



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

Decision and reason for decision of Natalie (62214719), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Verity Pane

Decision date: 2 February 2022

FOI reference number: FOI 47339

Sent by email: foi+request-8226-6602b843@righttoknow.org.au

Dear Ms. Pane,

Freedom of Information Request: FOI 47339

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has identified thirty-six (36) documents relevant to your request.
2. I have made a decision to **grant full access** to seventeen (17) documents and **part access** to eighteen (18) documents.
3. I have also made a decision to refuse access to one (1) document falling within scope of your request under section 24A of the FOI Act, on the basis that it cannot be found.
4. The documents that I have chosen to grant access in part are 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 *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

Authority to make decision

5. I, Natalie (Position Number 62214719), 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

6. On 23 December 2021 you made a request for access to documents in the possession of the Department. Your request sought access to:

A copy of all s 55G FOI Act varied or substituted decisions made by DVA, each with copy of their corresponding original FOI request, that were created in the last six years (2015-2021).

Only the s 55G decision (and its document schedule) and the original FOI request are in scope - documents released by the s 55G decision are outside the scope of this FOI.

Personal information to be redacted as irrelevant.

DVA can elect to provide a table in lieu listing FOI Reference, Date of FOI request, Date of Original FOI Decision and Date of s 55G decision as a summary table instead if it so wishes (as a way to reduce the amount of consideration/redaction to none).

7. A number of internal consultations were undertaken in order to ascertain the location of the request documents, in addition to searches of multiple DVA databases and shared hard drives. To the best of my knowledge these documents represent all section 55G decisions made by the Department within the requested date period.
8. 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 is due by 2 February 2022.

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 partial access to the documents follow.
10. I have taken the following material into account in making my decision:
- the terms of your request;
 - 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 provisions of the FOI Act relevant to my decision:
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 24A Document cannot be found or does not exist
 - Section 47E Public interest conditional exemptions--certain operations of agencies
 - Section 47F Public interest conditional exemptions--personal privacy
- 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 part access** to the documents within the scope of your request, subject to the following provisions and exemptions in accordance with the FOI Act:

Requests may be refused if documents cannot be found, do not exist or have not been received (section 24A)

1. I have decided to refuse part of your request in accordance with section 24A(1) of the FOI Act.
2. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:
 - the terms of your request;
 - the subject matter of the document;
 - the Department's current and past file management and record practices; and
 - the individuals and areas within the Department who may be able to assist with the location of the information you seek access to.

3. Despite the reasonable searches undertaken, I am satisfied that a copy of the original FOI requests for ICR 22387 (MR18/00223) and FOI 20229 cannot be found.

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

13. 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.
14. I have redacted the surnames names and other identifying details of non-Senior Executive staff members contained within the document to give effect to this conditional exemption.
15. The Department's role is to provide support and information to veterans and their dependants and other categories of people. 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.
16. I consider that release of the exempt information in these circumstances would adversely affect the Department as the established lines of communication could then be bypassed. It is reasonable to expect that this would disrupt and adversely affect the operations of the Department.
17. Further, 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.

18. Accordingly, I have decided that parts of the document 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.
19. Where the document contains information exempt under section 47E of the FOI Act, an edited copy has been prepared (pursuant to section 22 of the FOI Act) with these details redacted.

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.
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;
 - (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.

Public interest conditional exemptions--personal privacy (section 47F)

25. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).
26. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Privacy Act). Personal information is defined in section 6 of the Privacy Act as:
 - ..information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (a) whether the information or opinion is true or not;
 - (b) whether the information or opinion is recorded in a material form or not.
27. The elements of 'personal information' are:
 - (a) it relates only to a natural person (not, for example, a company);
 - (b) it says something about the individual;
 - (c) it may be in the form of an opinion, it may be true or untrue, and it may form part of a database;
 - (d) the individual's identity is known or is reasonably ascertainable using the information in the document.
28. If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

- (c) the availability of the information from publicly accessible sources; and
- (d) any other matter I consider relevant.

29. The document contains the surnames of non-Senior Executive staff members. Release of this information would identify these individual staff members. Further as noted above, some staff have been targeted, insulted or harassed based on disclosure of their details. I therefore consider that this information meets the definition of personal information and that it would be unreasonable to release this material.
30. Accordingly, I have decided that parts of the document which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for 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).

