



## Internal review decision made 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

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**Applicant:** Julie

Date of primary decision: 7 December 2020

**FOI reference number (Primary):** FOI 39099

**Internal review decision date:** 22 January 2021

**Internal review reference number:** IR 39750

**Sent by email:** [foi+request-6869-08711b5d@righttoknow.org.au](mailto:foi+request-6869-08711b5d@righttoknow.org.au)

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Dear Julie,

### Freedom of Information Request: FOI 39750

#### 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 Tayla (Position Number 62217695), Information Access Officer, Information Law Section. That decision was to grant access to two (2) documents in part and one (1) document in full.
3. I have identified two (2) further documents as falling within the scope of your request and have made a decision to grant access in full to one (1) document and access in part to one (1) document.
4. The document that I have chosen to grant access in part to is set out in **Schedule 1**, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the FOI Act.

## Authority to make this decision

5. 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

6. On 5 November 2020, you made a request for access to documents in the possession of the Department. Your request sought access to:

*'...Dear Department of Veterans' Affairs,*

*For the purposes of the Freedom of Information Act, I request copy of:*

*\* the Department of Veterans' Affairs (including the Repatriation Commission) Gift Register for FY19/20*

*\* the transaction list of all expenses coded as official hospitality for FY19/20*

*\* the transaction list of all expenses coded as (or that would fall under the umbrella of) official travel expenses for the Secretary, for FY19/20 (official travel includes airfare costs, hire car and chauffeur costs, accommodation costs, incidental costs, etc)...'*

7. On 7 December 2020, you were provided with a decision relating to access to documents within scope of your request. The decision was to grant access in part to the following documents created under section 17 of the FOI Act, with material exempt under sections 47E and 47F of the FOI Act:

- Document 1: Gift register for FY 19/20
- Document 2: List of all expenses coded as official hospitality for FY19/20.

8. Access in full was also given to the following document:

- Document 3: Official travel expenses for the Secretary, for FY19/20.

9. On 8 December 2020, you requested an Internal Review of the primary decision. In your request, you specifically noted:

*'...The scope of my FOI request included "a transaction list of all expenses coded as (or that would fall under the umbrella of) official travel expenses for the Secretary, for FY19/20 (official travel includes airfare costs, hire car and chauffeur costs, accommodation costs, incidental costs, etc)". You have provided only copies of Comcar invoices received by the Department for the Secretary's use of ComCars.*

*This is clearly insufficient given the breadth of scope (which includes all official travel expenses, including airfares, meal allowances, etc), and indicates that the Department has failed to process the FOI as it is legally obligated to (given such official travel records are required by law to be retained for at least seven years)...*

10. On the same day, you also emailed the Department with the following inquiry in respect of documents issued to you in the Primary decision:

*'...In respect to the gifts register, is there any Departmental document regarding the accepting of gifts (of which there are quite a few on the register) from vendors the Department pays for goods or services?*

*The reason I ask is that, unlike modest gifts received from customers or clients (if received after any decision affecting them is made), there is a significant probity and integrity issue in accepting gifts from parties that seek contracts from, or are paid for supplying goods and services to, an agency given that even modest gifts (especially if not rare) create a conflict of interest and can improperly influence officers doing procurement functions. This is why a number of agencies have a strict no gifts policy from such contractors/suppliers/tenderers as a result.*

*Also, I noticed a pair of real sapphire earring was put on the gift register as having an estimated value of \$40. This would be a quite low estimate for precious gem earrings, so raises whether an estimate was given specifically to slide under the \$50 threshold of modest gift...*

11. The Department has undertaken additional searches of its records and has identified a further two (2) documents that fall within the scope of your request, as set out above. The documents relevant to your request are listed in the schedule of documents at **Schedule 1**.
12. On 19 January 2021, the Office of the Australian Information Commissioner granted the Department an extension of time of 21 days under section 54D(4) of the FOI Act. A decision on your request is due on 27 January 2021.

## 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 partial access to the documents follows.
- the terms of your primary request;
  - the terms of your request for an Internal Review;
  - 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 provision[s] 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 22 Access to edited copies with exempt or irrelevant material deleted
    - Section 47E Public interest conditional exemptions--certain operations of agencies
    - Section 47F Public interest conditional exemptions--personal privacy; 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**.

