



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

Decision and reason for decision of Brett (Position Number 62258141),
Assistant Director, Information Access Unit,
Client Access and Rehabilitation Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 3 November 2022

FOI reference number: LEX 54133

Sent by email: foi+request-9446-a08056a5@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Request: LEX 54133

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and, in accordance with section 17 of the *Freedom of Information Act 1982* (Cth) (**FOI Act**), I have made a decision to create and grant access in full to one (1) document that partially meets the scope of your request. I have made a decision to refuse access to statistics and top three issues from financial year 2018/2019 in accordance with section 24A of the FOI Act as the data cannot be found.
2. The document that I have chosen to grant access to is set out in **Schedule 1**.

Authority to make decision

3. I, Brett (Position Number 62258141), 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

4. On 7 October 2022, you made a request for access to a document in the possession of the Department. Your request sought access to:

'...I am seeking the total number of complaints and complements to Open Arms for each of the last 4 financial years.

In addition I am seeking the top three issues regarding complaints for each of the last 4 financial years...'

5. On 12 October 2022, the Department acknowledged your request via email.
6. As no extensions of time have been applied to process your request, a decision on your request is due by 7 November 2022.

Material taken into account

7. 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 the document follow.
8. I have taken the following material into account in making my decision:
 - the terms of your request on 7 October 2022;
 - 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;
 - 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**);

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

Reasons for decision

10. I have decided to **grant access** to a document within the scope of your request and refuse access to statistics and top three issues from financial year 2018/2019 , subject to the following exemptions in accordance with the FOI Act:

Creation of a document in response to your FOI request (section 17)

11. After consultation with the Mental Health and Wellbeing Services Division it was determined that information relevant to your request was not entirely held by the Department in a discrete document form.
12. In order to provide you access to all relevant information regarding your request, it was requested the Mental Health and Wellbeing Services Division extract the data listed in the Department's wider database to create a document.
13. This document is comprised of the number of complaints and compliments received by Open Arms in the last three (3) financial years, accompanied by the top three (3) issues regarding those complaints.
14. This document is listed in **Schedule 1**. This document was created in accordance with section 17 of the FOI Act.

Requests may be refused if documents cannot be found, do not exist or have not been received (section 24A)

15. 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.

16. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:

- the terms of your request;
- the subject matter of the documents;
- the current and past file management systems and the practice of orderly destruction or removal of documents;
- the Department's record management systems and 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.

17. Despite the reasonable searches undertaken, the Department has been unable to identify documents relevant to statistics and top three issues from financial year 2018/2019.

18. For these reasons, I am refusing your request for access to documents as described in your request in accordance with section 24A(1)(b)(i) of the FOI Act, on the basis that the document cannot be found.

Access to documents

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

Information Publication Scheme

20. 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.

21. 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.

Your rights of review

22. 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 to resolve any concerns you may have.

Internal review

23. 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.
24. 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

Email: Information.Access@dva.gov.au

OAIC review

25. 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

26. 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

27. 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

Yours sincerely,

Brett (Position Number 62258141)

Assistant Director

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

3 November 2022



Schedule of documents

Applicant: Mr Alan Ashmore

Decision date: 3 November 2022

FOI reference number: LEX 54133

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	25/10/2022	Open Arms Feedback numbers and top themes for financial years 2019 – 2022	1	Full Access	s 17
2	Nil	Open Arms Feedback numbers and top themes for financial years 2018/2019	N/A	Refuse Access	s 24A(1)(b)(i)



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).

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.
(see section 11A).

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).