



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

Decision and reason for decision of Zoey (Position Number 62214764),
Senior Information Access Officer, Information Access Unit,
Client and Information Access Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 30 May 2024

FOI reference number: LEX 66668

Sent by email: foi+request-11303-1cfb83a1@righttoknow.org.au

Dear Mr Ashmore

Freedom of Information Request: LEX 66668

Decision

1. The Department of Veterans' Affairs (Department) has undertaken a reasonable search of its records and has identified one (1) document relevant to your request.
2. I have made a decision to refuse your request under section 12(1)(a) of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**), as the document within the scope are within the open access period under the *Archive Act 1983* (**Archives Act**).

Authority to make decision

3. I, Zoey (Position Number 62214764), Senior 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

4. On 07 April 2024, you made a request for access to documents in the possession of the Department. Your request sought access to:

'.....BACKGROUND:

DVA has previously advised the MATES program first commenced in 2004 when they engaged the University of South Australia to conduct research on veterans' personal information/data.

THE INFORMATION I AM SEEKING:

I am seeking the INITIAL signed contract between DVA and UniSA to conduct research studies in what is known as the MATES program...'

5. On 10 April 2024, the Department acknowledged your request via email.
6. As no extension of time was applied to process your request, a decision on your request was due by 07 May 2024.
7. 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.
8. 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

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 the document follow:
10. I have taken the following material into account in making my decision:
 - the terms of your request on 07 April 2024;

- my correspondence with different business areas within the Department;
- the types of information and documents that are in the Department's possession;
- 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 12 Part not to apply to certain documents
 - Section 13 Documents in certain institutions
 - Section 15 Request for Access
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).
- The Archives Act 1983

11. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 1**.

Reasons for decision

Part not to apply to certain documents (section 12)

12. Section 12(1) of the FOI Act provides that a person is not entitled access to a document if:

- (a) a document, or a copy of a document, which is, under the *Archives Act 1983*, within the open access period within the meaning of that Act unless the document contains personal information (including personal information about a deceased person)

13. If a document came into existence 20 years prior to the current year, this record is in the Open Access period.

Note: The following have different open access periods:

- (a) Cabinet notebooks (see section 22A);
- (b) records containing Census information (see section 22B);
- (c) Independent Review documents and PWSS documents (see section 22C)

14. A document consider to be in the Open Access period will be governed by the *Archives Act 1983* and not under the *FOI Act*.

15. Such documents may be in the care of the National Archives of Australia.
16. The documents we located within the scope of your request, came into existence over 20 years prior to the current year of 2024.

Documents in certain institutions (section 13)

17. A document shall not be deemed to be a document of an agency for the purposes of this Act if it is:
 - (d) in the care (within the meaning of the Archives Act 1983) of the National Archives of Australia (otherwise than as a document relating to the administration of the National Archives of Australia)
18. I am satisfied that information relevant to your request is not suitable for release under the FOI Act, having regard to:
 - the terms of your request;
 - the subject matter of the documents;
 - the age of the documents;
19. For these reasons, and noted above in point 16, I am refusing your request for access to documents as described in your request in accordance with section 12(1) of the FOI Act.
20. You may wish to peruse the National Archives of Australia's (NAA) website. Please note that NAA hold many documents that are not automatically uploaded to their website. As such, you may wish to apply to NAA and request access to the documents, if you are unable to locate them on the below link. <https://www.naa.gov.au/>

Your rights of review

Deemed refusal

21. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**). In accordance with section 54E(b) of the FOI Act, internal review is not available as the Department did not finalise your FOI request within the prescribed statutory timeframe.

OAIC review

22. 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

23. 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

24. 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

Kind regards,

Zoey (Position Number 62214764)

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

30 May 2024



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).

12 Part not to apply to certain documents

- (1) *A person is not entitled to obtain access under this Part to:*
- (a) *a document, or a copy of a document, which is, under the Archives Act 1983, within the open access period within the meaning of that Act unless the document contains personal information (including personal information about a deceased person); or*
 - (b) *a document that is open to public access, as part of a public register or otherwise, in accordance with an enactment or a Norfolk Island law, where that access is subject to a fee or other charge; or*
 - (ba) *a document that is open to public access, as part of a land title register, in accordance with a law of a State or Territory where that access is subject to a fee or other charge; or*
 - (c) *a document that is available for purchase by the public in accordance with arrangements made by an agency.*
- (2) *A person is not entitled to obtain access under this Part to a document or a part of a document that became a document of a Norfolk Island agency more than 5 years before the commencement of this subsection unless:*
- (c) *the document, or that part of the document, contains information that is:*
 - (i) *personal information about that person; or*
 - (ii) *information relating to that person's business, commercial or financial affairs; or*
 - (d) *the document, or that part of the document, is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of a Norfolk Island agency to which that person has lawfully had access.*

13 Documents in certain institutions

- (1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being:
- (a) in the memorial collection within the meaning of the *Australian War Memorial Act 1980*; or
 - (b) in the collection of library material maintained by the National Library of Australia; or
 - (c) material included in the historical material in the possession of the Museum of Australia; or

- (d) in the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia (otherwise than as a document relating to the administration of the National Archives of Australia); or
 - (e) a program or related material (within the meaning of the *National Film and Sound Archive of Australia Act 2008*) in the collection of the National Film and Sound Archive of Australia; if the document was placed in that collection, or in that custody, by or on behalf of a person (including a Minister or former Minister) other than an agency.
- (2) For the purposes of this Act, a document that has been transferred to the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia, or otherwise placed in a collection referred to in subsection (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.
 - (3) Despite subsections (1) and (2):
 - (a) records of a Royal Commission that are in the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia are, for the purposes of this Act, taken to be documents of an agency and to be in the possession of the Department administered by the Minister administering the *Royal Commissions Act 1902*; and
 - (b) records of the Commission of inquiry (within the meaning of the *Quarantine Act 1908*, as in force immediately before its repeal) that are in the custody of the Australian Archives are, for the purposes of this Act, taken to be documents of an agency and to be in the possession of the Agriculture Department (within the meaning of the *Biosecurity Act 2015*); and
 - (c) records of a Commission of inquiry (within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) that are in the custody of the Australian Archives are, for the purposes of this Act, taken to be documents of an agency and to be in the possession of the Department administered by the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.
 - (4) Nothing in this Act affects the provision of access to documents by the National Archives of Australia in accordance with the *Archives Act 1983*.

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 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.

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).