



## Internal review decision made under the *Freedom of Information Act 1982*

Decision and reason for decision of Molly (Position Number 62213164), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

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**Applicant:** Julie (Right to Know)

**Date of primary decision:** 2 September 2020

**FOI reference number (Primary):** FOI 36929

**Internal review decision date:** 19 November 2020

**Internal review reference number:** IR 38735

**Sent by email:** foi+request-6463-ddd17ae9@righttoknow.org.au

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Dear Julie,

### Freedom of Information Request: FOI 38735

#### 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 affirm the original decision made by Primary decision maker Famida (Position Number 62212449), Information Access Officer, Information Law Section. That decision was to grant you full access to one (1) document bundle.
3. I have also made a decision to grant full access to this 1 document bundle. The document that I have chosen to grant full access to is set out in **Schedule 1**.

#### Authority to make this decision

4. I, Molly (Position Number 62213164), Legal 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 3 July 2020, you made a request for access to documents in the possession of the Department. Your request was made in the following terms:

*'... Can the Department provide a summary list of all Veteran Centric Reform programs undertaken since its announcement in the 2017-2018 budget?*

*Would also be interested in any summary or evaluation documents relating to the Department's two-year pilot of behaviour-informed design and trial of small-scale policy interventions, referred to in*

*<https://www.dva.gov.au/sites/default/files/files/about%20dva/budgets/2017-18/veterancentricreform.pdf...>*

6. As an extension of time was applied to process your request in accordance with section 15AB of the FOI Act, a decision on your request was due by 2 September 2020.
7. On 2 September 2020, you were provided with a decision relating to access to documents within scope of your request. This decision granted you full access to 1 document bundle in scope of your request.
8. On 3 September 2020, you wrote to the Department advising the following:

*'On 3 August 2020 the Department claimed it had to review over 200 pages of documents within scope, and applied to the OAIC for a 30 day extension under s 15AB to that end, only for it to turn out that the Department only had to review 3 pages of documents (which is something that realistically doesn't meet the s 15AB threshold).*

*Can you explain this rather significant discrepancy, because if you did have to review 200 pages, those 200 pages of documents would have had to have been listed in the schedule that accompanied the decision - which only lists one three page document.*

*Also the decision states that the document provided met both criterion of the scope, whereas it barely meets the first criterion and doesn't meet the second criterion at all, which was "any summary or evaluation documents relating to the Department's two-year pilot of behaviour-informed design and trial of small-scale policy interventions.'*

9. A decision on your internal review was due by 2 October 2020. Unfortunately due to an administrative oversight, your request for internal review was not registered and a decision was not made within the prescribed timeframe. In accordance with section 54D of the FOI Act, as a decision had not been made on your request, the principal officer of the Department was taken to have made a decision personally affirming the original decision. This is also known as a deemed affirmation.

10. The Department will apply for an extension of time in accordance with section 54D of the FOI Act, so as to bring this decision back inside a statutory time period. However, even where a decision has not been issued within the prescribed timeframe, including where the Office of the Australian Information Commissioner (**OAIC**) does not grant the Department an extension of time, the Department retains an obligation to process and finalise a request. I would like to apologise for the delay in issuing this decision to you and any inconvenience it may have caused.
11. On 22 October 2020, the Department received a notification from the OAIC indicating that you had sought Information Commissioner review of the deemed affirmation of FOI 36929.
12. On 22 October 2020, the Department corresponded with the OAIC and yourself indicating that an administrative error had occurred and the Department did not acknowledge or commence reviewing your request for an internal review. The Department advised that it would process the internal review as a matter of priority and provide the OAIC with an update when a decision has been issued.

### **Material taken into account**

13. 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 1 document bundle follows.
14. In my decision I have considered the following:
  - the terms of your primary request and your internal review request;
  - 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;
  - consultation with the relevant Departmental business area;
  - 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

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

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

### **Reasons for decision**

16. I have decided to **grant full access** to the 1 document bundle falling within the scope of your request.
17. As part of the internal review process, the Department undertook further consultation with the Department's Transformation Division, being the relevant business area, in respect of your request (**Transformation**).
18. Transformation advised the following:
- a. That a significant number of documents were required to be reviewed and scoped, as part of the search and retrieval process, in respect of your request.
  - b. That the documents produced in the Department's primary decision were the pages of documents identified by the Department, to meet the description of your request, being for:

*'...a summary list of all Veteran Centric Reform programs undertaken since it's announcement in the 2017-2018 budget?*

