*
- *Withdrawn by the veteran.”*

5. On 2 August 2019, the Department wrote to you to advise that it intended to refuse your request on the basis that a practical refusal reason existed. In particular, the Department advised that processing your request was likely to result in a substantial and unreasonable diversion of resources.
6. On 15 August 2019, you wrote to the Department and agreed to revise the scope of your request to the following:

For the 2016/17, 2017/18 and 2018/19 financial years:

- *Name of law firm*
- *Total amount paid to each law firm for each financial year and*
- *Total number of cases by each law firm by each financial year*

7. On 16 August 2019, the Department sought your agreement to an extension of time to process your request under section 15AA of the FOI Act. On the same day, you agreed to this extension of time and a decision on your request is due by 27 August 2019.
8. 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

9. 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 access to the document follows:

- the terms of your request, dated 7 July 2019, and revised on 15 August 2019;
- the types of information and documents that are in the Department's possession;
- the content of the document 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;
- 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 15 Request for Access
 - Section 17 Requests involving use of computers etc (e.g. request for the Department to create a document); 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 documents within the scope of your request.

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 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

14. 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

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 Audit 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 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-factsheets/foi-factsheet-12-your-review-rights>

Contact us

19. 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

Yours sincerely,

Jo (Position Number 62210326)

Assistant Director

Information Law Section | Legal Services and Audit Branch

Integrity, Assurance and Communications Division

26 August 2019



Schedule of documents

Applicant: Mr Alan Ashmore

Decision date: 26 August 2019

FOI reference number: FOI 29696

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	N/A	Legal expense statistics for 2016-17, 2017-18 and 2018-19	2	Release in full	N/A



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).

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.