



DEFENCE FOI 481/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Noseyrosey (the applicant), validated by the Department of Defence (Defence) on 16 December 2024, for access to the following documents under the *Freedom of Information Act 1982 (Cth)* (FOI Act):

I seek access to any and all documents, records, data, and supporting material held by Defence concerning the sharing of personal information originating from the Department of Veterans' Affairs (DVA) over the last ten years. This includes any data transfers from or to the DVA, whether they were one-off exchanges or ongoing, systematic transfers of DVA client information, including personal, medical, financial, or service-related details concerning veterans or their dependents.

I am interested in obtaining a comprehensive understanding of what DVA client information Defence has received or accessed and for what purposes. Specifically, I request:

All records of data sharing arrangements between DVA and Defence, including but not limited to memoranda of understanding, service-level agreements, emails, letters, meeting minutes, file transfer logs, internal reports, and instructions that outline what data was shared, when it was shared, and the format or system used for the transfer.

Any policies, procedures, guidelines, or frameworks that govern how Defence requests, obtains, stores, handles, or uses DVA client information. This includes documents that detail the criteria for approving access to such data, any consent or authorization processes, security controls, and retention or destruction policies.

Copies of any ethics committee approvals, privacy impact assessments, internal review board decisions, or other documents that reflect deliberations or authorizations for obtaining DVA client information. This includes records that show the agency considered the ethical, legal, or privacy implications of receiving or using DVA client data.

Documents that outline the intended uses or practical applications of the DVA client data, such as project proposals, business cases, internal strategy papers, or briefings that explain why Defence sought access to this information, how it was intended to be integrated into the agency's operations, and any expected outcomes or benefits.

A representative sample (in a suitably de-identified or redacted form) of the data or data fields received, so long as providing this sample does not breach any exemption under the FOI Act. The purpose is to understand the nature and granularity of the information shared, without disclosing identifiable personal details.

If the only data Defence received pertains solely to data linked to the Centrelink Confirmation eServices (CCeS) arrangements as described at <https://www.servicesaustralia.gov.au/centrelink-confirmation-eservices-cces>, and

there were no other forms of DVA data shared, then no CCeS-related data needs to be provided under this request.

Background

2. On 14 December 2024, the applicant submitted a request under the FOI Act to Defence in the following terms:

I seek access to any and all documents, records, data, and supporting material held by [Name of Agency] concerning the sharing of personal information originating from the Department of Veterans' Affairs (DVA) over the last ten years. This includes any data transfers from or to the DVA, whether they were one-off exchanges or ongoing, systematic transfers of DVA client information, including personal, medical, financial, or service-related details concerning veterans or their dependents.

I am interested in obtaining a comprehensive understanding of what DVA client information [Authority name] has received or accessed and for what purposes. Specifically, I request:

All records of data sharing arrangements between DVA and [Authority name], including but not limited to memoranda of understanding, service-level agreements, emails, letters, meeting minutes, file transfer logs, internal reports, and instructions that outline what data was shared, when it was shared, and the format or system used for the transfer.

Any policies, procedures, guidelines, or frameworks that govern how [Authority name] requests, obtains, stores, handles, or uses DVA client information. This includes documents that detail the criteria for approving access to such data, any consent or authorization processes, security controls, and retention or destruction policies.

Copies of any ethics committee approvals, privacy impact assessments, internal review board decisions, or other documents that reflect deliberations or authorizations for obtaining DVA client information. This includes records that show the agency considered the ethical, legal, or privacy implications of receiving or using DVA client data.

Documents that outline the intended uses or practical applications of the DVA client data, such as project proposals, business cases, internal strategy papers, or briefings that explain why [Authority name] sought access to this information, how it was intended to be integrated into the agency's operations, and any expected outcomes or benefits.

A representative sample (in a suitably de-identified or redacted form) of the data or data fields received, so long as providing this sample does not breach any exemption under the FOI Act. The purpose is to understand the nature and granularity of the information shared, without disclosing identifiable personal details.

