



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

Decision and reason for decision of Andrew (Position Number 62329538), Information Access Unit, Department of Veterans' Affairs

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**Applicant:** Verity Pane

**Decision date:** 21 March 2022

**FOI reference number:** LEX 47867

**Sent by email:** foi+request-8391-570cafe3@righttoknow.org.au

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Dear Ms Pane,

### **Freedom of Information Request: LEX 47867**

#### **Decision**

1. I have decided to refuse your request under section 24(1) of the FOI Act because a practical refusal reason still exists under section 24AA of the FOI Act. I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations as specified in section 24AA(1)(a)(i) of the FOI Act.
2. The reasons for my decision, including the relevant sections of the FOI Act, are set out below.

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

3. I, Andrew (Position Number 62329538), Information Access Officer, Information Access Unit, 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 2 December 2021, you made a request for access to documents in the possession of the department. Your request sought access to:

*I seek copy of the Secretary's Estimates briefings (often referred to as the Estimates book) for the Estimates appearances in June 2021 and October 2021*

*These are the documents the Department prepares for the Secretary to read and take with her, to refer to if necessary, during her Estimates appearances.*

5. On 3 March 2022, I wrote to give you notice under section 24AB(2) of the FOI Act of my intention to refuse access because a practical refusal reason existed in relation to your request, as it was too voluminous and complex to process. I gave you an opportunity to consult with the department and invited you to revise the scope of your request to remove the practical refusal reason.

6. On 11 March 2022, you responded to my consultation notice and advised that you did not wish to withdraw your request but did make a revision to its scope.

7. You stated that:

*As to the other issues you raise about requiring extensive third party consultations with individuals litigating against DVA, along with a ridiculous claim as also requiring separate consultations with every family member of theirs (not party to the litigation), that would be privileged material you would claim exemption on anyway.*

*As I didn't request identifying personal information of private individuals, including litigants in legal action against DVA, that would be an agreed variation of irrelevant material - Names and other identifying information of private individuals, other than corporate or public officials carrying out their official functions, is exempt under s 22.*

8. As the 30 day processing period resumed upon receipt of your response, a decision on your request is due by 21 March 2022.

## Material taken into account

9. I have taken the following into account in making my decision:

- your original request dated 9 February 2022 and your revised request dated 11 March 2022;
- the documents that fall within the scope of your request;
- the resources that would have to be used:
  - in identifying, locating and collating the documents within the records of the department
  - in examining the documents
  - to decide whether to grant, refuse or defer access to documents in full or in part
  - in making a copy, or an edited copy of the documents, and
  - in preparing and notifying you of the decision in relation to the request
- consultations with departmental officers and business areas about the nature of the documents and the operating environment and functions of the department
- sections 24 and 24AA FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

10. The provisions of the FOI Act which are relevant to my decision are set out in **Schedule 1**.

### **Reasons for decision**

11. Following the request consultation process outlined above, I am satisfied that a practical refusal reason still exists because the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations.

12. The reasons for my decision are outlined below.

13. By your revised scope, I understand that you have agreed to remove the personal information of all private individuals, including litigants, from the scope of your request on the basis that this information is out of scope under section 22 of the FOI Act. I consider that this revised scope does reduce some of the time required to process your request, because I will not be required to identify and consult with those individuals under section 27 of the FOI Act, before I can make a decision in respect to the release of any of that information.

14. However, notwithstanding that revised scope of your request, given the highly sensitive and privileged nature of the Secretary's briefs I consider the time required to process your request continues to place an unreasonable and substantial diversion on the department's resources.

