

Our ref: FOI-2024-80054

16 January 2025

Nosey Rosey

By email: foi+request-12593-c8bac252@righttoknow.org.au

Dear Nosey

Freedom of Information Request – Access Decision

1. I refer to your request of 18 December 2024 to this Office under the *Freedom of Information Act 1982* (FOI Act) for access to documents in the following terms:

“I wish to request access to documents held by the Office of the Commonwealth Ombudsman, under the Freedom of Information Act 1982 (Cth), concerning the sharing of personal information originating from the Department of Veterans’ Affairs (DVA) over the last ten years. Specifically, I am seeking

Any documents that detail the sharing of personal or service-related information about veterans or their dependents, sourced from the DVA, that the Office of the Commonwealth Ombudsman has either received or provided. This may include memoranda of understanding, service-level agreements, emails, letters, meeting minutes, file transfer logs, internal reports, or similar materials that outline the nature, timing, and format of any such data exchange between the DVA and your Office.

Policies, procedures, guidelines, or frameworks that govern how the Office of the Commonwealth Ombudsman requests, accesses, stores, handles, or uses data originating from the DVA. This includes documents that detail the criteria for obtaining DVA client data, any consent or authorisation processes, security measures, and data retention or destruction policies.

Copies of any privacy impact assessments, ethics committee approvals, or internal review board decisions your Office may have undertaken in relation to the receipt or handling of DVA client data. In particular, I am interested in any documents that demonstrate how privacy, legal, and ethical considerations were addressed.

Records outlining the intended purposes or practical applications for any DVA client data accessed by your agency. This could include internal strategy papers, briefings, project proposals, or reports detailing why your Office sought such information, how it was integrated into your operations, and any expected benefits or outcomes.

A suitably de-identified or redacted sample of the kind of data fields received (provided that this does not trigger any exemptions under the FOI Act), to understand the nature and granularity of the shared information. If the only data your Office received relates solely to Centrelink Confirmation eServices (CCeS) arrangements, and if no other DVA data was exchanged, then it is not necessary to provide any CCeS-related data.

If you find any part of this request too broad or complex, please contact me promptly to discuss refining its scope. I remain willing to make reasonable adjustments within the statutory timeframe while preserving the substantive nature of what I am seeking.

I believe disclosure is in the public interest, as it promotes transparency and accountability regarding how sensitive personal information about veterans is handled by government agencies. If you consider charges applicable, I respectfully request that you waive or reduce them, given the importance of this information to public understanding and accountability.”

Scope clarification and interpretation

2. On 20 December 2024, our Office emailed you to clarify and refine scope on the basis that the nature of the requested information was very broad.
3. Based on our preliminary assessment of the likely document holdings, we considered the request would likely capture a significant volume of documents involving substantial manual labour. Our interpretation of your request as originally framed would have required our Office to review individual Department of Veterans' Affairs (DVA) complaint case files over a 10-year period.
4. We requested to clarify and revise the scope as follows:

To exclude personal information about individual veterans or their dependents?

To exclude individual DVA complaint files from the scope of your request (that is where we have received a complaint about DVA from an individual)?

To limit your request to governance documents pertaining to information sharing arrangements between our Office and the DVA? Documents may include:

- Policies, procedures, guidelines, frameworks that govern how the Office of the Commonwealth Ombudsman requests, accesses, stores, handles, or uses data originating from the DVA.
- Memorandum of understanding with DVA.
- Service-level agreement/s with the DVA.

5. On 30 December 2024, you emailed our Office and confirmed scope as follows:

Scope of Requested Documents

The focus of my request remains on widespread or systematic data sharing arrangements and governance documents between the DVA and the Ombudsman's Office. Specifically, this includes:

Service-Level Agreements (SLAs) and Memoranda of Understanding (MOUs): Any formal agreements governing the sharing of DVA client data.

Governance Documents: Policies, procedures, guidelines, or frameworks detailing how DVA client data is accessed, stored, handled, or used by the Office.

Privacy and Ethical Deliberations: Any privacy impact assessments, internal reviews, or documents reflecting considerations of the legal, privacy, or ethical implications of handling DVA client data.

