



## Revised decision made under section 55G of the *Freedom of Information Act 1982*

Decision and reason for decision of Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Client Access and Rehabilitation Branch, Department of Veterans' Affairs

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<b>Applicant:</b>	Ms Julie
<b>Date of primary decision:</b>	25 May 2022
<b>LEX reference number:</b>	LEX 49947 & LEX 50042IR
<b>Revised decision date:</b>	2 June 2023
<b>Revised decision reference number:</b>	MR22/01212

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Dear Ms Julie,

### Freedom of Information Request: LEX 49947

1. The purpose of this correspondence is to advise you of a revised decision the Department of Veterans' Affairs (**Department**) has made under section 55G of the *Freedom of Information Act 1982* (**FOI Act**) in relation to LEX 49947 (and LEX 50042IR).

### Revised Decision

2. I have made a decision to vary the original decision made by Isaac (Position Number 62329534), Information Access Officer, Information Access Unit, Client Rehabilitation Access Branch. That decision was to refuse your request under section 24A(1)(b)(ii) of the FOI Act, as the documents do not exist.
3. I have made a decision to:
  - (a) grant full access to a document created under section 17(1)(c)(i) of the FOI Act in response to the first part of your request for '*...a table listing the number of emails received by the secretary @ dva.gov.au group inbox (which is used only for this purpose) since its announcement on 1 July 2019...*'; and

(b) affirm the decision that no document(s) relevant to the second part of your request for *'...the number of emails the Office of the Secretary of Veterans Affairs who manage this group inbox decided would be classified as 'no further action' (or in plain English, ignored or decided would receive no response from the Office of the Secretary of Veterans Affairs or the Secretary)...'* exist or are able to be produced under section 17(2) of the FOI Act.

4. The document that I have chosen to grant access to is set out in **Schedule 1**.
5. Given the Department has now granted you full access to the information in the Department's possession that is relevant your request, we seek that you withdraw your review to the Office of the Australian Information Commissioner (**OAIC**).
6. We confirm that we will provide the OAIC with a copy of this revised decision in accordance with section 55G(2)(a) of the FOI Act.

### **Authority to make decision**

7. I, Ramona (Position Number 62336362), Assistant Director, 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**

8. On 3 May 2022, you made a request for access to the following:

*'...In a news article published by The Canberra Times on 19 July 2019 current Veterans Affairs Secretary Liz Cosson (best known for leaving a highly sensitive dossier of classified information in the Qantas Lounge, on the suicide of a veteran) 'promised to change the adversarial culture of the agency ... [known for its] ruthless way it has dealt with veterans for many years', stating 'we are changing ... [and I urge] people to get in touch ... [via] secretary @ dva.gov.au' if they had a problem with any member of Veterans Affairs.*

*I've been advised that the Office of the Secretary of Veterans Affairs manages this secretary @ dva.gov.au inbox and maintains statistics regarding the emails this address receives as well as record of what action it chose to take or not to take.*

*As this information is kept electronically, it is not available in a discrete hardcopy document and therefore can be prepared using resources ordinarily available to Veterans Affairs.*

*I request a table listing the number of emails received by the secretary @ dva.gov.au group inbox (which is used only for this purpose) since its announcement on 1 July 2019, and the number of emails the Office of the Secretary of Veterans Affairs who manage this group inbox decided would be classified as 'no further action' (or in plain English, ignored or decided would receive no response from the Office of the Secretary of Veterans Affairs or the Secretary).*

*To avoid doubt, I do not give consent for notices to be given in any other form other than in unencrypted PDF format sent directly to my address for notices, nor do I give consent for any s 22 redactions...'*

9. On 6 May 2022, the Department acknowledged your request via email.
10. As no extensions of time have been applied to process your request, a decision on your request was due by 2 June 2022.
11. On 25 May 2022, the Department made a decision to refuse your request under section 24A(1)(b)(ii) of the FOI Act, as the documents within the scope of your request do not exist. The decision was made considering the following provisions of the FOI Act:
  - Section 15 Request for Access;
  - Section 17 Requests involving use of computers etc. (e.g. requests for the Department to create a document)
  - Section 24A Request may be refused if documents cannot be found or do not exist

#### Internal Review

12. On 6 June 2022, you requested an internal review of the handling of this FOI request in the following terms:

*'...I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'Statistics on requests sent to Secretary'. LEX 49447...'*

13. As no extension of time was applied to process the internal review, a decision on your internal review application was due by 6 July 2022.
14. On 5 July 2022, the Department affirmed the original decision to refuse your request under section 24A(1)(b)(ii) of the FOI Act, as the documents within the scope of your request do not exist.

## IC Review

15. On 15 September 2022, the OAIC sent the Department a notice under section 54Z of the FOI Act, advising that the OAIC had commenced a review of the Department's decision. It is understood that in seeking the review, you stated:

*'...I request IC review of the attached decision...'*

16. I have decided to make a substituted decision in accordance with section 55G of the FOI Act.

### **Material taken into account**

17. 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 access to one (1) document in scope of the first part of your request, and refuse access to the second part of your request follows.
18. I have taken the following material into account in making my decision:
- the terms of your request on 3 May 2022 and the decision made on 25 May 2022;
  - the terms of your request for an internal review on 6 June 2022 and the decision made on 5 July 2022;
  - the terms of your request for external review through the OAIC;
  - the types of documents that are in the possession of the Department;
  - the availability of information relevant to your request, including the practicality and time required in which the Department may create a document under section 17 of the FOI Act;
  - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
    - Section 15 Request for Access
    - Section 17 Requests involving use of computers etc. (e.g. request for the Department to create a document)
    - Section 24A Request may be refused if documents cannot be found or do not exist

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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

## Reasons for Decision

### Section 17 of the FOI Act – Information Stored in Electronic Form

20. Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).

