



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

Decision and reason for decision of Tayla (Position Number 62217695), Information Access Officer, Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Geoffrey Shafran

Date of primary decision: 9 October 2020

FOI reference number (Primary): FOI 38184

Internal review decision date: 3 December 2020

Internal review reference number: IR 38980

Sent by email: foi+request-6693-8864f393@righttoknow.org.au

Dear Mr Shafran,

Freedom of Information Request: FOI 38980

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 the primary decision maker Famida, Position Number 62212449, Information Access Officer, Information Law Section. That decision was to grant you full access to the Department's CLIK and SOP's website link, directing you specifically to the Compensation and Support Policy Library.

Authority to make this decision

3. I, Tayla (Position Number 62217695), 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

4. On 9 September 2020 you made a request for access to documents in the possession of the Department. Your request sought access to:

'...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...'

5. On 30 September 2020, the Department consulted with you in relation to the searches conducted by the Department to date. The business area had advised that the policy document in which you were seeking was found in a CLIK and SOP, both of which are publically available and were provided to you within the Department's email dated 30 September 2020. At this stage, the Department requested that you consider withdrawing your request as a result of providing you with the relevant links.
6. On 8 October 2020, the Department once again consulted with you regarding potentially withdrawing your request. The Department did not receive a response to either of these correspondences and thereby the Department proceeded with issuing a decision.
7. As no extensions of time were applied to process your request, a decision on your request was due by 9 October 2020.
8. On 9 October 2020, you were provided with a decision relating to access to documents within scope of your request. The outcome of this request was a full access decision to the same website links that were provided to you via email on 30 September 2020.
9. On 3 November 2020, you requested an Internal Review of the primary decision. In your request, you specifically noted:

'...you appear to have s17 and s19 mixed up, I am after the duties of the representative of the Secretary of the Department of Veterans Affairs, not the Delegate of the Repatriation Commission Yours sincerely...'

10. The Department has undertaken additional searches of its records and has been unable to identify any further documents matching the description of your request.
11. As no extensions of time have been applied to process this Internal Review, a decision on your request is due by 3 December 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. I have taken the following material into account in making my decision:
 - the terms of your original request and 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;
 - 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; and
 - 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**.

Supporting or additional information

15. On further review of the website material that the Department has already provided to you as part of the original decision, the relevant business areas advised that you may wish to have regard to the following specific website material within the CLIK's that you have already been referred to:
 - <http://auth-clik.dvastaff.dva.gov.au/compensation-and-support-policy-library/part-2-applying-pension/21-claims/214-assessment-claim/investigation-claim>
 - <http://auth-clik.dvastaff.dva.gov.au/compensation-and-support-policy-library/part-12-compliance-and-obligations/122-information-gathering-powers>

Access to documents

16. The specific documents released to you in accordance with the FOI Act are enclosed.

Information Publication Scheme

17. 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.
18. 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

19. 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

20. 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

21. 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,

Tayla (Position Number 62217695)

Information Access Officer

Information Law Section

Legal Services and Audit Branch

3 December 2020



Schedule of documents

Applicant: Geoffrey Shafran

Decision date: 3 December 2020

FOI reference number: FOI 38980

Document Reference	Date of document	Document description	Pages	Decision	Exemption provision	Additional Comments
1	N/A	Compensation and Support Policy Library	N/A	Full Access	N/A	Additional links provided at paragraph 15 of this decision statement
2	N/A	Statements of Principles	N/A	A Access	N/A	Additional Links provided at paragraph 15 of this decision statement



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.

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).

54A Internal review—access grant decision

- (1) This section applies if an access grant decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The affected third party for the document may apply under this Part for the review (the *internal review*) of the access grant decision.

Note: For affected third party, see section 53C

54C Internal review—decision on internal review

Scope

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the original decision) is made in accordance with this Part.

Decision

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

Notice of decision

- (4) Section 26 extends to a decision made under this section.