



## Decision and Statement of reasons issued under the *Freedom of Information Act 1982*

Decision and reason for decision of Brett (Position Number 62258141),  
Assistant Director, Information Access Unit, Client Access and Rehabilitation Branch,  
Department of Veterans' Affairs

---

**Applicant:** Ms Verity Pane

**Primary Decision Date:** 9 November 2018

**Primary reference number:** LEX 25062

**Decision date:** 26 August 2022

**FOI reference number:** LEX 51217 (MR18/00907)

**Sent by email:** [foi+request-4882-7918df81@righttoknow.org.au](mailto:foi+request-4882-7918df81@righttoknow.org.au)

---

Dear Ms Pane,

### **Freedom of Information Request: LEX 51217 (Primary Request LEX 25062)**

#### **Decision**

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has not been able to identify any documents relevant to your request.
2. For this reason, I have made a decision to refuse your request under section 24A(1)(b)(ii) of the *Freedom of Information Act 1982* (**FOI Act**), as the document cannot be identified.

#### **Authority to make decision**

3. I, Brett (Position Number 62258141), Assistant Director, Information Access Unit, Client Rehabilitation Access Branch, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

## Summary

4. On 13 October 2018, you made a request for the Department to create a document from data in the possession of the Department. Your request sought access to:

*'...Dear Department of Veterans' Affairs,*

*Under s 17 of the FOI Act, I apply for a one page summary document to be compiled from information held in your agency's information systems, which will primarily (and possibly only require) information from DVA's aDVAnce system, to set out the number of DVA clients, by age group, that were referred to SPOC management by the Coordinated Care unit and Client Liaison Unit (to be listed separately) for the month of July 2018 (TRIM and Outlook need not be searched, based on information given by the Coordinated Client Support Program, that states such methods have not been used since Feb 2016 for referral management).*

*As per the relevant ANAO report, the Client Liaison Unit (CLU) was established by DVA in September 2007, and the Coordinated Care (CC) unit in January 2010, following criticisms made by various preceding reviews.*

*DVA implemented the Case Coordination program to case manage clients identified (Level 3 or Level 2) as being at increased risk of self-harm or harm to others, who have multiple complex needs (although recent veterans who were at risk, such as Jesse Bird, were not managed by this unit). The Client Liaison Unit was established to case manage clients identified (Level 1) as vulnerable or having complex behaviours.*

*DVA breaks veterans into age groups referred to as 'young veterans' (64 and under) and 'veterans' (65 and over), based on historical retirement age. For the purpose of this FOI, we will stick to this age split.*

*Format of compiled document:*

*Unit.....FY15/16.....FY16/17.....FY17/18*

*CLU - > 65*

*CLU - 65+*

*CC - > 65*

*CC- 65+*

*The purpose of this FOI is to determine what DVA itself has determined are the numbers of vulnerable veterans, by age group, it has, by reference to the number of referrals it makes (which, as the Jesse Bird case reflects, will be a lower number than the actual number of vulnerable veterans DVA is communicating with, but gives some indicative evidence)...'*

5. On 15 October 2018, the Department acknowledged your request via email.
6. On 25 October 2018, the Department provided you with a charges Notice, advising of a preliminary assessment of charges for processing your request in the amount of \$403.45. You were also advised that a deposit of \$100.86 was required before any further action could be taken on your request.
7. On 25 October 2018, you requested a reduction/waiver of charges associated with your request on the basis that the charges were wrongly assessed. Your request was made in the following terms:

*'...Disappointingly, there isn't even an attempt to justify the processing time claimed (at least previous ones did have some description) this time, and the summary charges even incorrectly has two different total charge amounts on it (obviously this was just a quick cut and paste job) - being a total charge of \$119.54 or \$403.45 depending where you look.*

*At least this is a preliminary notice this time.*

*But yet again it highlights the fictional nature of these estimates.*

*The same data, but for a six month period, recently had an invalid post-dated charges notice for \$507.75 issued*

*<https://www.righttoknow.org.au/request/4820/response/13308/attach/2/FOI%2024561%20Charges%20notice.pdf> 3*

*The same data, but for a one month period here, amazingly gets a \$403.45 charges levy.*

*DVA Information Law employee's math is either genuinely terrible (even for lawyers) or this is yet another example in the long list of DVA charges notices where the assessment bears no relationship to the work involved, but is merely a reflection of the amount of DVA's unwilling to legitimately deal with the FOI request in accordance with the law.*

*The calculations are clearly fictional, being inconsistent with previous calculations, lack any evidentiary basis let alone reasonable description, and are thus challenged accordingly...'*

