



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ24/00651

Nosey Rosey

By email: [foi+request-12576-0f5b6ef2@righttoknow.org.au](mailto:foi+request-12576-0f5b6ef2@righttoknow.org.au)

Dear Nosey Rosey

## Freedom of Information Request – FOIREQ24/00651

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on 14 December 2024.

I am writing to consult with you on the basis that your request gives rise to a practical refusal reason.

### Background

Scope of your request

Your FOI request sought access to the following information:

*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.*

*I emphasize that I am not authorizing the transfer of this FOI request to the Department of Veterans' Affairs or any other agency. If [Authority name] holds the*



*requested information, it should provide it directly. If there are parts of this request that [Name of Agency] does not understand or believes are not held, I invite you to contact me to clarify or refine the scope under section 24AB of the FOI Act, rather than initiating a transfer. However, I do not consent to the transfer of this request to another entity. The FOI Act places the onus on agencies to process requests for documents they hold, and I expect [Authority name] to meet its responsibilities in this regard.*

Following consultation with you on the scope of your request, on 30 December 2024 you provided the following clarification:

*Exclusivity to DVA*

*My request pertains specifically to documents relating to data sharing or transfers involving the Department of Veterans' Affairs (DVA) and the OAIC. It does not include general information that applies broadly to other agencies.*

*Particular Client Information*

*The request does not seek access to any specific individual client information. Instead, it focuses on systematic or broad data-sharing arrangements and governance frameworks involving DVA client information.*

*Data Fields*

*The reference to "data fields" in my request relates to a de-identified or redacted sample of the types of data shared between DVA and the OAIC. Examples might include categories such as name, service status, medical details, or financial information if applicable to shared datasets.*

*Timeframe*

*The timeframe for my request is the last ten years (14 December 2014 to 14 December 2024). I am not limiting this to current policies or procedures.*

*Specific Documents*

*While I do not have specific documents in mind, I am seeking any relevant:*

*MOUs or agreements governing data sharing with DVA, Policies or guidelines for managing DVA client information, Privacy or impact assessments related to such*



*data, and Internal reports or evaluations outlining the purpose or implications of receiving DVA client data.*

### *Exclusions*

*I confirm that the following may be excluded to streamline processing:*

*Duplicate documents or earlier parts of email chains captured in later correspondence, Individual-level complaint records or files.*

## **Notice of intention to refuse your request**

I am an officer authorised under s 23(1) of the FOI Act to make FOI decisions on behalf of the OAIC.

I am writing to consult with you under section 24AB of the FOI Act, because:

- I believe that the work involved in processing your request will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope (s 24AA(1)(a)(i)); and
- I cannot sufficiently identify the documents that you are requesting (s 24AA(1)(b)).

For the purposes of the FOI Act, these are called ‘practical refusal reasons’ (s 24AA(1)(a)(i) of the FOI Act).

On this basis, I intend to your request for access to documents unless the terms of your request are revised, so as to remove the practical refusal reasons.

However, before I proceed to a refusal decision, you have an opportunity to revise your request again. This is called a ‘request consultation process’ as set out under s 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

## **Why I intend to refuse your request**

### **Identification of request documents**

For the purposes of s 24AA(1)(b), a practical refusal reason exists in relation to a request if the request does not provide such information concerning the document as is reasonably necessary for the OAIC to identify it as required by s 15(2)(b) of the FOI Act.

After considering the terms of your request, including the clarification you provided, and undertaking internal consultation within the OAIC, I have formed the view that further



information is required to sufficiently identify and conduct searches for documents in response to your request.

The request is broad and there are multiple instances where assumptions are required, I consider that the process of trying to identify documents that may or may not be within the scope of the request would be an unreasonable diversion of Agency resources.