Intended Uses: Internal strategy papers, project proposals, or reports outlining how DVA client data is integrated into the Office's operations and the anticipated outcomes.

Nature of the Request

This request pertains to general practices and arrangements regarding data sharing and does not extend to individual-level data unless it directly pertains to widespread data sharing practices or agreements.

Publicly available information

6. I have interpreted the scope of your request to be specific to data sharing arrangements and governance documents between the DVA and our Office.

7. Our Office does not currently have governance documents in place which detail the sharing, access, storage, handling and use of information specific to DVA clients. Rather, we have overarching policies, guidelines and procedures which set out how our Office handles personal privacy generally.
8. I have considered the following six (6) documents to be relevant to the scope of your request, which are available to the public using the following links:

Current Documents

- Better Practice Complaint Handling Guide - [Better-Practice-Complaint-Handling-Guide-February-2023.pdf](#)
- Privacy Policy - [Privacy Policy | Commonwealth Ombudsman](#)
- Investigations Policy - [Investigations Policy | Commonwealth Ombudsman](#)

Superseded Documents

- Better Practice Complaint Handling Guide - [Better Practice Complaint Handling Guide](#)

Documents on Disclosure Log

- Parliamentary Complaint Handling Procedures - [FOI-2024-10001-Casa-Blanca-Documents-to-be-released-003-A2368321.pdf](#).
- Work Practices Manual for Complaint Management (*superseded by the Parliamentary Complaint Handling Procedures*) - [FOI-2022-10042-Work-Practices-Manual-Commonwealth-Ombudsman.pdf](#)

9. Additional documents that fall within scope of your request which are not publicly available are detailed below.

Decision

10. This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our Office under section 23 of the FOI Act.
11. When processing an FOI request, an agency is required to ensure that all reasonable steps have been taken to find documents within the scope of the FOI request (section 24A of the FOI Act).

12. Thorough searches have been undertaken of our case management and record management systems, using key words for any documents this Office may hold, that would fall within the scope of your request spanning across a 10-year period. I have undertaken extensive consultation with staff within the Office with specialised knowledge relating to the subject matter of your request, who would be best placed to identify where documents responsive to your request may be located to conduct searches.
13. Our Office has identified six (6) documents relevant to your request. I have decided to:
 - a) Grant part access to three (3) documents.
 - b) Refuse access to three (3) documents.
14. A schedule setting out the relevant documents is at **Attachment A**.

Material taken into account

15. In making my decision I had regard to the following:
 - the terms of your request
 - relevant provisions of the FOI Act
 - internal consultation with relevant areas within the Office
 - consultation with the Department of Veterans' Affairs (DVA)
 - Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, available at www.oaic.gov.au (FOI Guidelines); and
 - relevant case law and decisions.

A) Part Access

16. Three documents have been partially released to you as set out at **Attachment A**.
17. Junior Ombudsman staff last names and direct contact details, as well as junior DVA staff first and last names, and direct contact details have been redacted.
18. Deliberative matter which was recorded in the course of a deliberative process for the purposes of the Agency's functions has been redacted.

19. Our Office has relied upon the personal privacy and certain operations of agencies exemptions to exempt this material.

Conditional Exemption – Deliberative matter – Section 47C

20. I have decided that document 1 is conditionally exempt in accordance with section 47C of the FOI Act.

21. Section 47C of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; ...

22. 'Deliberative matter,' as discussed by Bennett J in *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 is:

... a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document...

23. The document contains draft material or amendments reflecting opinion, advice and recommendations about the material that was subject to change or review. The views expressed in this document did not reflect a concluded position or a decision made regarding these matters.

24. The deliberative matter was recorded in the course of a deliberative process involved in the functions of the Office, being the review and development of policies. The recommendations were not approved nor endorsed by senior members of the Office and therefore, an ultimate decision was not made on the recommendations.

25. I am satisfied the relevant material is deliberative matter for the purposes of section 47C of the FOI Act, as it relates to a process that was undertaken within the agency to revise or prepare a policy position.

