



## Decision and Statement of reasons issued under the *Freedom of Information Act 1982*

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

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**Applicant:** Geoffrey Shafran

**Decision date:** 9 October 2020

**FOI reference number:** FOI 38184

**Sent by email:** [foi+request-6693-8864f393@righttoknow.org.au](mailto:foi+request-6693-8864f393@righttoknow.org.au)

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Dear Mr Shafran,

### **Freedom of Information Request: FOI 38184**

#### **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 grant full access to that 1 document.
3. The Department has also provided you with a website link to the Statements of Principles (SOPs) determined by the Repatriation Medical Authority (RMA), which are legislative instruments relevant to your request.
4. The document that I have chosen to grant access to is set out in **Schedule 1**.

#### **Authority to make decision**

5. 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

6. On 9 September 2020 you made a request for access to documents in the possession of the Department. Your request was made in the following terms:

*'...I request the specific policy document that is issued to officers that are delegated the powers of the Repatriation Commission for the purposes of conducting their duties under VEA s17...'*

7. As no extensions of time have been applied to process your request, a decision on your request is due by 9 October 2020.
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 full access to the documents follows.
10. In making my decision, I have considered the following factors:
- the terms of your request;
  - the types of information and documents that are in the Department's possession;
  - consultation with relevant business areas of the Department;
  - the content of the document that fall 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

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

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

### **Reasons for decision**

12. I have decided to **grant full access** to the document within the scope of your request. This information is publicly available and has been previously provided to you administratively.

### **Access to documents under FOI Act**

13. Please find below relevant information and the website link to the document that I am granting you full access to:

14. Section 17(1) of the *Veteran's Entitlements Act 1986* (VEA) states:

*'Where a claim is made for a pension under subsection 14(1), or an application is made for an increased pension under subsection 15(1) or for a pension under subsection 15(2), the Secretary shall cause an investigation to be made into the matters to which the claim or application relates.'*

15. CLIK reflects policy made by DVA and is used in the assessment of claims. The Compensation Support and Policy Library is a resource within CLIK that provides policy information delegates can utilise in their investigations and decision making under the Veterans' Entitlements Act 1986. The library includes disability compensation eligibility and an explanation of disability pension, and the various rates at which it can be paid. The following is the link to the e Support Policy Library:

<http://auth-clik.dvastaff.dva.gov.au/compensation-and-support-policy-library>

### **Access to documents under administrative access**

16. Please find below relevant information and the website link to the document that I have referred to you under the Department's administrative access arrangements.

17. Delegates refer to the Statements of Principles (SOPs) determined by the Repatriation Medical Authority (RMA), which are legislative instruments. The SOPs exclusively state what factors must exist to establish a causal connection between particular diseases, injuries or death and service.

18. The SOPs apply to decisions about liability for injuries, diseases and deaths made under both the Veterans' Entitlements Act 1986 (VEA) and the Military Rehabilitation and Compensation Act 2004 (MRCA). The RMA SOP's are accessible from the following link:

<http://www.rma.gov.au/sops/>

### **Information Publication Scheme**

19. 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.
20. 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**

21. 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.
22. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**). In accordance with section 54E(b) of the FOI Act, internal review is not available as the Department did not finalise your FOI request within the prescribed statutory timeframe.

### **Internal review**

23. 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.

24. 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

25. 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

26. 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

27. 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,

**Famida (Position Number 62212449)**

Information Access Officer

Information Law Section

Legal Services and Audit Branch

9 October 2020



## Schedule of documents

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**Applicant:** Geoffrey Shafran

**Decision date:** 9 October 2020

**FOI reference number:** FOI 38184

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	N/A	Compensation and Support Policy Library	N/A	Full Access	N/A
2	N/A	Statements of Principles	N/A	Administrative 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).

**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.

## **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).

### **33 Documents affecting national security, defence or international relations**

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.