



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

Internal review decision and reasons for decision of Joanna (Position Number 62329542), Information Access Officer, Information Access Unit, Client Access Rehabilitation Branch, Department of Veterans' Affairs

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**Applicant:** Ms Verity Pane  
**Date of primary decision:** 21 March 2022  
**Primary decision reference number:** LEX 47867  
**Internal review decision date:** 22 April 2022  
**Internal review reference number:** LEX 48652  
**Sent by email only:** [foi+request-8391-570cafe3@righttoknow.org.au](mailto:foi+request-8391-570cafe3@righttoknow.org.au)

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Dear Ms Pane,

### Freedom of Information Internal Review Request: LEX 48652

1. The purpose of this letter is to give you a decision about your request for internal review under the *Freedom of Information Act 1982 (FOI Act)*.
2. I have made a decision to affirm the original decision.

### Authority to make this decision

3. I, Joanna (Position Number 62329542), Information Access Officer, Information Access Unit, am an officer authorised by the Secretary of the Department of Veterans' Affairs (**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 to review decisions about access to documents under section 54C.

### Summary

4. On 9 February 2022, 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, the department gave you notice under section 24AB(2) of the FOI Act of its intention to refuse access because a practical refusal reason existed in relation to your request, as it was too voluminous and complex to process. The department gave you an opportunity to consult and invited you to revise the scope of your request to remove the practical refusal reason.
6. On 11 March 2022, you responded to the consultation notice, noting that you did not wish to reduce the scope of your application. You also stated the following:

*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.*

7. A decision was due to be made by 21 March 2022, taking into account time the department has to make a decision when a consultation process is carried out under section 24AB of the FOI Act.
8. On 21 March 2022, you were provided with a decision which refused your request under section 24(1) of the FOI Act because a practical refusal reason was found to exist under section 24AA of the FOI Act.
9. On 23 March 2022, you requested an internal review of the primary decision. However, in requesting an internal review, you quoted the incorrect LEX number. The department was not in a position to confirm which matter your application for internal review was made in relation to, until receipt of correspondence from you on 13 April 2022. By that correspondence, the department confirmed that you were requesting an internal review of LEX 47867. Notwithstanding the delay, the department has processed your internal review on the basis that it was received on 23 March 2022.
10. As no extensions of time have been applied to process this internal review, a decision on your request is due by 22 April 2022.
11. I have decided not to impose a charge in relation to this request, in accordance with regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*.

## **Decision**

12. I have made a decision to affirm the original decision made by Information Access Officer, Andrew (Position Number 62329538) to refuse your application under section 24(1) of the FOI Act, on the basis that a practical refusal reasons exists.

13. I have based my decision on the following documents:
  - a. Completed search minute in relation to LEX 47867 (dated 25 February 2022),
  - b. Request Consultation Notice due to existence of a practical refusal in relation to LEX 47867 (dated 3 March 2022), and
  - c. Decision and Statement of Reasons in relation to LEX 47867 (dated 21 March 2022).
14. Provisions of the FOI Act that I have relied upon to decide this internal review decision are outlined in **Schedule 1**.

### **Remarks on primary decision**

15. On 21 March 2022, Information Access Officer, Andrew (Position Number), made the decision to refuse your request under section 24(1) of the FOI Act because a practical refusal reason existed under section 24AA of the FOI Act. He was 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.
16. In conducting this internal review, I have reviewed the search requests and consultations undertaken with the relevant business unit. I have reviewed the search minute completed by the business unit, which outlines that 135 documents (equally to approximately 1,381 pages) as being within the scope of the application. The search minute provided by the business unit also highlights the sensitivity of the documents, and that consultation would be required with each business area or owner of each brief.
17. A Senior Executive Staff member of the relevant business unit has certified that reasonable searches were conducted to locate the documents within the scope of your request, and I accept this certification.
18. Based on this initial enquiry with the business unit and sampling some of the documents within scope, the deciding officer estimated approximately 11.25 hours would be required to undertake an initial review of the documents.
19. However, once an initial review of the documents was completed, given the sensitivities of the documents requested, this meant that for the department to make a full and proper decision of the documents, extensive consultation would be required with each business unit involved in each particular document. It is understood there would have been eleven (**11**) business units.
20. When undertaking internal consultations with a business unit, time is required to work with the business unit to fully understand the context of each document and determine whether certain information should be released. A period of 7 days is usually given to internal business units to consider information that may be released and provide information to the Information Access Unit to assist us in making a decision as to whether documents should be released or not. I note that the original