26. Section 47C(2) provides that 'deliberative matter' does not include *purely factual material*. I am satisfied that the deliberative material is not purely factual in nature, as it contains material that is deemed to be an opinion, advice or recommendation.

27. I have also taken into consideration the fact that Document 1 (the Privacy Policy (2015)) has been superseded by the latest Privacy Policy (2019) which is publicly

accessible on the Ombudsman website: [Privacy Policy | Commonwealth Ombudsman](#).

28. Section 11A of the FOI Act provides that while an agency must give a person access to a document that is conditionally exempt, access may be refused if the document's disclosure would, on balance, be contrary to the public interest.

Public interest

29. Section 11A(5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be contrary to the public interest.

30. In deciding whether access should be given to this information on the basis of public interest, I have taken into account the public interest factors for and against disclosure pursuant to section 11B(3) of the FOI Act, the FOI Guidelines at paragraphs 6.229 – 6.233, as well as matters specific to this agency's functions and operating environment.

31. I have considered the following factor which favour disclosure:

- Disclosure of this material would promote the objects of the FOI Act by informing the community of the Government's operations, in particular, policies.

32. I have considered the following factors which do not favour disclosure:

- Disclosure could reasonably be expected to have an adverse impact on the decision-making and deliberative processes within the Office.
- Disclosure could prejudice the agency's ability to share opinion, advice and recommendations within the Office.

33. Considering the FOI Guidelines at paragraphs 6.245 – 6.252, in addition to the above factors, I am of the view that the disclosure of this deliberative information could reasonably be expected to inhibit frankness and candour within the Office, and, as a result, full consideration by the Office on any potential future consideration of the development of policy making.

34. On balance, I find that disclosure of the relevant material would be contrary to the public interest.

Conditional Exemption – Personal privacy – Section 47F

35. Section 47F of the FOI Act conditionally exempts a document where *'its disclosure would involve the unreasonable disclosure of personal information about any person.'* I must give access unless access would, on balance, be contrary to the public interest (s 11A(5)).

36. 'Personal information' is defined in section 4 of the FOI Act to mean:

information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.

37. The partially released Documents 2 and 3 contain personal information in the form of junior Ombudsman staff last names and direct contact details, as well as the full names of junior DVA staff and direct contact details.

38. I am satisfied that the relevant information is considered personal information for the purposes of section 4 of the FOI Act, as the individuals are identifiable or reasonably identifiable from the relevant information.

39. In considering whether disclosure would be unreasonable, subsection 47F(2) of the FOI Act requires that I take into account:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly accessible sources, and any other matter considered relevant.

40. With regards to agency staff names and direct contact information, this information is not well known. The individuals to whom the information relates are not generally known to be associated with the relevant information and, the relevant information is not readily available from public sources.

41. I find that release of such information would involve the unreasonable disclosure of personal information under section 47F(1) of the FOI Act.

Public interest

42. In deciding whether access should be given to this information on the basis of public interest, I have taken into account the public interest factors for and against

disclosure pursuant to section 11B(3) of the FOI Act, the FOI Guidelines at paragraphs 6.229 – 6.233, as well as matters specific to this agency's functions and operating environment.

43. I have not identified any public interest factors supportive of disclosing personal information, with regards to documents 2 and 3, which has been captured by this request. While broadly disclosure may promote the objects of the FOI Act, disclosure in my view would not otherwise increase scrutiny, discussion or comment around decision making or increase public participation in Government processes.

44. I consider the following factors weigh against disclosure:

- a. the disclosure could reasonably be expected to prejudice the protection of a person's right to privacy;
- b. the disclosure could reasonably be expected to impede the Office's health and safety obligations under the *Work Health and Safety Act 2011* (Cth);
- c. prejudice to the proper and efficient conduct of communication channels within a Commonwealth Agency, and
- d. the fact that such information is not on the public record or otherwise available from publicly accessible sources.

