



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

Decision and reason for decision of Brett (Position Number 62331110),
A/g Director, Information Access Unit,
Client Access and Rehabilitation Branch, Department of Veterans' Affairs

Applicant:	Alan Ashmore
Date of primary decision:	24 October 2022
FOI reference number (Primary):	LEX 53717
Internal review decision date:	15 December 2022
Internal review reference number:	LEX 54687
Sent by email:	foi+request-9359-f9d0aedb@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Internal Review Request: LEX 54687

Decision

1. The purpose of this letter is to give you a decision about your request for internal review for the decision made in LEX 53717 under the *Freedom of Information Act 1982* (Cth) (**FOI Act**)
2. I have made the decision to affirm the original decision made by Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Client Access Rehabilitation Branch. That decision was to grant full access to two (2) documents and refuse access to the last two dot points of your request (ie. the total additional cost to the Government of veterans and war widows in receipt of a Gold Card) under section 24A(1)(b)(ii) of the FOI Act, on the basis that the documents do not exist or cannot be found.

Authority to make decision

3. I, Brett (Position Number 62331110), A/g Director, Information Access Unit, Client Access Rehabilitation 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

Original Decision

4. On 8 September 2022 you made a request for access to a document in the possession of the Department. Your request sought access to:

'...I am seeking the latest document/worksheet listing the following, namely:

: The total cost to DVA of a veteran in receipt of a Gold Card.

: The total cost to DVA of a war widow in receipt of a Gold Card

: The total additional cost to Government of a veteran in receipt of a Gold Card, and

: The total additional cost to Government of a war widow in receipt of a Gold Card.

All documentation/worksheets to list the complete breakdown of costs, e.g. optical, dental, hospital, transport, medical, pharmaceutical, etc...'

5. On 15 September 2022, the Department acknowledged your request via email.
6. As an extension of time was applied to process your request in accordance with section 15AA of the FOI Act, a decision on your request was due by 24 October 2022.
7. On 24 October 2022 the Department made a decision to grant full access to two (2) documents and refuse access to the last two dot points of your request (ie. the total additional cost to the Government of veterans and war widows in receipt of a Gold Card) under section 24A(1)(b)(ii) of the FOI Act, on the basis that the documents do not exist or cannot be found within the scope of your request, under the following provisions of the FOI Act:
- Section 15 Request for Access
 - Section 17 Requests involving use of computer etc. (e.g. request for the Department to create a document)
 - Section 24A Request may be refused if the documents cannot be found or do not exist

Internal Review

8. After receiving the Department's decision on 24 October 2022, you contacted the Department on 15 November 2022 requesting an internal review of the handling of this FOI request. Your internal review request was made in the following terms:

'...I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'Gold card costs...'

9. On 8 December 2022, I emailed you to clarify the scope of the internal review. Thank you for clarifying the scope.
10. As your application was made within the 30 day of the original decision being made, the internal review decision is valid.
11. As no extension of time has been applied to process this internal review, a decision on your internal review application is due 15 Dec 2022.

Material taken into account

12. 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 grant partial access to the document follows
13. I have taken the following material into account in making my decision.
 - the terms of your original request made on 8 September 2022 and the original decision made on this request on 24 October 2022;
 - the records of the searches carried out in processing your original request;
 - the terms of your internal review request made on 15 November 2022;
 - the types of information and documents that are in the Department's possession;
 - the content of the document that fall within the scope of your request;
 - 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 have also considered the following provisions of the FOI Act relevant to my decision:
 - Section 15 Request for Access
 - Section 17 Requests involving use of computer etc. (e.g. request for the Department to create a document)
 - Section 24A Request may be refused if the documents cannot be found or do not exist

- Section 54C Internal review - decision on internal review; and

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);

14. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 3**.

Reasons for decision

15. I have decided to affirm the original decision made on 24 October 2022 to grant full access to two (2) documents and refuse access to the last two dot points of your request (ie. the total additional cost to the Government of veterans and war widows in receipt of a Gold Card) under section 24A(1)(b)(ii) of the FOI Act, subject to the following provisions in the FOI Act.

