



Internal Review decision made under the *Freedom of Information Act 1982*

Decision and reason for decision of Famida (Position Number 62212449), Information Access Officer, Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Alan Ashmore

Date of primary decision: 31 August 2020

FOI reference number (Primary): FOI 36781

Internal review decision date: 12 October 2020

Internal review reference number: IR 38143

Sent by email: foi+request-6450-c8fe9421@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Request: FOI 38143

Decision

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 vary the original decision made by Primary decision maker Molly, Position Number 62213164, Legal Officer, Information Law Section.
3. The primary decision was to refuse your request under section 24A of the FOI Act, on the basis that the requested documents did not exist. Further, a decision was made to refuse your request under section 17 of the FOI Act, on the basis that the requested documents could not be created via the use of a computer system that is ordinarily available to the Department.
4. In varying that decision, I have instead decided to:

- a. Grant and defer full access to one (1) document created under section 17 of the FOI Act.

5. The document that I have created and chosen to defer access to is set out in **Schedule 1**.

Authority to make this decision

6. I, Famida (Position Number 62212449), 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 *Freedom of Information Act 1982 (FOI Act)*.

Summary

7. On 2 July 2020 you made a request for access to a document in the possession of the Department. Your request sought access to:

'...The percentage of high impact errors, (HIE), by each quarter in 2019/2020 for the following:

: MRCA Initial Liability Claims,

: DRCA Initial Liability Claims,

: MRCA Permanent Impairment, and

: DRCA Permanent Impairment.

I request that each of the above categories be further broken up to include the following:

: Number of cases checked.

: Total number of work elements.

: Number of work elements with HIE.

: HIE correctness rate, and

: Average work elements per case to one decimal point...'

8. As an extension of time was applied to process your request in accordance with section 15AA of the FOI Act, you were provided with a decision due on 31 August 2020.

9. On 10 September 2020, you requested an Internal Review of the primary decision. In your request, you specifically noted:

'...I am writing to request an internal review of my FOI request .

This is a most disappointing response as this request was identical to one made 12 months earlier for the 2018-19 financial year. On 29 July 2019 I received the requested information for the first three quarters.

I later lodged an FOI request for the final quarter of 2018-19, a request that was completed in full.

I find it unacceptable that the same information requested under FOI can be provided inside the required timelines last year, yet, this year, you refuse to release the same information.

I also note, "the relevant business area advised that they are currently in the process of checking cases and compiling data for annual reporting requirements and that information will not be available until later on in 2020."

May I respectfully suggest the comment about, "checking cases and compiling data for annual reporting requirements..." could well be untrue. I say this as DVA's Annual Report to the Minister was signed off by the Secretary and others on 2 August 2018, (for 17-18), and 8 August 2019, (for 18-19). I again note your refusal was dated 31 August 2020. I trust this is not game playing on your part.

I request this matter be finalized in full by no later than 30 September 2020. Failure to do so will leave me with no alternative but to write to the Minister and send it via my Federal MP.

Please note that earlier today I lodged a formal complaint about this FOI request that you refused...'

10. In reaching my Internal Review decision, I have undertaken a further review of your FOI request and engaged in further consultation with relevant business areas.
11. As no extensions of time have been applied to the processing of this Internal Review, a decision on your request is due by 12 October 2020.

Material taken into account

12. 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 full access to the document follows.

13. In making my decision, I have had regard to the following factors:
 - the terms of your original FOI request and your request for Internal Review;
 - the types of information and documents that are in the Department's possession;
 - the content of the document that falls within the scope of your request;
 - consultation with relevant business areas of the Department;
 - 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 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 21 Deferment of Access
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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

Reasons for decision

15. I have decided to **defer access** to one document created under section 17 within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Section 21 Deferment of Access

16. The document created under section 17 of the FOI Act is an extract from the Department's Annual Report, which is not yet publicly available.

17. Section 46 of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* provides that Commonwealth entities must prepare and provide an Annual Report to the entity's responsible Minister for presentation to the Parliament.

18. Section 17AB of the *Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)* requires that as soon as practicable after the annual report for an entity has been presented to Parliament, the Annual Report must be published online.

19. Under section 21(1) of the FOI Act, an agency is able to defer the provision of access to a document, relevantly:

- (a) if the publication of the document concerned is required by law – until the expiration of the period within which the document is required to be published; or
- (b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body with the intention that it should be so made available – until the expiration of a reasonable period after its preparation for it to be so presented or made available; or
- (c) if the premature release of the document concerned would be contrary to the public interest – until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest.

20. In processing your FOI request and this internal review request, the Department consulted with the following business areas of the Department in relation to your request:

- The Client Benefits Division.

21. The relevant business areas have advised that the Department's Annual Report has been prepared for the Minister for Veterans' Affairs and Defence Personnel, the Honorable Darren

Chester MP, to table in Parliament in mid to late October 2020. Following the tabling of the Report, the Department will then publish the Annual Report on its website in accordance with section 17AB of the PGPA Rule.

22. As the above-mentioned events are yet to occur, under section 21(1) of the FOI Act, the Department is able to defer access of the Annual Report. I also consider it would be contrary to the public interest to release information in the Annual Report to you before it is tabled in Parliament or published on the Department's website given that these processes are required by law to occur.
23. Accordingly, I find that access to the document should be deferred until it has been tabled in Parliament and published on the Department's website.
24. Once the deferred access period has expired, the Document will be released to you in full.

Access to document

25. The document will be released to you in full once the deferred access period has expired.

Information Publication Scheme

26. 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.
27. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI 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 only publishes details of the FOI request and the documents released in response to the request.

Your rights of review

28. Under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (**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

29. 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

30. 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,

Famida (Position Number 62212449)

Information Access Officer
Information Law Section
Legal Services and Audit Branch

12 October 2020



Schedule of documents

Applicant: Alan Ashmore
Decision date: 12 October 2020
FOI reference number: FOI 38143

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	23/09/2020	High Impact Error Statistics 2019-2020	1	Deferred Access	s 17 s 21



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).

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.

21 Deferment of access

- (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:
 - (a) if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published; or
 - (b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the expiration of a reasonable period after its preparation for it to be so presented or made available; or
 - (c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or
 - (d) if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

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).