45. I have given considerable weight to the factors weighing against disclosure.

46. Pursuant to subsection 11A(5) of the FOI Act, I have concluded that this material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

Conditional Exemption – Certain Operations of Agencies – Section 47E(d)

47. Section 47E(d) of the FOI Act conditionally exempts a document where disclosure could reasonably be expected to '*have a substantial adverse effect on the proper and efficient conduct of the operations of an agency*'. I must give access unless access would, on balance, be contrary to the public interest (section 11A(5)).

48. The partially released documents contain the full names of junior Ombudsman staff and junior DVA staff, along with direct agency contact details.

49. An agency routinely provides centralised points of contact for efficient management and response to correspondence. This enables an agency to perform its statutory functions. For our Office, this includes the investigation of complaints and processing of FOI requests.

50. If direct contact details were to be released, this would undermine the effectiveness of such established communication channels, resulting in a diversion of resources to responding to unsolicited correspondence received through those points of contact. I am satisfied, this would have a substantial adverse effect on the proper and efficient conduct of both agencies.

Public interest

51. In deciding whether access should be given to this information on the basis of public interest, I have taken into account the public interest factors for and against disclosure pursuant to section 11B(3) of the FOI Act, the FOI Guidelines at paragraphs 6.229 – 6.233, as well as matters specific to this agency's functions and operating environment.

52. As outlined above, I have not identified any public interest factors supportive of disclosing personal information, with regards to Documents 2 and 3, which has been captured by this request. While broadly disclosure may promote the objects of the FOI Act, disclosure in my view would not otherwise increase scrutiny, discussion or comment around decision making or increase public participation in Government processes.

53. However, I consider that disclosure of full staff names and direct agency contact details could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of both agency's operations.

54. Furthermore, the release of full staff names and direct agency contact details could enable members of the public to email staff directly. This increases the potential for unwanted emails and the need for staff to forward emails to correct addresses, interfering with their normal work.

55. Pursuant to subsection 11A(5) of the FOI Act, I have concluded that this material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

Access to edited copies/ deletion of exempt or irrelevant material – Section 22

56. I provide access to edited copies of the 3 partial release documents with conditionally exempt material:

- Junior Ombudsman staff last names and direct contact details;
- Junior DVA staff full names and direct contact details; and

- Deliberative matter;

removed in accordance with s 22 of the FOI Act.

57. The 'printing line' generated by outlook when saving PDFs has been edited to remove the surname of the Commonwealth Ombudsman staff member who saved the documents.

B) Access Refused

58. I have decided to refuse access to documents 4 – 6 as set out in the schedule at **Attachment A**.

59. Access has been refused to the documents as I consider each document, in its entirety, is a document which contains deliberative material in accordance with section 47C of the FOI Act.

Conditional Exemption – Deliberative Process Documents – Section 47C

60. Section 47C of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; ...

61. 'Deliberative matter,' as discussed by Bennett J in *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 is:

... a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document...

62. Documents 4 and 5 are draft material reflecting opinion, advice and recommendation for the purposes of developing and implementing a system-wide policy.

63. Document 6 is draft material reflecting opinion, advice and recommendation for the purposes of engaging in an arrangement with another Commonwealth agency.

64. The deliberative matter in documents 4 – 6 was recorded in the course of a deliberative process involved in the functions of the Office, being the development

of governance documents. The documents were not approved nor endorsed by senior members of the Office and therefore, an ultimate decision to use the documents was not made.

65. A factual document prepared to aid a complex issue may be classed as purely factual material but, may also be of a character as to disclose a process of selection involving opinion, advice or recommendation. As such, a conclusion which involves a deliberative process may well prevent material from being purely factual.
66. I am satisfied that no part of the three documents constitutes a record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function, or purely factual or operational information. While there is some factual material in each document, it is an integral part of the deliberative purpose and content of each document and is embedded or intertwined with the deliberative content such that it is impractical to excise it.
67. I am satisfied that the entirety of the three documents contains deliberative matter for the purposes of section 47C of the FOI Act, as this deliberative matter relates to a process that was undertaken within our Office to consider whether and how to make or implement a decision or prepare a policy.
68. It is noted that the draft document 6, which was never endorsed, has been superseded by the current agreement of August 2024, which is a statement that sets out the Ombudsman's commitments to organisations the Office oversees. This document is publicly available on the Ombudsman's website: [Statement-of-Commitments.pdf](#).
69. Section 11A of the FOI Act provides that while an agency must give a person access to a document that is conditionally exempt, access may be refused if the document's disclosure would, on balance, be contrary to the public interest.

