



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

Decision and reason for decision of Sonja (Position Number 62391186),
Information Access Officer, Information Access Unit,
Client and Information Access Branch, Department of Veterans' Affairs

Applicant: Jenny

Decision date: 17 October 2024

FOI reference number: LEX 62809

Sent by email: foi+request-10883-08034452@righttoknow.org.au

Dear Jenny,

Freedom of Information Request: LEX 62809

Purpose of this notice

1. The purpose of this notice is to provide a Statement of Reasons for this request, as outlined in paragraph 3.161 of the Freedom of Information Guidelines below:

"Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the request. This obligation to provide a statement of reasons continues until the deemed decision is finalised."

2. No statutory powers under the *Freedom of Information Act 1982* are being exercised in this informal process. Any reference to statutory provisions within this notice have been provided to assist you with interpreting the Departments response.

Decision

3. No documents were found that met the terms of your request referring to 'consent'.

Authority to make decision

4. I, Sonja (Position Number 62391186), Information Access Officer, Information Access Unit, Client and Information 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

5. On 17 November 2023, you made a request for access to documents in the possession of the Department. Your request sought access to:

'...According to the Hansard transcript (p.15) of Secretary Frame's testimony before the FADaT Senate Estimates Committee on Wednesday 15 November 2023 Secretary Frame, in response to a question from Senator Lambie, said about the DVA/UniSA MATES program (although still suspended since mid-year) that "There is a consent that has been in place for the program to operate it as it has for 18 years".

I have searched the DVA website, the UniSA website and Hansard but it does not appear that the Department of Veterans Affairs has made this 'consent' publicly available.

I have also checked the minutes the department has published of its ESO roundtables, back issues of VetAffairs, referred to by Secretary Frame (on the same transcript page) where it was suggested such information was communicated, but was unable to find any such information.

As the 'consent' referred to by Secretary Frame has not been made publicly available by DVA, can the Department of Veterans Affairs please provide copy of it.

As Secretary Frame appears quite aware of that 'consent' document for the DVA/UniSA MATES program and reviewed it before she gave her testimony to the committee this week, it should be able to be quickly located by the Secretary's office.

It sounds like a discrete document and one able to be reviewed quickly for release.

As I am sure more than just me would be interested in this 'consent' document, please ensure it will be accessible on release for me than just me...'

6. On 25 November 2023, the Department acknowledged your request via email.
7. As an extension of time was not applied to process your request a decision on your request was due by 18 December 2023.
8. In accordance with section 15AC of the FOI Act, the principal officer of the Department is taken to have made a decision personally refusing to give access to the documents on the last day of the initial decision period. Even where a decision has not been issued within the prescribed timeframe, the Department retains an obligation to process and finalise the FOI request. I would like to apologise for the delay in issuing this decision to you and any inconvenience it may have caused.

9. As a decision on your request was not made within the timeframe as prescribed in section 15(5)(b) of the FOI Act, Regulation 7(2) of the *Freedom of Information (Charges) Regulations 2019* prescribed that no charge is payable.

Material taken into account

10. 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.
11. I have taken the following material into account in making my decision:
- the terms of your request on 17 November 2023;
 - correspondence with different business areas within the Department;
 - the types of information and documents that are in the Department's possession;
 - 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 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](#));

Reasons for decision

12. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records, and no documents were found that met the terms of your request referring to 'consent'.

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

13. 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.

14. 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 current and past file management systems and the practice of orderly destruction or removal of documents;
 - the kind of documents held by the Department;
 - 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.
15. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records, and no documents were found that met the terms of your request referring to 'consent'.
16. A description of the searches undertaken to locate the documents which you are seeking to access is at **Schedule 1**.

Office of the Australian Information Commissioner (OAIC)

17. 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/>

18. Contact details for the OAIC are listed below:

Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Phone: 1300 363 992
Email: enquires@oaic.gov.au

19. More information about the Department's information access policies are available here: [Accessing Information | Department of Veterans' Affairs \(dva.gov.au\)](#)

Yours sincerely,

Sonja (Position Number 62391186)

Information Access Officer
Information Access Unit
Client and Information Access Branch
Department of Veterans' Affairs

17 October 2024



Summary of Searches

A search was undertaken by the Privacy Assurance Branch (PAB), on behalf of Program Delivery Division, for documents within the part of your scope, highlighted in bold below:

'...According to the Hansard transcript (p.15) of Secretary Frame's testimony before the FADaT Senate Estimates Committee on Wednesday 15 November 2023 Secretary Frame, in response to a question from Senator Lambie, said about the DVA/UniSA MATES program (although still suspended since mid-year) that "There is a consent that has been in place for the program to operate it as it has for 18 years".

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The searches conducted included:

- Records Management and archives;
- Personal and shared email inboxes;
- Microsoft Teams and Skype messages; and
- Shared computer drives (R drive).

PAB have advised that information relating to the delivery of the MATES program was shared via a secure portal (R drive referenced above) or via a data transfer.

The above searches resulted in zero returns for a document that meets the highlighted part of your scope. As a result, I am satisfied that this I am satisfied that this document could not be found.

Whilst the search returned nil documents, the Department notes that Veterans were made aware of the collection, use and sharing of information generated from using their DVA Veteran Card for purposes like the MATES program, through various notices including:

- Correspondence sent to Veterans at the time of issue and re-issue of their DVA health care card(s);
- Claim forms;
- Privacy collection notices, and
- Privacy policies published on the Department and University of South Australia websites.



Schedule of documents

Applicant: Jenny

Decision date: 17 October 2024

FOI reference number: LEX 62809

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	N/A	'consent'	N/A	Refused 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.

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 2, 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.

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).