Following internal consultation, we could not identify documents falling with scope of your request for the following reasons:

- The request is multifaceted and requires a detailed analysis of any OAIC document that is responsive to a reasonable search term in order to identify whether the document or part of the document falls within any part of the scope of the request. We don't consider that there are currently any reasonable search parameters that could be used to identify documents within the request scope, while reducing the number of documents outside of scope to a manageable number.
- The request is broad and potentially captures a wide range of instances where data is shared between the OAIC and DVA across a 10-year period. Without a specific time period, document category or matter type, there is no way for the OAIC to target the searches required. Reasonable searches would therefore be required across almost every function of the OAIC.
- Searches would be required across:
  - the OAIC's case management system - Resolve
  - the OAIC's document holding system – Content Manager
  - OAIC's email system – including archived accounts of staff no longer employed by the OAIC, requiring specialist IT support
  - general computer files
  - paper files
- With DVA as the specific search term that could be used, these searches would be required to be undertaken across the whole Agency. As the OAIC has an extensive history working with the DVA or DVA related matters across its functions, there are likely to be an unreasonable number of responsive documents that would require manual review in order to identify whether the document falls within the scope of your request.

As an indication of the breadth of these searches, a preliminary search using the search term “DVA” in the OAIC case management system, Resolve, returned over 1000 files, all containing numerous, potentially relevant documents.



- The terms of your request are unclear as to whether you seek documents strictly about an arrangement for sharing data with DVA or data sharing generally.

### Calculation of the processing time – substantial diversion

Based on our initial assessment of your request, and the internal scoping that has been undertaken, I estimate it will take the OAIC at least 200 hours to process your FOI request in its current form.

I consider that the processing of your request would be a substantial diversion of the OAIC's resources, for the purposes of section 24AA(1)(a)(i) of the FOI Act.

### Unreasonable diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available to the OAIC for FOI processing
- the impact that processing the request may have on other tasks and functions of the OAIC
- whether an applicant has cooperated in revising the scope of the request
- whether there is a significant public interest in the requested documents
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 160 (head count) staff. I consider that processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests of this size and nature.

Processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests. Given the substantial amount of documents which fall within scope of your FOI request, it is likely that line areas will also be asked to assist with conducting search and retrieval of



documents in this matter, resulting in staff being diverted from their other work in the OAIC, including undertaking regulatory functions in both FOI and privacy along with undertaking activities set out in the OAIC's 2024/2025 Corporate Plan.

For these reasons I have formed the view that processing your request would substantially impact the OAIC's operations.

I also consider that the processing of your request would be an unreasonable diversion of the OAIC's resources.

### Request consultation process

You now have an opportunity to revise your request so as to remove the practical refusal reasons.

There are a number of ways that you can reduce the scope of your request so as to remove the practical refusal reasons. These include limiting and/or further revising the scope of your request by:

- narrowing the terms of your request to a document category (e.g. email correspondence or internal briefing documents)
- identifying the type of data sharing you are interested in. For instance, the sharing of data in relation to a privacy assessment or investigation. Or, the sharing of data, when the OAIC undertakes its FOI review functions.
- further clarifying the kinds or types of information that you are seeking access to
- narrowing the scope of your request to communication between specific individual staff members
- reducing the date range of your request

By way of assistance, we note that the OAIC makes available a range of documents on our website, including our privacy policy and memorandums of understanding

We have also drafted the following revised scope for your consideration. While we understand this revision may not capture all of the documents sought in your original request, we consider that this revised scope provides an example of what what could be considered a reasonable request to process:

*Documents that outline what data sharing arrangements were in place between the OAIC and the Department of Veteran's Affairs (DVA) in the course of conducting privacy complaint investigations under s 40 of the Privacy Act from date 1 July 2024 to present.*

If you would like to proceed with the above revised scope of your request or proceed with another revision of scope you should advise us in a reply email.



**Australian Government**

**Office of the Australian Information Commissioner**

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for **14 days** and starts on the day after you receive this notice. Therefore, you must respond to this notice by 23 January 2025.

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal reasons outlined above, we will recommence processing it.

Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

### **Contact officer**

If you would like to revise your request, or have any questions, you can contact me at [foi@oaic.gov.au](mailto:foi@oaic.gov.au).

Yours sincerely,

Lachlan Smith-Marks

Governance, Risk and Compliance Officer (FOI)

9 January 2025