



18 February 2025

Noseyrosey

**BY EMAIL:** [foi+request-12602-54e6d26b@righttoknow.org.au](mailto:foi+request-12602-54e6d26b@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 24/12/00950

File Number: FA24/12/00950

Dear Noseyrosey,

**Freedom of Information (FOI) request – Decision**

On 14 December 2024, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following documents:

*Revised Scope 30 December 2024*

*To address the department's concerns and assist in processing, I propose the following refined scope:*

*Documents Sought*

*1. Memoranda of Understanding (MOUs) related to data sharing between the Department of Veterans' Affairs (DVA) and the Department of Home Affairs.*

*2. Policies, procedures, guidelines, or frameworks governing how the Department of Home Affairs requests, obtains, stores, handles, or uses DVA client information. This includes documents detailing criteria for approving access, consent or authorization processes, security controls, and retention or destruction policies.*

*3. Privacy impact assessments related to the receipt, storage, or handling of DVA client information.*

*Timeframe*

*From 1 January 2014 to 14 December 2024.*

### *Exclusions*

*To streamline processing, I exclude individual complaint files or other case-specific records involving veterans.*

### *Clarification of Purpose*

*The purpose of my request is to understand if and how the Department of Home Affairs engages with DVA in systematic or formal data-sharing arrangements and the governance structures supporting these activities. This inquiry does not pertain to individual-level interactions or isolated cases but focuses on high-level agreements, policies, and procedures.*

### *Next Steps*

*I trust this refinement resolves the practical refusal concerns and enables the department to proceed with processing the request. Please confirm if this revised scope is acceptable or if further adjustments are necessary.*

## **2 Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

## **3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- advice from other Commonwealth Departments

## **4 Documents in scope of request**

The Department has identified two documents as falling within Part 1 of the scope of your request. These documents were in the possession of the Department on 14 December 2024 when your request was received.

**Attachment A** is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

The Department has undertaken reasonable searches for documents within Parts 2 and 3 of the scope of your request.

In summary, the searches undertaken by the relevant business areas in relation to your request included:

- Legal - Privacy, FOI and Records Management
- Policy Procedure Control Framework
- ABF Operational Coordination and Planning
- ABF Operational Systems Management
- ABF Legislation Coordination

- Immigration and Citizenship Services
- Digital Delivery

The Department does not hold an existing discrete documents that are specific to Department of Veterans' Affairs (DVA) as reflected in Parts 2 and 3 of your request. Further, all files regarding Document Verification Services have been permanently transferred under Machinery of Government to the Attorney-General's Department (AGD).

The Department has considered whether it can extract the data in accordance with section 17(1) of the FOI Act.

The obligation for retrieving or collating information stored in a computer system arises if:

- the Department could produce a written document containing the information using a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information, and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s17(2))

In *Collection Point Pty Ltd v Commissioner of Taxation* the full bench of the Federal Court decided that if a new computer program is required to be written to produce the document then a computer is not being used in a manner that is ordinarily available to the agency because an extraordinary step is required to be taken<sup>1</sup>.

I am satisfied that the Department is not able to produce a written document containing the information you seek in a discrete form using a computer or other equipment ordinarily available to it.

Having regard to your request and the types of documents that may fall within the scope of your request I am satisfied that the searches conducted were extremely thorough and all reasonable steps have been taken to locate any document relevant to your request.

## **5 Decision**

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release two documents in part with deletions regarding Part 1 of your scope
- Refuse Parts 2 and 3 of your scope as documents do not exist, as they were transferred to the AGD

## **6 Reasons for Decision**

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

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<sup>1</sup> *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 [20].

### **6.1 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 18 December 2024, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff and non-public facing email addresses, contained in documents that fall within scope of an FOI request.

I have decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

### **6.2 Section 24A of the FOI Act – Requests may be refused if documents cannot be found, do not exist or have not been received**

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has undertaken reasonable searches in relation to Parts 2 and 3 of your request and that no documents were in the possession of the Department on 14 December 2024 when your FOI request was received. As such, I am refusing your request based on the application of section 24A of the FOI Act.

