



Australian Government
Department of Veterans' Affairs

Intake and Early Resolution Team
Freedom of Information Regulatory Branch
Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

By email only: foidr@oaic.gov.au
Attention: Claire Lynch

Your reference: MR22/01958
Our reference: LEX 54130

Dear Claire,

IC Review MR22/01958 – response to notice of review and request for documents

I refer to your correspondence of 20 March 2023 in which you gave notice to the Department of Veterans' Affairs (the department) of an application for Information Commissioner (IC) review in accordance with s 54Z of the *Freedom of Information Act 1982* (FOI Act).

We thank you for the extensions of time provided in relation to this response.

Issues in Contention

The decision under review fell deemed on 1 November 2022 pursuant to s 15AC of the FOI Act.

You have issued the department a direction under s 55(2)(e)(ii) of the FOI Act, to either remake the decision under s 55G of the FOI Act, or provide submissions justifying access refusal.

The department considers that processing the request on its current terms would amount to a substantial and unreasonable diversion of the resources of the department from its other operations in accordance with s 24AA(1)(a). As such, our access refusal submissions are provided below.

However, we understand that the applicant was not afforded consultation and that failure to adhere to requirements under s 24AB would amount to a procedural defect, invalidating any practical refusal decision made. The department would be open to making a decision under s 55G of the FOI Act to

resolve this review, should the applicant revise the scope of their request in a manner that would remove the practical refusal reasons identified in our submissions.

As set out at paragraph 10.100 of the Guidelines, issued under s 93A of the FOI Act (FOI Guidelines), the department provides the following documents in support of its below submissions.

| <u>Documents</u> | <u>Attachment</u> |
|---|----------------------------|
| The FOI request and any correspondence that modifies its scope | Attachment A |
| The names and contact details of anyone who was consulted by the Department formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies) If any third parties have been notified of this IC review a copy of the written notifications. Copies of any correspondence between the Department, and anyone who was consulted, including file notes of any relevant telephone conversations | <i>Not Applicable</i> |
| Records that demonstrate the number of documents and/or pages encompassed by the request, including but not limited to notes of any searches conducted, and consultations with relevant staff members. | Attachments B.1-B.7 |
| An estimation of the number of hours processing time involved, and a breakdown of this time to demonstrate what this is based on - document sampling. | Attachment C |

Submissions

Background

On 01 October 2022, the applicant made a request for access to documents in the possession of the department. The request sought access to:

- '...Excluding identifying personal information, the scope of this foi is for documents*
- a. (whether held in electronic or other forms) sent in 2022 to clients about cost*
 - b. recovery of incapacity payments made to them due to the client receiving a*
 - c. ComSuper pension (including backpay of such a pension)...'*

On 12 October 2022, the department acknowledged the applicant's request via email.

On 25 October 2022, the department sent a s 15AA extension request to the applicant. No response was received by the department to this request.

On 1 November 2022, the decision fell deemed pursuant to s 15AC of the FOI Act.

Business areas consulted

The applicant's request seeks all records for the 2022 calendar year in which the department has corresponded with clients about *'cost recovery of incapacity payments made to them due to the*

client receiving a ComSuper pension’.

The Compensation Processing and Payments Branch and the Incapacity and Permanent Impairments Payments Branch were identified as the team’s most closely related with the request, both teams were asked to complete a Search Minute in October 2022. Both business areas advised that actioning the request would be detrimental to the resources of the business area (Attachments B.1-B.7).

Follow up consultation with the business areas occurred between October 2022 and February 2023 (Attachment B.2) in which, the business areas advised:

- There are over 6500 WA Payees. Identifying which clients may have had communications regarding a cost recovery for a ComSuper payment would involve individually reviewing each incapacity payment client.
- In essence, the department has no means or software ordinarily available to it that could be used to isolate the specific subject matter of the data requested without manually reviewing each email regarding ‘incapacity payments’ sent in 2022.

Final Searches conducted

In May 2023, fresh searches were conducted with search terms/phrases most likely to return results within the scope of the applicant’s request (May 2023 search minute at Attachment B.5). After conducting these searches, the business areas advised:

- As the data requested was not for a particular person, but for a variety of persons with varying individual circumstances, the requested information is too voluminous to effectively isolate, and there is approximately 10,500+ Payees nationally (Attachment B.7).
- This means in order to identify all the documents within scope, a delegate would need to be pulled off the floor to complete the task which could take a couple of months, without considering the department’s existing claims backlog and workload (in Attachment B.4).
- There were several system limitations and as such, not all relevant search data may have been captured however a search of the Process and Payments Branch sent box with subject line of “Incapacity Payments” yielded 6700+ search results alone, and there was an estimated 7500 results (Attachment B.6).

The department considers it has undertaken searches on a flexible and common sense interpretation of the terms of the applicant’s request.