Public interest

70. Section 11A(5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be contrary to the public interest.
71. In deciding whether access should be given to this information on the basis of public interest, I have taken into account the public interest factors for and against disclosure pursuant to section 11B(3) of the FOI Act, the FOI Guidelines at paragraphs 6.229 – 6.233, as well as matters specific to this agency's functions and operating environment.

72. I have considered the following factors which favour disclosure:

- Disclosure of this material could promote the objects of the FOI Act by informing the community of the Government's operations, in particular, policies and guidelines.
- Disclosure could support the objects of the FOI Act by promoting government transparency and could reveal background information that informed a decision of a Commonwealth agency and enhance scrutiny of government decision making.

73. I have considered the following factors which do not favour disclosure:

- Disclosure could reasonably be expected to have an adverse impact on the decision-making and deliberative processes within the Office.
- Disclosure of some deliberative information, on which a decision has not yet been taken, could also reasonably be expected to prejudice consultations with relevant stakeholders.
- Disclosure would impact the agency's ability to negotiate arrangements and maintain productive working relationships with other agencies.

74. Considering the FOI Guidelines at paragraphs 6.245 – 6.252, in addition to the above factors, I am of the view that the disclosure of this deliberative information could reasonably be expected to inhibit frankness and candour within the Office, and, as a result, full consideration by the Office on any potential future consideration of the development of policy making.

75. Accordingly, I find that the public interest is weighted more heavily against disclosure, so that giving access to the conditionally exempt information would, on balance, be contrary to the public interest.

Review Rights

Internal review

76. No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be changed. Applications for internal review can be made:

- via email to information.access@ombudsman.gov.au
- by mail to Commonwealth Ombudsman GPO Box 442 Canberra ACT 2601

77. If you choose to seek an internal review, you will afterward have a right to apply for Information Commissioner review (IC review) of the internal review decision.

Information Commissioner review or complaint

78. You also have the right to seek IC review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

79. If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

80. While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

81. You can make an IC review application or make an FOI complaint in one of the following ways:

- online at <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

82. More information about the Information Commissioner reviews and complaints is available at its website: www.oaic.gov.au/freedom-of-information/foi-review-process.

Contact

83. You may contact me via email at information.access@ombudsman.gov.au or via telephone on 1300 362 072.

Yours sincerely

A handwritten signature in black ink, appearing to be the name 'Carolina' written in a cursive style.

Carolina
Senior Legal Officer
Legal Team

Doc No.	Total pages/Page number	Description of Document	Decision on Access	Exemption	Notes
1.	19	DRAFT Privacy Policy (2015)	<i>Part access</i>	<i>Conditionally exempt under s 47C</i>	<i>Deliberative process documents</i>
2.	2	Email attaching Correspondence from Secretary DVA to Commonwealth Ombudsman	<i>Part access</i>	<i>Conditionally exempt under s 47F and 47E</i>	<i>Unreasonable disclosure of personal information</i>
3.	6	Email attaching Cluster Information Table	<i>Part access</i>	<i>Conditionally exempt under s 47F and 47E</i>	<i>Unreasonable disclosure of personal information</i>
4.	14	DRAFT Business Intelligence Data Privacy Policy and Guidelines	<i>Access refused</i>	<i>Conditionally exempt under s 47C</i>	<i>Deliberative process documents</i>

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5.	13	DRAFT Business Intelligence Data Security Policy and Guidelines	<i>Access refused</i>	<i>Conditionally exempt under s 47C</i>	<i>Deliberative process documents</i>
6.	24	DRAFT Relationship Protocol between the Commonwealth Ombudsman and the Department of Veterans' Affairs	<i>Access refused</i>	<i>Conditionally exempt under s 47C</i>	<i>Deliberative process documents</i>