



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

Decision and reason for decision of Sara (Position Number 62214764),  
Information Access Officer, Information Access Unit,  
Client Access and Rehabilitation Branch, Department of Veterans' Affairs

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**Applicant:** Ms Verity Pane

**Date of primary decision:** 26 April 2022

**FOI reference number (Primary):** LEX 48748

**Internal review decision date:** 25 May 2022

**Internal review reference number:** LEX 49375

**Sent by email:** foi+request-8653-2f51c26b@righttoknow.org.au

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Dear Ms Pane,

### Freedom of Information Internal Review Request: LEX 49375

#### Decision

1. The purpose of this letter is to give you a decision about your request for internal review for the decision made in LEX 48748 under the *Freedom of Information Act 1982* (Cth) (**FOI Act**)
2. I have made the decision to affirm the original decision made by Suzanne (Position Number 62210948), Information Access Officer, Information Access Unit, Client Access Rehabilitation Branch. That decision was to create and grant access in full to one (1) document within the scope of your request.
3. The document that I have decided to grant access to is set out in **Schedule 1**, together with the applicable provision of the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

#### Authority to make decision

4. I, Sara (Position Number 62214764), Information Access Officer, Information Access Unit, Client Access Rehabilitation Branch, 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

### Original Decision

5. On 26 March 2022, you made a request for access to document in the possession of the Department. Your request sought access to:

*'...I seek a document listing the number of liability and compensation claims DVA has \*received\* for the last full ten financial years, as well as the current partial financial year listed by Act [MRCA, VEA (excluding NLHC claims), and SRCA/DRCA] of entitlement that applies, with Non-Liability Health Care (NLHC) claims listed in their own row/column...'*

6. On 29 March 2022, the Department acknowledged your request via email.
7. As no extensions of time were applied to process your request, a decision on your request was due by 25 April 2022. When a decision due date falls on a weekend or public holiday, the decision may be made the following day. Accordingly, the decision was due 26 April 2022.
8. On 26 April 2022, the Department made a decision to create and grant access in full to one document within the scope of your request, under the following provisions of the FOI Act:
  - a. Section 15 Request for Access
  - b. Section 17 Requests involving the use of computers etc

### Internal Review

9. After receiving the Department's decision on 26 April 2022, you contacted the Department on 3 May 2022 requesting an internal review of the handling of this FOI request. Your internal review request was made in the following terms:

*'...Please pass this on to the person who conducts Freedom of Information reviews.*

*I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'Number of liability and compensation claims received'.*

*DVA has invalidly varied the scope of the FOI made, claiming that some fields of the table produced under s 17 are outside scope 'as the definition of 'document' provided at section 4 of the FOI Act, does not extend to material which is publicly available'. This is an untenable position as this would only apply to a request for a discrete document that had been published (for example, if the FOI had been for copy of the 2020-21 Annual Report, DVA could decide to give administrative access to the published report), not a data in table produced in a s 17 because no such discrete document as applied for existed.*

As such this exclusion of scope made is invalid...'

10. As no extension of time has been applied to process this internal review, a decision on your internal review application is due 2 June 2022.

### **Material taken into account**

11. 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 document follow:
12. I have taken the following material into account in making my decision.
  - the terms of your original request made on 26 March 2022 and the original decision made on this request on 26 April 2022;
  - the records of the searches carried out in processing your original request;
  - the terms of your internal review request made on 3 May 2022;
  - the types of information and documents that are in the Department's possession;
  - the content of the document that falls 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 have also considered the following provisions of the FOI Act relevant to my decision:
    - Section 15 Request for Access
    - Section 17 Requests involving the use of computers etc
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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

### **Reasons for decision**

14. I have decided to affirm the original decision made on 26 April 2022 to create and grant full access to the document within the scope of your request, subject to the following provision in the FOI Act:

### ***Requests involving use of computers etc (s 17)***

15. The primary decision maker consulted with the Client Benefits Division and determined the Department does not hold the information sought in its entirety, in a discrete document.
16. At the conclusion of this consultation process, the decision maker determined that some of the information requested is publicly available and can be found in the Department's Annual Reports.
17. In order to provide you with access to relevant information, the decision maker requested that data be extracted (where not publicly available) to create a document.
18. The document that was created comprises the gross number of compensation claims received for DRCA and MRCA Incapacity claims and NLHC claims for the financial periods FY2011/12 – 2020/21.
19. As requested, the document also contains the gross number of compensation claims received for VEA, DRCA and MRCA for FY2021/22 up to and including 28 February 2022.
20. On the basis of the consultation with the Client Benefits Division, the decision maker determined that all other statistics requested are publicly available in the Department's Annual Reports, as noted above in paragraph 16.
21. For the purposes of the FOI Act, material which is publicly available is not classified as a document of the Department. As such, this material was not included in the document created under section 17 and did not form part of the access decision.
22. I have reviewed the primary decision and the reasoning for creating a document pursuant to section 17, including the content of that document, and am satisfied that the correct and preferable decision has been made by the original decision maker.

### **Access to documents**

23. You were provided with the document previously, on 26 April 2022, as part of the primary FOI decision LEX 48748. I have therefore not enclosed the document again.
24. On 26 April 2022, you were also provided with the link to the Department's Annual Reports.

## Information Publication Scheme

25. 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.
26. Details of your request have been made available in the Department's Disclosure Log and can be identified at Log Number 301.

## Your rights of review

27. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**).

## 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

**Phone:** 1800 838 372

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

Yours sincerely,

**Sara (Position Number 62214764)**

Information Access Officer

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

25 May 2022



## Document schedule

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**Applicant:** Ms Verity Pane

**Decision date:** 25 May 2022

**FOI reference number:** LEX 49375

Document reference	Date of document	Document description	Page number	Decision	FOI Act provision
1	8/04/2022	LEX 48748 – Gross Claims FY 2011/12 – FY 2020/21 & FY 2021/22 or part thereof	1	Full access	s 17



## 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.

**17 Requests involving use of computers etc**

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

- (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
  - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

### **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.

### **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).

#### **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.