Search and retrieval time (s 24AA(2)(a) and (c))

The random sampling exercise undertaken for these submissions (**Attachment D**) consisted of a sample of 183 documents (estimated 2.5%) out of a total 7429 documents.

Of the 183 documents included in the sampling exercise, 1064 pages were viewed, with an average of 6 pages per document, revealing a total estimated **44,574 pages** requiring processing.

An average time of 02:18 minutes per page was required to review the 186 documents.

The sampling took over 52 hours in total for a 2.5% sample. Due to the size of documents reviewed, sampling of even of 5% would require review of around 400 documents, estimated to take approximately 87 hours.

The translation of this data into the estimated processing time for the total package of documents revealed an estimated processing time of **2143 hours**, or **89 days** for the 7429 documents identified as possibly in scope when re-conducting searches in May 2023 (Attachment C).

Decision making time (s 24AA(2)(b) and (d))

The sampling exercise undertaken does not encompass the estimated decision making time including: consulting with business area/third parties, reviewing documents and determining whether any exemptions apply, time required to draft a decision letter, preparing the documents, applying appropriate redactions and creating a schedule of documents.

The following processes will be required after the initial processing stage of the document bundle:

- *examining the documents for relevance to scope;*
- *deciding whether to grant, refuse or defer access;*
- *consulting with other parties;*
- *redacting exempt material from the documents;*
- *making copies of documents; and*
- *notifying the applicant of the final decision and transmitting any documents.*

Sensitivities

Of the 183 documents sampled, 153 documents would likely require consultation and 168 documents will require redaction on the basis of s 47F of the FOI Act, given that the documents include significant personal information of third parties, given that the applicant has sought sensitive personal information of other clients of the department.

As acknowledged by the applicant in the scope of the request, the relevant documents contain personal information (of DVA officers and clients) and consideration would likely need to be given to sections 22, 45, 47C, 47E(d), 47F, and 47G of the FOI Act when assessing this material for redaction and release.

Consideration of whether the work involved in processing the request would substantially divert the resources of the department from its other operations (s 24AA(1)(a)(i))

Based on the total estimated time of **2143 hours / 89 days** required to process the applicant's request, the department considers that the request remains substantial and that processing the request in its current form would ultimately constitute a substantial diversion of the department's resources, pursuant to FOI Guidelines – [3.116]–[3.121].

Specifically, the department has considered the following factors:

- *the staffing resources the department for FOI processing;*
- *the impact that processing a request may have on other work in the department, including FOI processing;*
- *the fact that the applicant has not cooperated in framing a request to reduce the processing workload; and*
- *there is not a significant public interest in the documents requested.*

Consideration of whether the department's resources would be 'unreasonably' diverted

The department considers that the estimated 2143 hours of initial processing time required to prepare the documents for a decision to be made constitutes an unreasonable diversion of the department's resources.

Specifically, the department has considered the following factors:

- 2143 hours of initial processing time is, at face value, a markedly unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business areas to undertake their designated duties.
- The documents requested by the applicant includes details of numerous individual DVA client claims, all of which are specifically referring to sensitive information provided confidentially by each claimant, and accordingly there is no significant public interest in the documents requested.
- In summary, the department is of the view that it has already spent significant time searching for and sampling the documents identified as within scope of the applicant's request and that it would be an unreasonable diversion of the department's resources to divert upwards of 2143 hours towards the processing of this current request, particularly in circumstances where the applicant acknowledged the likelihood of processing documents that require the exclusion of personal information not belonging to the applicant.

Summary

The department considers that the practical refusal reason could be removed in circumstances where the scope of the request is narrowed and clarified to a more specific scope of documents.

Relevantly, the search minute was provided by the business areas in late February 2023 (Attachment B.3), which details:

'Due to the vagueness of the request the department cannot obtain the information required without causing a substantial and unreasonable diversion of the business areas resources from their core operations. Without a more specific request it is anticipated potentially all incapacity delegates will need to be involved in this task and would require significant manual, time consuming activity to provide this information.'

Further to the advice provided in the department's purported consultation notice, the Applicant may wish to consider:

- a) providing further clarification about the specific documents they are seeking access to;
- b) if they are seeking information about the department's approach to processing of certain claims, asking for policy and procedure documents;
- c) limiting or narrowing the scope of the request to a specific claim;
- d) restricting the date range to a smaller period of time or particular date; or
- e) narrowing the scope to a more specific subject matter (i.e. to a particular issue or claim subject).

The department is committed to working with the applicant to revise the scope of their request to enable the department to process the request and remove the practical refusal reason currently at issue.

The department has no concerns with a copy of these submissions being provided to the applicant, however, the department respectfully requests that the internal material at Attachments B & C is not provided to the applicant as this material contains the personal information of departmental staff (including names and contact details), DVA clients and reveals operational information not widely known outside the department.

Kind regards,

Hannah (PN 62230915)
Senior Legal Officer
Information Law Section
General Counsel Division