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

16. 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.

17. 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.

18. The last two dot points of your request seek access to the total additional cost to the Government of veterans and war widows in receipt of a Gold Card.

19. The Department's Data & Insights team have advised that the data requested is not produced as a report, thus no documentation is available to fully address the request.
20. On the advice provided by the business area, I am satisfied that documents do not exist for the last two dot points of your request. On this basis, I am refusing those parts your request for access to documents in accordance with section 24A(1)(b)(ii), on the basis that documents do not exist.
21. Additionally, further searches were conducted (summarised in **Schedule 2**) to locate the document shown to you at the Secretary's Round Table in August 2019. On the basis of the responses to the searches, I am refusing those parts of your request for access to documents in accordance with section 24A(1)(b)(i), on the basis that the document cannot be found.

Creation of a document in response to your FOI request (section 17)

22. In order to provide you access to relevant information regarding your request, the Department's Data & Insights team extracted and compiled the data listed in the Department's wider databases to create document 2 in scope of your request.
23. Document 2 is comprised of a breakdown of the average costs to the Department of a veteran and war widow in receipt of a Gold Card as requested in the first dot points of your request.
24. Document 2 is listed in **Schedule 1** and was created in accordance with section 17 of the FOI Act.

Access to documents

25. You were provided with the document previously, on 24 October 2022, as part of the primary FOI decision LEX 53717. I have therefore not enclosed the document again.

Your rights of review

26. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**).

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

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

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

Yours sincerely,

Brett (Position Number 62331110)

A/g Director
Information Access Unit
Client Access and Rehabilitation Branch
Department of Veterans' Affairs

15 December 2022



Document schedule

Applicant: Alan Ashmore

Decision date: 15 December 2022

FOI reference number: LEX 54687

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	March 2022	Document 1 – SAAG_March 2022	1	Full Access	N/A
2	Unavailable	Document 2 – DATA-4967 – ATCM – Veteran and War Widow Gold Card Cost	1	Full Access	N/A



Summary of Searches Undertaken

Applicant: Alan Ashmore
Decision date: 15 December 2022
FOI reference number: LEX 54687

1. On 7 December 2022, noting your contention that you had seen a document containing the information you are requesting at the *"Secretary's Round Table, (SRT), in August 2019"*, I sent a search minute to the Office of the Secretary. I was advised by a staff member of the Secretary's office (by phone) that the document, if it does exist, would more likely be held by the Chief Operating Officer or the Chief Financial Officer Division. The Secretary's Office did not conduct a search.
2. On 7 December 2022, I sent a search minute to the Chief Operating Officer Division. On 7 December 2022 the COO Division advised they are the incorrect area to respond to the search minute. The COO Division did not conduct a search.
3. On 7 December 2022, I sent a search minute to the Chief Financial Officer Division. On 12 December 2022 the Data Insights Branch (within the CFO Division) advised that they had conducted a search and could not locate the document presented in August 2019.
4. On 13 December 2022, noting your contention that you were shown the document by a First Assistant Secretary at the SRT in August 2019. *"This First Assistant Secretary then arranged to meet with him when next in Melbourne but we never heard from him again."* According to organisational charts from the period. There were two male First Assistant Secretary's at the time. One is no longer employed by the department. The other, I consulted as to whether he had any recollection of the meeting or the document. He advised me that he was acting as Chief Operating Officer at the time of the meeting. He has a record of the meeting in his diary, but he doesn't recall attending. He advised me that the scope of your request would have fallen outside his responsibilities, and advised me to approach the Policy Division Costings Team.
5. On 13 December 2022, I sent a search minute to the Veteran and Family Policy Division. On 13 December 2022 the VFP Division advised that they had conducted the search and found "Nil results".



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:
 - (i) a document of the agency; or
 - (ii) 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.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter - that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

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.

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).

54C Internal Review - decision on internal review

Scope

- (1) This section applies if an application for internal review of an access refusal decision OR an access grant decision (the original decision) is made in accordance with this Part.

Decision

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

Notice of decision

- (4) Section 26 extends to a decision made under this section.