deciding officer estimated the consultation process would take approximately 44 hours (being 4 hours per business unit). I believe this estimate to be conservative, as in practice business units can sometimes take longer to respond to our requests for consultations, particularly when sensitive information is involved.

21. Only after the context of a document is fully understood can the FOI decision maker determine whether any exemptions under the FOI Act are applicable to information within the documents or the documents as a whole. Therefore, time would need to be taken to consider the responses of business units, and whether information can be removed. The original FOI decision maker, after having looked through various documents within the scope of the application, noted that the following provisions “at a minimum” were likely to be considered in a decision for your request:
  - 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.
22. Considering whether an exemption applies, whether conditional or not, involves an evaluation process for each specific piece of information, and whether a certain test can be met for such an exemption to apply. Taking into consideration the fact that the deciding officer would have had to consider the responses of 11 internal business units and then go on to review the 1,381 pages of information, whilst considering whether the various tests in relation to the above provisions apply, this would have been a significant task. The original deciding officer estimated such a task would be likely to take more than 100 hours of processing time.
23. The deciding officer also identified that personal information of third-party individual’s information was contained in some of the documents within the scope of the application. In its consultation notice to you on 3 March 2022, the department estimated it would take approximately 50 hours to consult such individuals. However, as noted above, you advised the department on 11 March 2022 that you agreed to the removal of personal information of “*private individuals, including litigants in legal action against DVA*” under section 22 of the FOI Act. I accept that this does reduce the time required to consult with third party individual. However, time would still need to be taken to remove any identifying information of the third parties pursuant to section 22 of the FOI Act.
24. In assessing the resources of the department, the original deciding officer considered the following:
  - a. The staffing resources available to the department, and
  - b. The impact that processing the request may have on other work in the department, including FOI processing.
25. The Information Access Unit team is made up of 37 staff members, who are a mix of full time and part time employees. Approximately 7 of those team members are responsible for the administrative role

of registering applications and responding to general enquiries, leaving the remaining 30 staff members responsible for managing cases and making FOI decisions. Each staff member has approximately 15 to 20 matters which they are responsible for, each which have a statutory timeframe that needs to be met. If an unreasonable amount of time were to be spent processing one application, this would impact the department's response to other applicants.

26. I have also considered the public interest in the documents within the scope of the request, as the FOI decision maker did at paragraph 22 of his original decision. I agree that the disclosure of the documents may promote the objects of the FOI Act, inform debate on matters of public importance and promote effective oversight of public expenditure. However, this does not outweigh the unreasonableness of the department processing the application, in addition to the fact that it is not clear what information would be released (if released) at this point, nor how the release would prejudice the flow of the department (given the context of the document).
27. After reviewing the determinations of the original deciding officer, I am satisfied the correct and preferable decision was made 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.

## Your rights of review

28. Under section 54L of the FOI Act, if you are dissatisfied with my decision, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner 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

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**In person:** Level 3, 175 Pitt Street, Sydney NSW.

29. More information about your review rights under the FOI Act is published by the Office of the Australian Information Commissioner: [Reviews and complaints - Home \(oaic.gov.au\)](http://www.oaic.gov.au/reviews-and-complaints).

## Contacts

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

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

**Email:** [information.access@dva.gov.au](mailto:information.access@dva.gov.au)

Yours sincerely,

**Joanna (Position Number 62329542)**

Information Access Officer

Information Access Unit

22 April 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.

**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.

**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.

**54C Internal review—decision on internal review**

*Scope*

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

*Decision*

(2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.

(3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

*Notice of decision*

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