8. On 9 November 2018, the Department issued you with a decision that advised the charges remained payable (Charges Decision).
9. On 21 November 2018, you applied for external review of the Department's decision to apply charges to your FOI request (MR18/00907 refers). In your application you noted:

*'...A charges notice was issued by DVA on 25 October 2018 and the charges were contested as wrongly calculated the same day.*

<https://www.righttoknow.org.au/request/4882/response/13330/attach/4/FOI%2025062%20Charges%20notice.pdf>

*Unlike the other IC review submitted today, DVA acknowledged the contested status but re-issued the charges notice as a charges decision anyway on 9 November 2018:*

<https://www.righttoknow.org.au/request/4882/response/13448/attach/4/FOI%2025062%20Charges%20decision.pdf>

*The grounds of objection are provided here:*

[https://www.righttoknow.org.au/request/spoc\\_referral\\_statistics\\_for\\_july#outgoing-9992](https://www.righttoknow.org.au/request/spoc_referral_statistics_for_july#outgoing-9992)

*This is one of multiple charges notices issued by DVA to me that have involved spurious and excessive charges that bear no realistic relationship to the work involved.*

*The FOI Guidelines explain that the decision to impose a charge is discretionary and any charges must be fair, accurate and should not be used to unreasonably hinder an applicant from pursuing an FOI request. Further, a charge must not be used to unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act.*

*The FOI Guidelines further explain that in exercising the discretion to impose a charge, an agency should take into account the 'lowest reasonable cost objective' in s 3(4) of the FOI Act, which provides that 'functions and powers given by this Act are to be*

*performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost’.*

*Under s 55D(1) of the FOI Act, it is the agency that bears the onus of establishing that the decision given in respect of the request is justified.*

*Because of the above, the Information Commissioner must be satisfied that a charge is accurate and fairly reflects the work involved.*

*An underlying assumption in calculating processing time is that the officers involved in this process are skilled and efficient. For example, it is assumed that an officer who is preparing material has appropriate knowledge and expertise to carry out the activity efficiently.*

*In the recent IC review decision of 'ND' and Department of Human Services (Freedom of information) [2017] AICmr 119, the Information Commissioner considered the use of a charges calculator in estimating the cost of processing a request. This and various other IC review decisions, together with the FOI Guidelines, emphasise that '[w]here a decision is made to utilise the charges calculator to estimate a charge, the agency or minister should examine a sample of the relevant documents and adjust the parameters of the charges calculator accordingly.'*

*I also note that a earlier Information Commissioner decision ruled that agencies could not charge applicants for any time the agency took on verifying and confirming figures as applicants are not paying for the agency assurance activities, which are predominantly for their own benefit.*

*I also note that the information Commissioner has previously made IC decisions relating to the use of 'fractional' hours to essentially create a charge - particularly in this case where DVA have decided to charge for a EL1 (Assistant Director) Information Law lawyer to carry out basic tabulation work that an APS 3 or APS 4 could carry out (being within their work standards). I note in earlier charges notices DVA use to charge \$20/h for such work, but has tripled these costs of late by charging for Executive Level lawyers in Information Law when realistically the work is actually carried out by much lower level employees in the respective business area, therefore the charges are in bad faith.*

*Also, I note the charges decision is invalid, as it does not meet the requirements of s 26(1)(b) and FOI Guideline 3.181, as it does not include the required information to identify the decision maker (without further research), which as per the OAIC ICON*

*circular of 8 June 2018 (which was circulated to agencies including DVA), states “where the decision relates to a document of an agency, the decision notice needs to include the name and designation of the person making the decision, including the decision maker’s first name, surname and title, to clearly explain their authority to make the decision”.*

*This required information is not merely incidental to an FOI decision but integral - it is provided so the receiver knows who to contact about the decision, and to determine whether the person who issued it is in fact authorised to do so (such as by independently checking the agency’s FOI delegations/authorisations list). It is simply not enough to assert that the agency knows who issued the decision, or is confident they are authorised to do so - it is not a question for the agency alone to determine...’*

10. On 6 May 2019, the Department received a notice under section 54Z of the FOI Act from the OAIC, advising of the IC Review. In response, the Department elected to issue you with a revised decision.
11. On 24 May 2019, the Department provided you with a revised Charges Notice under section 55G of the FOI Act, advising of revised charges for processing your request in the amount of \$145.84. You were also advised that a deposit of \$36.46 was required before any further action could be taken on your request.
12. On 29 July 2022, the Office of the Australian Information Commissioner (OAIC) made a compliance decision under section 55K of the FOI Act (MR18/00907 refers). The decision set aside the Department’s original decision of 9 November 2018 and substituted a decision that you are not liable to pay any charge in respect of your request for access to the document at issue.
13. On 13 August 2022, a search minute was issued to the Coordinated Client Support Branch to determine whether the department could produce a document relevant to the scope of the original request.
14. On 22 August 2022, the Coordinated Client Support Branch (CCSB) advised that their search for the data had returned a total number of referrals to Client Liaison Unit and Coordinated Care for the month of July 2018. Coordinated Client Support Branch stated that “due to limitations with reporting in aDVance (as this is now a legacy system) we are unable to interrogate this data further.” Meaning, the data could not be split into the categories requested.

