



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

Decision and reason for decision of Joanna (Position Number 62329542), Information Access Officer, Information Access Unit, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 25 March 2022

FOI reference number: LEX 48159

Sent by email: foi+request-8510-c69f1e36@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Request: LEX 48159

Decision

1. The Department of Veterans' Affairs (**the department**) has undertaken a reasonable search of its records and has identified three (3) documents relevant to your request (being one draft report dated 17 December 2021 and two attachments).
2. I have made a decision to refuse access to the documents pursuant to section 47C of the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
3. The documents that I have chosen to refuse access to are set out in **Schedule 1**, together with the applicable exemption provision.

Authority to make decision

4. I, Joanna (Position Number 62329542), 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

5. On 24 February 2022, you made a request for access to documents in the possession of the department. Your request sought access to:

... I require the full and unredacted McKinsey Report as presented to DVA on 17 December 2021.

6. On 25 February 2022, the department acknowledged your application and advised you that your decision was due to be decided thirty (30) days from the date the department received your application.
7. I have decided not to impose a charge in relation to this request, in accordance with Regulation 8 of the *Freedom of Information (Charges) Regulations 2019*.

Material taken into account

8. In accordance with section 26(1) 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.
9. 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;
 - 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 11B Public interest exemption – factors
 - Section 15 Request for Access
 - Section 47C Public interest conditional exemptions – deliberative processes; and
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

10. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

Reasons for decision

11. 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:

Public interest conditional exemptions--deliberative processes (section 47C)

12. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, either:

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded, or
- (b) a consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

13. As is publically known, the department engaged independent consultants, McKinsey & Company (**McKinsey**), to review the department's claims processing function. In doing so, McKinsey provided a draft report to the department, dated 17 December 2021, which contains certain findings and recommendations in relation to that function for the department's consideration.

14. McKinsey's review of the department's claims process is not yet complete and the department is currently considering the findings and recommendations made in the draft report dated 17 December 2021. The department has not yet reached a final position on those findings and recommendations.

15. Given the content of the draft report dated 17 December 2021 report and the fact that the department is currently considering the findings and recommendations made (and has not yet reached a conclusion as to whether to adopt those recommendations), I am satisfied that the draft report dated 17 December 2021 is deliberative.

16. Accordingly, I have decided that the documents 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:

17. 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.
18. 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;
 - (ii) reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - (iii) enhance the scrutiny of government decision making.
 - (b) disclosure would inform debate on a matter of public importance; and
 - (c) disclosure would promote effective oversight of public expenditure.
19. I also considered the following factors which do not favour disclosure:
 - (a) disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth;
 - (b) disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency;
 - (c) disclosure could reasonably be expected to prejudice the management function of an agency; and

(d) disclosure could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.

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

21. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. While the draft report dated 17 December 2021 discusses matters the disclosure of which would inform the public about the department's claims handling function, and recommended changes to that function, I consider that to disclose the content of the draft report now, while the department is still considering the findings and recommendations would be contrary to the public interest. I consider the premature disclosure of the draft report would inhibit the department's ability to consider the findings and recommendations of the draft report, together with other material provided to the department as part of the McKinsey review, and could impede the department (and Government's) ability to consider the draft report and make decisions about any changes to the function effectively and efficiently.

22. In view of the above, I am satisfied that the public interest is to withhold the exempt material.

Your rights of review

23. 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

24. 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.

25. 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

OAIC review

26. 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

27. More information about your review rights under the FOI Act is available on the OAIC website: [Reviews and complaints - Home \(oaic.gov.au\)](http://www.oaic.gov.au/reviews-and-complaints).

Contact us

28. 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

Yours sincerely,

Joanna (Position Number 62329542)

Information Access Officer

Information Access Unit

25 March 2022



Schedule of documents

Applicant: Mr Alan Ashmore

Decision date: 25 March 2022

FOI reference number: LEX 48159

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	17 December 2021	DRAFT Short investigation into DVA processing reporting – Discussion document	1 – 15	Refused in full	Section 47C
1(a)	17 December 2021	Attachment 1 – DRAFT Proposed Minister and Secretary Dashboard	16 – 19	Refused in full	Section 47C
1(b)	17 December 2021	Attachment 2 – DRAFT Proposed weekly processing report	20 – 26	Refused in full	Section 47C



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).

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.

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.

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).

Public interest conditional exemptions

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth; or
 - (d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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