*Would also be interested in any summary or evaluation documents relating to the Department's two-year pilot of behaviour-informed design and trial of small-scale policy interventions, referred to in*

*<https://www.dva.gov.au/sites/default/files/files/about%20dva/budgets/2017-18/veterancentricreform.pdf...>*

19. Further, Transformation identified one (1) further document that it considered may have fallen within scope of your request. This document was labelled as the *BI Training Evaluation Report*. Transformation advised that the Department's BI team designed one training program with the Behavioural Economics Team of Australian Government (**BETA**) to help Departmental staff write better letters that were behaviourally informed. The training was rolled out through Year 2 and the team produced the report to evaluate the success of the training. Based on available information, the Department partnered with BETA and the Department of Prime Minister & Cabinet, but none of the initiatives that had been proposed were progressed any further.

20. On 12 November 2020, I wrote to you to seek your view as to whether the above-mentioned training program was the kind of document you may be interested in. Your response of 16 November 2020, indicated that you did not consider this to be in scope, and I confirmed my understanding by return email on 17 November 2020. Your response again also raised your concern about the Department's 15AB extension of time application which noted that the Department had to scope over 200 pages of documents.
21. In respect of your concerns regarding the Department's delay in issuing the primary decision and the Department's application for a section 15AB extension of time, I note the following:
- a. The Department's business area advised that they had to review and scope over 200 pages of material to determine what documents or pages of material they held that may be in scope of your request;
  - b. I have reviewed and confirmed that this material was scoped as part of the original and internal review decision making processes;
  - c. I consider that the Department's request for an extension of time under section 15AB of the FOI Act was necessary and appropriate in respect of the delays and complexities associated with your request. I note in granting the application for an extension of time, the OAIC had regard to the Department's application at the time and made a decision to grant it.
22. The Department wishes to draw your attention to the current pressures it is facing in the relation to the processing of FOI requests. The Department is currently managing both the impact of COVID-19 on different business areas and significant resourcing pressures being experienced by both the Department's Information Law Team and the National Information Access Processing Team.
23. As the Department focuses its efforts on managing the impact of COVID-19 on its critical services and employees, other non-critical services may not be delivered within expected timeframes. During this time, business areas that would ordinarily have capacity to undertake searches and assist in the processing of FOI requests have not always been readily available to provide that assistance.
24. Additionally, the Department's Information Law team and National Information Access Processing Teams process a high volume of Information Access related requests every day and are regularly the third highest recipient of FOI requests across the Commonwealth. These workload demands impact on the manner and timeframe in which the Department can process FOI requests. This high workload and resourcing constraints also means that

broad and significant FOI requests such as yours, does require more time and consideration than a more straight forward access request, which again has an impact on available resources.

25. Despite this, the Department strives to meet statutory timeframes where it can, and whilst the Department manages to meet those timeframes for the majority of access requests, there are some few occasions where timeframes have not been met. When that occurs, the Department continues to process the request as expediently as possible. The Department apologises for the delay experienced in the primary decision and again, for the oversight that saw your request for an internal review missed.

### **Access to documents**

26. The documents released to you in accordance with the FOI Act were provided to you as part of the Department's primary decision. These are available to you through [https://www.righttoknow.org.au/request/veteran\\_centric\\_reforms#incoming-19212](https://www.righttoknow.org.au/request/veteran_centric_reforms#incoming-19212) . Please notify the Department should you require an additional copy of this material.

### **Information Publication Scheme**

27. 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.
28. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log and that this has previously been listed as entry 213. The Department's FOI Disclosure Log can be accessed at <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/foi-disclosure-log>.

### **Your rights of review**

29. Under section 54L of the FOI Act, you should notify the OAIC if you would like the OAIC to continue reviewing the Department's decision in respect of this request.
30. More information about your review rights under the FOI Act is published on the OAIC's website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/> .

## Contact us

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

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

**Facsimile:** (02) 6289 6337

**Phone:** 1800 838 372

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

Yours sincerely,

**Molly (Position Number 62213164)**

Legal Officer

Information Law Section

Legal Services and Audit Branch

19 November 2020



## Schedule of documents

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**Applicant:** Julie (Right to Know)

**Decision date:** 19 November 2020

**FOI reference number:** FOI 36929 (Internal Review)

Document reference	Date of document access	Document description	Page number	Decision	Exemption provision
1	22/07/2020	Power Point Slides on VCR Programs	1	Full Access	N/A





## 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).

**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.

**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).