If the only data [Authority name] received pertains solely to data linked to the Centrelink Confirmation eServices (CCeS) arrangements as described at <https://www.servicesaustralia.gov.au/centrelink-confirmation-eservices-cces>, and

there were no other forms of DVA data shared, then no CCeS-related data needs to be provided under this request.

3. On 16 December 2024, Defence sought clarification from the applicant in relation to their request, as the applicant had not specified the agency from which they were requesting the documents.
4. On the same day, the applicant resubmitted their FOI request confirming the request is for documents held by Defence, and the scope was revised in accordance with the terms outlined in Paragraph 1.
5. On 9 January 2025, Defence formally consulted with the applicant in accordance with section 24AB of the FOI Act. The notice provided to the applicant included a statement outlining Defence's intention to refuse the request on the grounds that that a practical refusal reason existed in relation to it.
6. On 15 January 2025, the applicant provided the following response:

...I respectfully maintain that my request is targeted, manageable, and consistent with the objectives of the Freedom of Information Act 1982 (FOI Act).

The FOI Act is built upon the principle of public access to government-held information to enhance transparency and accountability, as enshrined in section 3. My request focuses explicitly on systemic data-sharing arrangements between the Department of Defence and the Department of Veterans' Affairs (DVA). It excludes individual case files, duplicates, and publicly available information, thereby significantly narrowing the scope to minimize the burden on your resources.

Regarding the Memorandum of Understanding (MOU) referenced in your response, while it provides a general framework, my request specifically seeks supplementary records and documents such as governance frameworks, privacy assessments, and reports detailing the intended purposes or practical applications of DVA client information. These documents are likely to provide critical insights into the implementation of the MOU and related data-sharing practices.

I note your recommendation to limit the request further, such as narrowing the timeframe or focusing on specific types of documents. However, the scope already aligns with section 15(2)(b) of the FOI Act, as it provides sufficient information to identify the documents sought. Additionally, as FOI case law highlights, agencies are expected to apply a reasonable and proportionate approach to processing requests, particularly when exclusions have been clearly articulated to reduce workload...

FOI decision maker

7. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Decision

8. I have decided to refuse this request under section 24AA(1)(a)(i) of the FOI Act on the basis that the work involved in progressing this request would substantially and unreasonably divert resources of the department from its other operations.

Material taken into account

9. In making my decision, I have had regard to:
- a. the terms of the request;
 - b. relevant provisions of the FOI Act;
 - c. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - d. advice received from officers within the Directorate of Defence Health Policy, Directorate of Health Research and the Directorate of Strategic Clinical Assurance and Ethics in Joint Health Command (JHC).

REASONS FOR DECISION

Section 24AA – When does a practical refusal reason exist?

10. Section 24AA of the FOI Act outlines when a practical refusal reason exists for the purposes of section 24. Relevantly, section 24AA(1)(a) provides that a practical refusal reason exists if:

(a) the work involved in processing the request:

- i. in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations*

11. Section 24(1) of the FOI Act provides that:

If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

- (a) must undertake a request consultation process (see section 24AB); and*
- (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.*

12. In considering whether a practical refusal reason exists I had regard to the matters set out in section 24AA(2), namely the resources required to perform the following activities:

- a. identifying, locating or collating documents within the filing system of the agency or minister;
- b. examining the documents;
- c. deciding whether to grant, refuse or defer access;
- d. consulting with other parties;
- e. redacting exempt material from the documents; and

f. notifying a final decision to the applicant.

13. Paragraph 35.2 of the Memorandum of Understanding (MoU) between Defence and the Department of Veterans' Affairs (DVA) for the Cooperative Delivery of Care and Wellbeing Support and Services (2022) states:

The Parties acknowledge to comply with the procedures for handling personal information set out in either the Schedule(s), the Data Management Agreement between the Department of Defence, the Department of Veterans Affairs and the Commonwealth Superannuation Corporation or any approved program, project or initiative documentation, and elsewhere in this MoU.

