



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

Decision and reason for decision of Suzanne (Position Number 62210871),
Information Access Officer, Information Access Unit, Client Access and Rehabilitation Branch,
Department of Veterans' Affairs

Applicant: Ms Felicity Wetsmou

Decision date: 6 March 2023

FOI reference number: LEX 55780

Sent by email: foi+request-9771-7d6f5cef@righttoknow.org.au

Dear Ms Wetsmou,

Freedom of Information Request: LEX 55780

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has not been able to identify any documents relevant to your request.
2. For this reason, I have made a decision to refuse your request under section 24A(1)(b)(ii) of the *Freedom of Information Act 1982* (**FOI Act**), as the documents do not exist.

Authority to make decision

3. I, Suzanne (Position Number 62210871), Information Access Officer, Information Access Unit, Client Rehabilitation Access 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 31 January 2023, you advised the Department that you had not received a decision on a request you submitted on 31 December 2022.
5. On 3 February 2023, the Department advised that it had not received the request.
6. On the same date, you forwarded your request for access to documents in the possession of the Department which was in the following terms:

'...I seek any and all documents held by DVA relating to the supply of Hearing Aids to Veterans with accepted hearing loss and other hearing conditions, in particular the Policy that allows DVA to refuse to supply Hearing Aids not listed in the Old Age Pensioners/Free to Client list, despite treating Audiologists/ENT Specialists stating that the Top-Up Hearing Aids are deemed clinically necessary...'

7. On 3 February 2023, the Department acknowledged your request via email.
8. As no extensions of time have been applied to process your request, a decision on your request is due by 6 March 2023.

Material taken into account

9. 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 refuse access to your request follows.
10. I have taken the following material into account in making my decision:
 - the terms of your request 3 February 2023;
 - the types of documents that are in the possession of the Department;
 - my correspondence with different business areas within the Department;
 - 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. requests for the Department to create a document)
- Section 24A Request may be refused if documents cannot be found or do not exist
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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

Reasons for decision

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

12. 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.

13. 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.

14. Despite the reasonable searches undertaken, the Department has been unable to identify documents relevant to your request. A description of the searches undertaken to locate the documents which you are seeking to access is at **Schedule 1**.
15. For these reasons, I am refusing your request for access to documents as described in your request in accordance with section 24A(1)(b)(ii) of the FOI Act, on the basis that the document does not exist.

Requests involving use of computers etc. (section 17)

16. In making my decision to refuse your request I also considered the application of section 17 of the FOI Act and whether a document could be created to meet the terms of this part of your request.
17. Subject to section 17(1)(c)(i), I decided that the department was not in a position to create a written document, via the use of a computer or other equipment that is ordinarily available to the department for the purposes of retrieving or collating stored information.

Your rights of review

18. 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

19. 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.
20. 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

21. 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

22. 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

23. 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,

Suzanne (Position Number 62210871)

Information Access Officer

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

6 March 2023



Summary of document searches

The Department undertook the following to identify any records that fall within the scope of your request (relevant documents).

1. Searches undertaken

Consultation was conducted with the Care and Assistance Program branch within the department.

Whilst no document was found to exist specific to your request the business area has provided additional commentary in response to your request.

The Department of Veterans' Affairs (DVA) does not have documents or a DVA policy for hearing aids as veterans receive their hearing aids and services from the Australian Government's Hearing Service Program (HSP). The HSP is managed by Department of Health and Aged Care (Health) and all HSP documentation and information is managed by Health. The HSP website provides veteran specific information, including guidance on what is available to veterans through the HSP and is available on the HSP website at: www.hearingservices.gov.au/veteran.

The veteran specific HSP webpage states that, if a hearing provider believes that fully subsidised options are not suitable to meet a veteran's clinical hearing needs, they can contact DVA by emailing Health.Approvals@dva.gov.au to discuss the veteran's circumstances.

This last sentence relates to DVA legislation, specifically the DVA Treatment Principles, made under subsection 90(4) of the *Veterans' Entitlements Act 1986* (VEA) which state:

11.5.4 *Subject to prior approval, the Commission may accept financial responsibility for the supply of a hearing aid from an audiology provider if the hearing aid is unable to be supplied to the eligible person under the Hearing Services Administration Act 1997 or the Hearing Services Act 1991.*

11.5.5 *The Commission may accept financial responsibility for service charges in respect of a hearing aid that has been supplied under paragraph 11.5.4.*

11.5.6 *The Commission may accept financial responsibility for service charges in respect of a hearing aid following the supply of that hearing aid under paragraph 11.5.4 or 11.5.5.*

Although not a policy, this legislation allows DVA to consider funding a veteran's hearing aids outside the HSP fully subsidised range, **subject to prior approval**. The process of applying for prior approval is that, if a hearing provider determines that a veteran's hearing needs cannot be met by the fully subsidised HSP range, they can send a request for funding of a partially subsidised hearing aid to DVA for consideration. The hearing provider's request and clinical notes are carefully considered by DVA Audiologists and program areas.



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:
 - a document of the agency; or
 - 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).

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).