



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

Decision and reason for decision of Jessy (Position Number 62320730), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 22 November 2021

FOI reference number: LEX 45443

Sent by (email, post etc): Via Email: foi+request-7796-1e218a8d@righttoknow.org.au

Dear Mr Ashmore

Freedom of Information Request: LEX 45443

Decision

1. The Department of Veterans' Affairs (**the department**) has undertaken a reasonable search of its records and has identified 238 documents relevant to your request.
2. I have made a decision to refuse access to the documents.

Authority to make decision

3. I, Jessy (Position Number 62320730), Information Access Officer, Information Law Section, am authorised to make decisions in accordance with section 23(1) of the Freedom of Information Act 1982 (FOI Act).

Summary

4. On 2 September 2021 you made a request for access to documents in the possession of the Department. Your request sought access to:

“...the appointment of a National Commissioner for Defence and Veteran Suicide Prevention to inquire into suicides of serving and former ADF members:

I am seeking all documents including the initial brief/direction, and all aspects of the development of this policy by DVA up to and including 4 February 2020.

Documentation to include every document/s including internal emails and minutes of meeting/s pertaining to the development of this policy.”

5. On 12 November 2021, you were notified as required under section 24AB of the *Freedom of Information Act 1982* (FOI Act) that I intended to refuse your request on the basis that a practical reason exists, as defined by section 24AA of the FOI Act.
6. Based on the terms of your request, and from searches undertaken to respond to your request, I was of the view that a practical refusal reason exists because:
 - a. Processing your request is likely to result in a substantial and unreasonable diversion of the Department’s resources from its other operations (section 24AA(1)(b) of the FOI Act).
7. Section 24 of the FOI Act provides that if the department is satisfied that a practical refusal reason exists in relation to a request, the department must undertake a consultation process with you, and if, after that consultation process, the department remains satisfied that the practical refusal reason still exists, the department may refuse to give you access to the documents subject to the request.
8. On 17 November, you provided a revised scope being:

“I am seeking all documents including the initial brief/direction, and all aspects of the development of this policy by DVA from the starting date up to and including the first 21 days from the initial brief/direction.”
9. Despite the revision of scope, I am still satisfied that a practical refusal reason exists in relation to your request.
10. The business area advised that the voluminous number of documents identified could only be produced within a secure environment.
11. Consultation was required with another agency as the material is classified as sensitive. The agency was unable to review the documentation due to the voluminous nature which would require up to approximately 50 hours.

12. As extensions of time were applied to process your request in accordance with section 15AA, and 15AB of the FOI Act, a decision on your request is due by 22 November 2021.

Administrative access for a document

13. I am aware that you have requested a document that shows the date that the department commenced work on the proposal for the appointment of a National Commissioner for Defence and Veteran Suicide Prevention.
14. If such a document exists and it is not a cabinet document then the department will look to provide it to you administratively.
15. We are prioritising these searches and will provide you with an update tomorrow.

Material taken into account

16. 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 refuse access to the documents follows.
17. I have taken the following material into account in making my decision.
 - the terms of your request and as revised
 - 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.

Reasons for decision

18. I have decided to **refuse access** to the documents within the scope of your request in accordance with the following exemption in the FOI Act:
19. ***Power to refuse request - diversion of resources***
 - a. If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - i. must undertake a request consultation process (see section 24AB); and

- ii. if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.

20. Section 24AA(1)(a) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

Request is substantial

21. Following enquiries, I estimate that 80 hours of processing time is required to deal with this request. The reasons for this are as follows:

- I estimate that there are approximately 1692 pages of material relevant to your request. These 1692 pages are contained over 238 documents identified as being relevant to your request.
- The material relevant to your request is considered sensitive in their entirety or contain sensitive material.
- The relevant documents will need to be analysed and a decision made before they can be released to you. The documents subject to your request are in relation to policy development leading to the appointment of a National Commissioner for Defence and Veteran Suicide. It is estimated that:
 - Searching and collating documents has taken 25 hours.
 - 10 hours will be required to consider the exemptions and applicable redactions to the documents;
 - 50 hours will be required to consult with another agency and for that agency to consider exemptions and applicable redactions;
 - 5 hours will be required to prepare a decision and statement of reasons; and
 - 10 hours will be required to prepare a schedule of documents to accompany the decision and statement of reasons.

22. Taking these factors into account, I have concluded the request is substantial.

Request is unreasonable

23. I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 90 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.

24. Taking this into account, I am of the view that the request is unreasonable, as well as substantial.

Yours sincerely,

Jessy (Position Number 62320730)

Information Access Officer

Information Law Section

Legal Services and Audit Branch

22 November 2021



Your Rights to Review

1. 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.

Internal review

2. 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.
3. 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

OAIC review

4. 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

Post: Director of FOI Dispute Resolution
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

5. 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

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

Online: <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>

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