## Material taken into account

15. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to refuse access to your request follow(s).

16. I have taken the following material into account in making my decision:

- the terms of your request on 13 October 2018;
- the OAICs decision (MR18/0090) to set aside the revised decision of 24 May 2019;
- the types of documents that are in the possession of the Department;
- my correspondence with different business areas within the Department;
- Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
  - Section 15 Request for Access;
  - Section 17 Requests involving use of computers etc. (e.g. requests for the Department to create a document)
  - Section 24A Request may be refused if documents cannot be found or do not exist
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

17. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

## Reasons for decision

### ***Requests may be refused if documents cannot be found, do not exist or have not been received (section 24A)***

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

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

19. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:

- the terms of your request;
- the subject matter of the documents;
- the current and past file management systems and the practice of orderly destruction or removal of documents;
- the Department's record management systems and practices; and
- the individuals and areas within the Department who may be able to assist with the location of the information you seek access to.

20. Despite the reasonable searches undertaken, the Department has been unable to identify documents relevant to your request. A description of the searches undertaken to locate the documents which you are seeking to access is at **Schedule 1**.

21. For these reasons, I am refusing your request for access to documents as described in your request in accordance with section 24A(1)(b)(i) of the FOI Act, on the basis that the document cannot be found.

### **Requests involving use of computers etc. (section 17)**

22. In making my decision to refuse your request I also considered the application of section 17 of the FOI Act and whether a document could be created to meet the terms of this part of your request.

23. Subject to section 17(1)(c)(i), I decided that the department was not in a position to create a written document, via the use of a computer or other equipment that is ordinarily available to the department for the purposes of retrieving or collating stored information as the required data could not be found.



## Your rights of review

24. If you are dissatisfied with my decision, you may apply for internal review or request the Office of the Australian Information Commissioner (**OAIC**) review my decision. We encourage you to seek internal review as a first step to resolve any concerns you may have.

## Internal review

25. Under section 54 of the FOI Act, you may apply in writing to the Department for an Internal Review of my decision. The Internal Review application must be made within 30 days of the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.
26. You can make your application for Internal Review in one of the following ways:

**Post:** Information Access Unit,  
Department of Veterans' Affairs  
GPO Box 9998, Brisbane QLD 4001

**Email:** [Information.Access@dva.gov.au](mailto:Information.Access@dva.gov.au)

## OAIC review

27. Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)

**Post:** Director of FOI Dispute Resolution  
Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001

**Facsimile:** (02) 9284 9666

**Phone:** 1300 363 992

**Email:** [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au)

28. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

## Contact us

29. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

**Online:** <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>

**Post:** Information Access Unit  
Department of Veterans' Affairs  
GPO Box 9998, Brisbane QLD 4001

**Phone:** 1800 838 372

**Email:** [Information.Access@dva.gov.au](mailto:Information.Access@dva.gov.au)

Yours sincerely,

**Brett (Position Number 62258141)**

Assistant Director

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

26 August 2022



## Summary of document searches

---

The Department undertook the following to identify any records that fall within the scope of your request (**relevant documents**).

### 1. Searches undertaken

On 16 August 2022, a search minute was issued to the Mental Health and Wellbeing Services Division (MHWSD). The search minute was completed by the Coordinated Client Support Branch (CCSB), the responsible area for the data.

On 22 August 2022, the Coordinated Client Support Branch (CCSB) advised that their search for the data had returned a total number of referrals to Client Liaison Unit and Coordinated Care for the month of July 2018, but could not interrogate the data further to obtain the detail required to fulfil the request.



## Schedule of relevant provisions in the FOI Act

---

### 3 Objects - general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

## 11A Access to documents on request

### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - a document of the agency; or
    - an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

### *Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

### *Exemptions and conditional exemptions*

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
  - (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

## **15 Requests for access (as related to the requirements for requests)**

### *Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

### *Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

## **17 Requests involving use of computers etc**

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

## **23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or

her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.  
(see section 11A).

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

### *Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

## **26 Reasons and other particulars of decisions to be given**

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
  - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and

(c) give to the applicant appropriate information concerning:

- (i) his or her rights with respect to review of the decision;
- (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
- (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

(1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).

(2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document. (see section 11A).