### Number of emails received by the Secretary@DVA.gov.au inbox since 1 July 2019

21. In searching for information under the first part of your request for '*...the number of emails received by the secretary @ dva.gov.au group inbox (which is used only for this purpose) since its announcement on 1 July 2019...*', I conducted fresh searches with the assistance of the Office of the Secretary team and the IT Security team. As a result of these searches, I was able to determine that the number of emails received by the Secretary@DVA.gov.au inbox between the period 1 July 2019 and 3 May 2022 was **103,013 items**.
22. In accordance with section 17(1)(c)(i) of the FOI Act (outlined above), I extracted this figure to a table which I have decided to release to you in full.

### Emails classified as 'no further action'

23. Regarding the second part of your request for '*...the number of emails the Office of the Secretary of Veterans Affairs who manage this group inbox decided would be classified as 'no further action' (or in plain English, ignored or decided would receive no response from the Office of the Secretary of Veterans Affairs or the Secretary)...*', section 24A(1) of the FOI Act provides that an agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency or Minister is satisfied that the document:
  - (i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

24. I am satisfied that all reasonable steps have been taken to find information relevant to this part of your request, having regard to:
- the terms of your request;
  - a review of the 'Secretary@DVA.gov.au' inbox and records keeping processes;
  - how the team who manages this inbox processes enquiries received (their standard business practices); and
  - the individuals and areas within the Department who may be able to assist with the location of the information you seek access to.
25. Relevantly, I am advised by the relevant team who manage the inbox that statistics covering the number of emails received by the 'Secretary@DVA.gov.au' from veterans, and the actions taken in response to each email, are not kept in discrete form.
26. Despite the searches undertaken, the Department has been unable to identify any documents relevant to your request. Therefore, I am refusing access to this part of your request in accordance with section 24A(1)(b)(ii) of the FOI Act, on the basis that the document does not exist.
27. I have also considered the application of section 17 to determine whether a document could be created to meet the terms of the second part of your request.
28. As previously advised, the group inbox email address 'Secretary@DVA.gov.au' receives a significant number of both internal and external emails. Between 1 July 2019 and 3 May 2022, the Secretary Group inbox received 103,013 emails in total.
29. I have engaged with the Secretary's Office, who have advised that there is no way to determine how many of these emails were or could be classified as 'no further action' without manually retrieving and reviewing every single email in the inbox received during the relevant period and then manipulating the data to manually generate a report with information as to whether any action was/is required and subsequently taken.
30. The IT team were also unable to identify an alternative solution other than by reviewing each email individually.
31. Having regard to the number of emails that would require manual interrogation, I am satisfied that a document cannot be produced by a computer ordinarily available to the Department in accordance with section 17(1) of the FOI Act, without significant manual intervention and manipulation of the data. We consider this type of exercise would likely fall outside of the Department's requirements under section 17 of the FOI Act, given that the information is not currently accessible to the Department in discrete form through use of its computer software of 'other equipment usually available'.

32. Even if the Department did have an obligation under section 17(1) to produce such a document, I consider that the Department would otherwise not be required to comply with subsection (1) on the basis that to do so would substantially and unreasonably divert the resources of the Department from its other operations (in accordance with section 17(2)). This is because to process this request, a staff member would be required to manually extract, review, process and then store information from 103,013 emails. If each email took only 2 minutes to read and then capture relevant information on the outcome in a spreadsheet or other report (noting we consider two (2) minutes to be a conservative estimate as some enquiries are lengthy and complex), this exercise would take approximately 3,433 hours or 143 days to complete. This is well outside the Department's existing resources and capabilities and would amount to a substantially and unreasonably divert the resources of the Department from its other operations.
33. I have therefore decided to affirm the internal review decision as it relates to Part 2 of your request, that no document exists that contains this information, and it is not possible to produce such a document under section 17 of the FOI Act.

### **Access to documents**

34. The document released to you in accordance with the FOI Act is enclosed.

### **Information Publication Scheme**

35. 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.
36. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI Disclosure Log which can be accessed at: <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>. Please note that the Department does not publish details of FOI applicants, it only publishes details of the FOI request and the documents released in response to the request.

### **Application for Information Commissioner Review – request to withdraw application**

37. Should you be satisfied with the Department's revised decision to release in full a document satisfying Part 1 of your request, I kindly ask you to consider withdrawing your application for Information Commissioner Review before the OAIC.

## Your rights of review

38. If you are dissatisfied with my decision, you may advise the OAIC that you do not wish to withdraw your application for IC Review.
39. You can contact the OAIC 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 2000
40. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner:  
<http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

## Contact us

41. 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,

**Ramona (Position Number 62336362)**

Assistant Director

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

2 June 2023





## Schedule of documents

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**Applicant:** Ms Julie A.

**Decision date:** 2 June 2023

**FOI reference number:** LEX 49947 & LEX 50042IR

Doc No.	Date of document	Document description	Pages	Decision	Exemption provision
1	3 May 2022	Table listing number of email in Secretary group inbox since 1 July 2019	1	Release in full	N/A



## 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).

## **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.

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

### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and

- (b) the agency or Minister is satisfied that the document:
  - (i) is in the agency's or Minister's possession but cannot be found; or
  - (ii) does not exist.

*Document not received as required by contract*

(2) An agency may refuse a request for access to a document if:

- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
- (b) the agency has not received the document; and
- (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

## **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).