



24 January 2025

Noseyrosey

By email: foi+request-12608-e0eb68ca@righttoknow.org.au

Dear Noseyrosey,

Freedom of Information – Notice of decision

FOI Reference number: 24/25 – 37

I refer to your correspondence to the Fair Work Commission (**Commission**) dated 14 December 2024, in which you requested access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Decision

My decision is to refuse you access to the documents which are the subject of your freedom of information (**FOI**) request under section 24A of the FOI Act. I have made this decision on the basis that I am satisfied that those documents do not exist.

By way of background, I am authorised by the President of the Commission to issue decisions for requests made under the FOI Act.¹ This includes providing reasons for a decision as to whether a document, or documents, should be disclosed in response to a request under the FOI Act.

The reasons for my decision are outlined in this letter. However, I must first address the history of this matter.

Request History

On 14 December 2024, you wrote to the Commission the following:

“...

I am making this request for access to documents under the Freedom of Information Act 1982 (Cth).

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.

¹ *Freedom of Information Act 1982* (Cth), s.23(1).

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.

..."

On 31 December 2024, I sent a letter to you which stated that your request would be refused under section 24 of the FOI Act. The basis of this finding was that a large number of results were generated as a result of a search performed in locating the documents which may be captured by the scope of your initial request. I also mentioned in the letter that under section 24AB(8) of the FOI Act, the period starting on the day in which you make a revised request or indicate that you do not wish to revise the request is disregarded when calculating the 30-day processing period. In other words, I had advised you that the clock had stopped.

What followed from that letter was a series of email exchanges between you and I, which discussed a potential revised scope of your request. This led to an email, which I sent to you on 9 January 2025, which stated the following:

"Do you wish to revise the scope of your request to the following:

- data sharing arrangements between the Commission and the Department of Veterans' Affairs (DVA) within the last 10 years (i.e. 14 December 2014 to 14 December 2024); and*
- information pertaining to sharing large scale data (of more than 100 veterans) between the Commission and the DVA?*

As part of the proposed revised scope of your request, do you also wish to include:

- policies and procedures governing the handling of DVA client information; and*

- *privacy impact assessments or other ethical review documents which relate to the policies and procedures governing the handling of DVA client information?”*

(revised request)

On 11 January 2025, you replied to that email with the following:

“That would be suitable.”

I have taken the revised request to be what I had proposed to you on 9 January 2025. For the remainder of this Decision Letter, I will refer to any documents which are captured by the scope of the revised request to be the requested documents. For completeness, I note that the timeframe for the revised request remained 14 December 2014 to 14 December 2024.

Given that the clock resumed on 11 January 2025, being the date the revised request was made, the due date for your request is now **Friday 24 January 2025**.

Having recapped the request history, I will now turn to the reasons for my decision.

Reasons for decision

Materials considered

In reaching my decision, I considered the following:

- all correspondence between you and I in relation to this FOI request;
- the revised request;
- the FOI Act;
- guidelines issued by the Office of the Australian Information Commissioner, as prescribed under section 93A of the FOI Act (**FOI Guidelines**);
- the Commission’s administrative and statutory functions; and
- the results of searches performed by me in locating the requested documents.

General Principles

Section 11 of the FOI Act bestows upon you a legally enforceable right to access documents held by a Commonwealth agency such as the Commission.

I further note that if a decision-maker reaches a conclusion that part of, or the entirety of a document falls within an exemption under the FOI Act, then part of, or the entirety of that document does not have to be disclosed.²

There is nothing in the FOI Act which limits what an applicant can do with any document which is released to them and that has been taken into consideration for the purposes of this request. A decision to give an individual access to a document under the FOI Act is generally done on the premise that the disclosure of that document is disclosed to a wider audience.³

Furthermore, a request for documents under the FOI Act should be construed in a broad and common-sense manner,⁴ and should be for documents which were in the relevant agency’s possession at the

² Ibid, s.31B.

³ [3.36] FOI Guidelines.

⁴ *Russell Island Development Association Inc and Department of Primary Industries* (1994) 33 ALD 683.

time the request was made.⁵ In light of those considerations, I will comment on the scope of the revised request.

Scope

I have interpreted the scope of the revised request to capture documents pertaining to data sharing arrangements between the Commission and the DVA, as well as documents pertaining to the sharing of large-scale data between the Commission and the DVA. The final two points of your request, in my view, pertain to policies and procedures, privacy impact assessments and other ethical review documents which are classified under any data sharing arrangements between the Commission and the DVA, as contemplated by the first point of the revised request.