Application of the public interest test:

31. 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.
32. 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.
33. I also considered the following factors which do not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the fair treatment of individuals;
 - (b) disclosure could reasonably be expected to harm the interests of an individual or group of individuals; and
 - (c) disclosure could reasonably be expected to prejudice the management function of an agency.
34. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

35. 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)

36. 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. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant (or out of scope) to the request.

37. In respect of material that has been removed as irrelevant to your request, I note the following:

- a. that terms of your request agreed to the removal of third party personal information as out of scope; and
- b. document number 18, as outlined in Schedule 1, consists of an initial FOI request in addition to other information outside the scope of your request.

38. As explained above, some of the documents subject to your request contain exempt and irrelevant 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

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

Information Publication Scheme

40. 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.

41. 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

42. 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

43. 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.
44. 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

45. 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

46. 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

47. 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

Yours sincerely,

Natalie (Position Number 662214719)

Information Access Officer

Information Law Section

Legal Services and Audit Branch

2 February 2022



Schedule of documents

Applicant: Verity Pane
Decision date: 2 February 2022
FOI reference number: FOI 47339

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	31/03/21	S55G Decision ICR 46245 (MR21/00377)	9	Full Access	22
2	01/03/21	FOI Request 41100	3	Full Access	22
3	25/02/20	S55G Decision ICR 25042 (MR19/00154)	17	Full Access	22
4	04/03/19	FOI Request 27271	3	Full Access	22
5	01/08/19	S55G Decision ICR 29518 (MR19/00344)	13	Part Access	47E 47F
6	26/04/19	FOI Request 27843	3	Full Access	22
7	20/10/15	S55G Decision OAIC MR15/00103 (DVA: 3122)	11	Part Access	47E
8	12/09/14	FOI Request 14-62	1	Full Access	22
9	24/05/19	S55G Decision ICR 28421	16	Full Access	
10	09/11/18	FOI Request 25062	2	Part Access	47E
11	19/02/20	S55G Decision ICR 26189 (MR18/00789)	11	Full Access	
12	16/07/18	FOI Request FOI 23543	2	Part Access	47E
13	31/05/19	S55G Decision ICR MR18/00860	17	Full Access	
14	27/09/18	FOI Request 24762	2	Part Access	47E
15	31/05/19	S55G Decision ICR MR18/00923	17	Full Access	
16	11/10/18	FOI Request 25080	2	Part Access	47E
17	09/07/18	S55G Decision ICR 23018	12	Part Access	47E 47F
18	03/04/18	FOI Request 21762	3	Part Access	22 47E 47F
19	25/05/18	S55G Decision ICR 22387 (MR18/00223)	13	Part Access	47E 47F
20	11/01/17	FOI Request 20229		Refused Access	24A
21	27/05/16	S55G Decision MR16-000113	4	Part Access	47E 47F
22	06/12/15	FOI Request IR8348	5	Part Access	47E 47F
23	03/12/21	S55G Decision 24900 (MR18/00381)	7	Full Access	22
24	27/04/18	FOI Request 22180	1	Full Access	22
25	25/06/19	S55G Decision ICR 27675	11	Full Access	22

26	13/10/18	FOI Request 25071	1	Part Access	47E 47F
27	03/12/21	S55G Decision ICR 27268 (MR18/00895)	7	Full Access	
28	20/10/18	FOI Request 25194	1	Part Access	47E
29	14/06/19	S55G Decision ICR 16271	9	Part Access	47E 47F
30	16/05/17	FOI Request 14608	1	Full Access	22
31	01/04/16	S55G Decision MR15/00263	3	Part Access	47E 47F
32	23/06/15	FOI Request 4680	1	Full Access	22
33	11/02/19	S55G Decision ICR 25294	14	Part Access	47E 47F
34	13/08/18	FOI Request 23465	3	Full Access	22
35	29/04/20	S55G Decision 35015	20	Part Access	47E 47F
36	24/09/19	FOI Request 35015	1	Part Access	47E 47F



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).

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.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and

- (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

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).

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

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