### **6.3 Section 47D of the FOI Act – Financial or property interests**

Section 47 provides that a document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth, of Norfolk Island or of an agency.

The parts of the document redacted and marked 's47D' relate to the commercial activities of the Department. The release of this material would have a substantial adverse effect on the financial or property interests of the Commonwealth, and I therefore find that they are exempted under section 47D of the FOI Act.

Having formed the view that the release of the documents would have a substantial adverse effect on the financial or property interests of the Commonwealth, I have considered whether release of the documents would be contrary to the public interest, below.

### **6.4 Section 47E of the FOI Act – Operations of Agencies**

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I consider that the disclosure of the parts of documents marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the DVA and AGD.

Managing the security and integrity of Australia's residents' identities is integral to the operations of the Government. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Government or more specifically the DVA and AGD.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and procedures to avoid jeopardising their future effectiveness.

I have decided that parts of the documents are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

### **6.5 The public interest – section 11A of the FOI Act**

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A)*
- (b) inform debate on a matter of public importance*
- (c) promote effective oversight of public expenditure*
- (d) allow a person to access his or her own personal information.*

Having regard to the above I am satisfied that:

- Access to the documents would promote the objects of the FOI Act.
- The subject matter of the documents may have a general characteristic of public importance.
- No insights into public expenditure will be provided through examination of the documents.
- You do not require access to the documents in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the parts of the documents that are conditionally exempt under section 47D of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of the Department. Disclosure would provide an unfair advantage in relation to lawful tender process, affecting the Department's ability to use public money effectively.
- Disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice law enforcement functions and, as a result, the ability of the Government to protect Australian residents' identities. I consider there to be a strong public interest in ensuring that the ability of the Government to verify and protect Australian residents' identities is not compromised or prejudiced in any way. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government*
- b) access to the document could result in any person misinterpreting or misunderstanding the document*
- c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made*
- d) access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

## **7 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

## **8 Your review rights**

### ***Internal review***

You do not have the right to seek an internal review of this decision. This is because section 54E(b) of the FOI Act provides that, when an agency is deemed to have refused an FOI request under section 15AC of the FOI Act, the applicant does not have the right to seek an internal review of the deemed decision.

The Department was deemed to have refused your request under section 15AC of the FOI Act because it did not make this decision within the statutory timeframes for the request.

While the Department has now made a substantive decision on your request, section 15AC of the FOI Act continues to apply to your request, which means that any request you make for internal review will be invalid.

### ***Information Commissioner review***

You can instead request the Australian Information Commissioner to review this decision. If you want to request an Information Commissioner review, you must make your request to the Office of the Australian Information Commissioner (OAIC) within 60 days of being notified of this decision.

You can apply for an Information Commissioner review at: [Information Commissioner review application form on the OAIC website](#).

If you have already applied for an Information Commissioner review, there is no need to make a new review request. The OAIC will contact you shortly to give you an opportunity to advise whether you wish the review to continue, and to provide your reasons for continuing the review.

You can find more information about Information Commissioner reviews [on the OAIC website](#).

## **9 Making a complaint**

You may make a complaint to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. This is a separate process to the process of requesting a review of the decision as indicated above.

You can make an FOI complaint to the Office of the Australian Information Commissioner (OAIC) at: [FOI Complaint Form on the OAIC website](#).

## **10 Contacting the FOI Section**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).

Yours sincerely,

*Electronically signed*

Kerry  
Position number 60107817  
Authorised Decision Maker  
Department of Home Affairs

**ATTACHMENT A**

**SCHEDULE OF DOCUMENTS  
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982**

**FOI request:** FA 24/12/00950

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No.	Date of document	No. of pages	Description	Decision on release	
1.	13 April 2018	30	Memorandum of Understanding: Department of Home Affairs and Department of Veterans' Affairs for participation as a user in the National Document Verification Service	Release in part	s. 22(1)(a(ii)) s. 47D s. 47E(d)
2.	14 January 2019	1	Schedule 4 – Variation Template	Release in part	s. 22(1)(a(ii)) s. 47D