It is worth noting that parties to a Commission matter generally do not advise the Commission whether or not they are DVA clients, and accordingly, such information is not collected. I further note that the Commission is a workplace relations tribunal, which has functions in relation to the subject matters listed in section 576 of the *Fair Work Act 2009* (Cth).

Having regard to my interpretation of the scope of the revised request, I will now turn to my findings.

Searches performed

The only feasible location in which the requested documents could be located is any internal record database held by the Commission's Legal Services team.

The Commission's Legal Services team have oversight of, among other things, memoranda of understanding between the Commission and other government agencies, advice to internal stakeholders pertaining to the Commission's obligations under the *Privacy Act 1988* (Cth), policy documents which pertain to the handling and use of personal information, and privacy impact assessments of documents and programs being undertaken by the Commission.

I performed a search of all internal records belonging to the Legal Services team, including records which pertain to the abovementioned functions of the Legal Services team. The search incorporated the following parameters:

- 'data sharing arrangement';
- 'Department of Veterans' Affairs';
- 'DVA';
- 'DVA client';
- 'Memorandum of understanding'; and
- 'DVA Memo'.

I will now turn to the findings of those searches.

Findings

Section 24A of the FOI Act states:

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:**

⁵ *Re Radar Investments Pty Ltd and Health Insurance Commission and others* [2004] AATA 166.

- (i) is in the agency's or Minister's possession but cannot be found; or
- (ii) **does not exist.**

...

(emphasis added)

Paragraph [3.85] of the FOI Guidelines provides that an agency may refuse a request if it has taken 'all reasonable steps' to locate a document which is the subject of a FOI request and is satisfied that that document does not exist. The FOI Act does not provide a meaning to the term 'all reasonable steps'. The meaning of the word 'reasonable' in the context of section 24A of the FOI Act has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.⁶

Steps which are comprehensive and are directed to locating the documents in those places are relevant in ascertaining whether 'all reasonable steps' have been taken.⁷ What constitutes a reasonable search will depend on the circumstances of the request itself and will be influenced by the normal business practices of the relevant agency.⁸ Additionally, and depending on the circumstances of the request, a search of backup systems or archives in locating the requested documents may be necessary.⁹

The results of the searches performed, which incorporated the previously mentioned considerations, yielded no results. There is no other location in which the requested documents would be held by the Commission. It is on that basis that I am satisfied that no documents, which are within the scope of the revised request, exist. I therefore refuse you access to the requested documents under section 24A of the FOI Act.

As an aside, if you wish to know more about how the Commission collects and handles the personal information of its users, I refer to the Privacy Policy.

Rights of review

If you disagree with my decision, you have the right to apply for an internal review of my decision by the Commission. Any request for internal review must be made to the Commission within 30 days of being notified of my decision. The internal review will be conducted by an officer other than myself (as the original decision-maker), and the Commission must make a review decision within 30 days.

An application for internal review can be sent by email to foi@fwc.gov.au or by mail to GPO Box 1994 Melbourne VIC 3001, marked to my attention.

Review by the Information Commissioner

Under section 54L of the FOI Act, you can apply to the Information Commissioner for review of my decision. If you want to apply to the Information Commissioner for review, you must do so in writing within 60 days after you are notified of my decision. More information in relation to this can be found on the [Information Commissioner website](#).

⁶ *De Tarle and Australian Securities and Investments Commission (Freedom of information)* [2015] AATA 770, applying *Re Cristovao and Secretary, Department of Social Security* (1998) 53 ALD 138.

⁷ *Bienstein and Attorney-General (Commonwealth of Australia)* [2008] AATA 490, at [48].

⁸ *Chu v Telstra Corporation Limited* (2005) FCA 1730, at [35].

⁹ *Trevor Kingsley Ferdinands and Department of Defence (Freedom of Information)* [2024] AICmr 182, at [21].

How to make a complaint

You can complain to the Information Commissioner about action taken by the Commission in relation to your FOI request. Enquires to the Information Commissioner can be made by telephone (1300 363 992) or online via an [Enquiry Form](#).

Please don't hesitate to contact me if you wish to discuss this matter.

Yours sincerely,

Nick Kierce
FOI Delegate
Legal Services
Fair Work Commission