14. Due to the extensive and varied nature of the work jointly undertaken by Defence and DVA, it could reasonably be expected that data-sharing arrangements may vary by individual program, project or initiative. Defence systems are unable to be sufficiently targeted in a way that could easily identify the documents the applicant is seeking access to, therefore, in order to satisfy the requirements of the request, all documentation related to any joint Defence and DVA engagement that handles personal information would require manual review and consideration for relevance.
15. Advice received from the Directorate of Health Research within Joint Health Command (JHC) states:

...the scope and scale would place an unreasonable burden on Defence staff and divert crucial resources away from our core functions. The request seeks access to any and all documents, records, data, and supporting material concerning the sharing of personal information between DVA and Defence. Given the nature of the relationship between the two departments and the volume of interactions over the past decade, the sheer number of documents and projects that could potentially fall under the scope of this request is extensive. Two examples are provided below:

DVA contracted a significant joint project with two universities that used Defence Health data and Work Health and Safety (WHS) Data under the DVA/Defence MOU Schedule 23. This project involved lengthy discussions and arbitration before data was released. The volume of documentation associated with this single project alone would likely exceed the resources that Defence can reasonably allocate to processing this FOI request. Defence have in excess of ~1000 documents that relate to this project alone.

A collaborative program between Joint Health Command and DVA: The Transition and Wellbeing Research Programme (the Programme) - Defence have in excess of ~6985 documents that relate to Transition and Wellbeing Research Programme that would need to be considered for this FOI.

16. As advised in the consultation notice dated 9 January 2025, the Directorate of Health Research has identified that in excess of 7985 documents would need to be reviewed in the first instance. Using a conservative estimate of two minutes to collectively retrieve and consider each document, it would take one full time staff member in excess of 266 hours to examine these documents for relevance alone.

17. The following advice was received from the Directorate of Strategic Clinical Assurance and Ethics:

Since 2017, there have been 626 research proposals and approximately 50 research proposals for the Australian Defence Human Research Ethics Committee which the committee will need to liaise with an Objective Workgroup Co-ordinator to regain access. This can take some time before it will be available for review.

Research proposals will generally consist of an application and other relevant supporting documentation and can exceed 100 pages per application (although it is dependent on the application itself). Based on the request, it also appears to be requesting access to meeting Minutes. There have been 67 DDVA HREC meetings and there would be approximately 20 ADHREC meetings within scope. The length of the meeting Minutes does vary and can be anywhere upwards of 5 pages each (this is for a shorter meeting). Each of these files would need to be manually reviewed and is labour intensive and would take several weeks to undertake.

18. As detailed above, the Directorate of Strategic Clinical Assurance and Ethics hold over 763 documents that would require manual review and consideration. Using the same estimate used above in paragraph 16, it would take one full time staff member in excess of 25 hours to examine these documents for relevance.
19. In *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) at paragraph 101, the Senior Tribunal Member Puplick stated that “what constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless, for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test”. The estimates detailed above only reflect searches undertaken by two JHC Directorates, does not reflect the time required to conduct additional searches of information holdings for all relevant Directorates and teams, only considers two relevant programs that would hold information relevant to the applicants scope, does not include time to consult with any persons in relation to the request, and does not include the time required to grant, refuse or defer access or redact any exempt material from the documents, making copies etc. Therefore, I regard the actual time required to fulfil this request to certainly be considerably higher than the estimates detailed above.
20. I am satisfied that if this request was to be processed in its current form it would have a substantial and adverse effect on the above Directorates within JHC and their teams ability to perform their usual functions.
21. Taking all the above into consideration, I deem that the work required to progress the request would substantially and unreasonable divert the resources of the Department and on this basis I refuse access under section 24AA(1)(a)(i) of the FOI Act.

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Mr Paul Naveau
Accredited Decision Maker
Joint Health Command
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