## Reasons for decision

15. I have decided to **grant access in part** to one (1) document and **access in full** to one (1) document within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

***Public interest conditional exemptions--certain operations of agencies (section 47E)***

16. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:
- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
  - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
  - (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
  - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
17. The Department's role is to provide support and information to veterans and their families, Australian Defence Force personnel and other categories of people. The services and support which the Department provides include pensions and compensation, health care, rehabilitation and counselling services, amongst other things. It is important that the Department is able to continue to provide these services and to carry out the other legislative functions and administrative and operational processes required of them. Certain processes and specific channels of communication have been implemented which enable clients and other relevant stakeholders to contact the Department in a way that ensures all Departmental resources are managed as efficiently as possible.
18. I have identified that parts of the documents contain the surnames of non-SES Department staff members. I consider that the release of this information could have a substantial adverse effect on the management or assessment of personnel as well as an adverse effect on the proper and efficient conduct of the operations of the agency, including the inability of the Department to retain staff or effectively manage the wellbeing and safety of our staff. Relevantly, some staff have been targeted, insulted or harassed based on disclosure of their details. This presents challenges in managing the welfare of staff and can affect the ongoing management and retention of personnel by the Department. Consequently, in these circumstances, it would not be in the public interest to release this information.
19. Accordingly, I have decided that parts of the documents listed as exempt in accordance with this provision in Schedule 1, meet the criteria for this conditional exemption. Where a

document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act.

*Application of the public interest test:*

20. Section 11A(5) provides that an agency 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 would, on balance, be contrary to the public interest.

21. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

(a) disclosure would promote the objects of the FOI Act, including:

(i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community.

22. I also considered the following factors which do not favour disclosure:

(a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency; and

(b) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

23. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

24. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

***Delete exempt or irrelevant material from documents and provide access to edited copies (section 22)***

25. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited

copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act.

26. As explained above, some of the documents subject to your request contain exempt information. On this basis, I have prepared the documents for release by removing that exempt material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

### **Access to documents**

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

### **Information Publication Scheme**

28. 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.
29. 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**

30. 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](http://www.oaic.gov.au)  
**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Phone:** 1300 363 992  
**Email:** [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au)

31. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

### Contact us

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

**Post:** Information Law, 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,

**Jo (Position Number 62210326)**

Assistant Director

Information Law Section

Legal Services and Audit Branch

22 January 2021





## Schedule of documents

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**Applicant:** Julie

**Decision date:** 22 January 2021

**FOI reference number:** FOI 39750 (Internal Review of 39099)

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	16 November 2020	Document created in accordance with section 17 of the FOI Act: Gift Register for FY19/20.	2	Part access	s 47E s 47F s 22
2	19 November 2020	Document created in accordance with section 17 of the FOI Act: List of all expenses coded as official hospitality for FY19/20.	2	Part access	s 47E s 22
3	31 July 2019 to 31 March 2020	Official travel expenses for the Secretary, for FY19/20.	17	Full access	N/A
4	N/A	Document created in accordance with section 17 of the FOI Act: Secretary Travel data FY19/20	24	Full access	N/A
5	27 July 2020	DVA People Policy – acceptance of gifts benefits and sponsorships	10	Part access	s 22 s 47E

Documents 1-3 were released with the Primary Decision of 7 December 2020 and are not re-released with this Internal Review decision



## 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.

## **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.

## **22 Access to edited copies with exempt or irrelevant matter deleted**

*Scope*

- (1) This section applies if:

- (a) an agency or Minister decides:
  - (i) to refuse to give access to an exempt document; or
  - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
  - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
  - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
  - (i) the nature and extent of the modification; and
  - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

*Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

*Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

**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).

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

#### **54D Internal review—deemed affirmation of original decision**

(1) This section applies if:

- (a) an application for internal review has been made to an agency; and
- (b) the period (the initial decision period) of 30 days (as mentioned in subsection 54C(3)) has ended since the day the application for internal review was received by the agency; and
- (c) notice of a decision on the application has not been received by the internal review applicant.

(2) Subject to this section:

- (a) the principal officer of the agency is taken to have made a decision personally affirming the original decision on the last day of the initial decision period; and
- (b) notice of the decision is taken to have been given under section 26 to the internal review applicant on the same day.

*Agency may apply for further time*

(3) However, the agency may apply, in writing, to the Information Commissioner for further time to deal with the application.

(4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency to deal with the application.

(5) If the Information Commissioner allows further time the Information Commissioner may impose any condition that he or she considers appropriate.

(6) Subsection (2) (deemed affirmation) does not apply, and is taken never to have applied, if the agency:

(a) makes a decision on the application within the further time allowed; and

(b) complies with any condition imposed under subsection (5).

(7) However, subsection (2) (deemed affirmation) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (4) if the agency:

(a) does not make a decision on the request within the further time allowed; or

(b) does not comply with any condition imposed under subsection (5).

*No further time allowed*

(8) If subsection (7) (deemed affirmation after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (2) in its operation as affected by subsection (7).