15. The need to consult with third parties regarding personal information under section 27A of the FOI Act was only one factor which contributed to the overall practical refusal reasoning.
16. There still exists the need to undertake thorough consultation with 11 internal business areas, who are the policy owners of the content of the Secretary's briefs. There is also a need for direct consultation with the Secretary's office.
17. Under your revised scope, while the department would not be required to consult under section 47F of the FOI Act, I would still be required to consider, at a minimum, the following provisions of the FOI Act:
  - a. Section 22 – Access to edited copies with exempt or irrelevant matter deleted
  - b. Section 42 – Legal Professional Privilege
  - c. Section 45 – Documents containing material obtained in confidence
  - d. Section 47C – Public interest conditional exemptions – deliberative processes
  - e. Section 47E – Public interest conditional exemptions – certain operations of agencies
  - f. Section 47H – Public interest conditional exemptions – research.
18. I will then need to prepare my statement of reasons and redact documents for release. As explained in the consultation notice, this will take significant time for a request of this nature and size.
19. Based on the sampling time estimates provided in my consultation notice, I estimate that it would take in excess of 100 hours of processing time to process your request. I am satisfied that the processing of your request would divert substantial department resources from performing other functions.
20. For the purposes of deciding whether your request would unreasonably divert the resources of the department from its other operations, I have considered whether the substantial diversion of resources would be unreasonable having regard to:
  - the staffing resources available to the department
  - the impact that processing the request may have on other work in the department, including FOI processing
  - your cooperation in framing the request to reduce the processing workload
  - whether there is a significant public interest in the documents requested.
21. I have taken into consideration that processing your request would divert significant resources from processing FOI requests made to the department by other applicants. I note

that you have declined to sufficiently revise your request along the lines suggested in the consultation notice, such as by choosing certain briefs that relate to your particular areas of interest within the department, which would have had the effect of dramatically reducing the processing workload when compared to processing all 135 briefs.

22. I recognise that there may be some public interest in the content of some of the documents which come within the scope of your request being released, and that the disclosure of some of the documents may inform the public about the department's operations and enhance scrutiny of the department's decision making. However, based on the sample of documents I have reviewed, this public interest needs to be balanced against the prejudice that may flow to the department and its clients if information that is sensitive, and, in some cases, deliberative, commercial and /or confidential, being released. In weighing these factors both for and against disclosure, I have decided that the factors against disclosure outweigh those in favour of disclosure at this time.
23. For these reasons, I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations, namely the processing of other FOI requests and supporting those who serve or have served in defence of our nation and their families.
24. I have found that a practical refusal reason exists in relation to your request for access to the documents, following a request consultation process undertaken in accordance with section 24AB of the FOI Act. Accordingly I have decided to refuse your request under section 24(1) of the FOI Act.

### **Your rights of review**

25. 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 quicker resolution of your concerns.

### **Internal review**

26. 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.
27. You can make your application for Internal Review in one of the following ways:

**Post:** Information Access Unit, Department of Veterans' Affairs  
GPO Box 9998, Brisbane QLD 4001

**Facsimile:** (02) 6289 6337

**Email:** [Information.Access@dva.gov.au](mailto:Information.Access@dva.gov.au)

### OAIC review

28. 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:** 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](mailto:FOIDR@oaic.gov.au)

29. 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

30. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

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

**Post:** Information Access Unit, Department of Veterans' Affairs  
GPO Box 9998, Brisbane QLD 4001

**Facsimile:** (02) 6289 6337

**Phone:** 1800 838 372

**Email:** [Information.Access@dva.gov.au](mailto:Information.Access@dva.gov.au)

Yours sincerely,

**Andrew (Position Number 62329538)**

Information Access Officer

Information Access Unit

Department of Veterans' Affairs

21 March 2022



## 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).

**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.

**24 Power to refuse request--diversion of resources etc.**

- (1) 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:
- (a) must undertake a request consultation process (see section 24AB); and
  - (b) 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.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
  - (b) the requests relate to documents, the subject matter of which is substantially the same.

**24AA When does a practical refusal reason exist?**

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:
- (a) the work involved in processing the request:
    - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
    - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
  - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
- (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
  - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
    - (i) examining the document; or
    - (ii) consulting with any person or body in relation to the request;
  - (c) making a copy, or an edited copy, of the document;
  - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
- (a) any reasons that the applicant gives for requesting access; or
  - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
  - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

## **24AB What is a request consultation process?**

### *Scope*

- (1) This section sets out what is a request consultation process for the purposes of section 24.

### *Requirement to notify*

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
  - (b) the practical refusal reason;
  - (c) the name of an officer of the agency or member of staff of the Minister (the contact person ) with whom the applicant may consult during a period;
  - (d) details of how the applicant may contact the contact person;
  - (e) that the period (the consultation period ) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

### *Assistance to revise request*

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), reasonable steps includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
  - (b) providing the applicant with any information that would assist the applicant to revise the request.

### *Extension of consultation period*

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

### *Outcome of request consultation process*

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
- (a) withdraw the request;
  - (b) make a revised request;
  - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
  - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

### *Consultation period to be disregarded in calculating processing period*

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

### *No more than one request consultation process required*

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.

## **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).