



## Internal review decision made under the *Freedom of Information Act 1982*

Internal review decision and reasons for decision of Position Number 62209913  
Information Law Section, Legal Services and General Counsel Branch, Department of  
Veterans' Affairs

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**Applicant:** Julie  
**Date of primary decision:** 17 September 2017  
**FOI reference number:** FOI 24057  
**Internal review decision date:** 18 October 2018  
**Internal review reference number:** IR 24563

Dear Julie,

1. The purpose of this letter is to give you a decision about your request for internal review under the *Freedom of Information Act 1982* (FOI Act).
2. I have made a decision to vary the original decision made by Position Number 62210022, Information Law Section, Legal Services and General Counsel Branch, not to release any documents subject to your request.

### Authority to make this decision

3. I, Position Number 62209913, Acting Director, Information Law Section, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to review decisions about access to documents in the possession of the Department in accordance with section 54C) of the *Freedom of Information Act 1982* (the FOI Act).

### Summary

4. On 17 August 2018 you made a request for access to documents in the possession of the Department. Your request sought access to:

*I request under FOI any document (not including emails or other informal documents relating to just general administrative activity) held by the Department about the formal services agreement or other establishing formal documents that relate to the purpose and/or scope and/or outcomes to be delivered by the 'Veteran Mates', excluding all marketing material and general advice/information material distributed to pharmacists, GP or veterans.*

*Any document not involving sign-off/approval below SES level (or equivalent) is excluded from scope (looking at the primary documents only, not ancillary material).*

*Any financial expenditures within documents in scope, if sensitive, may be redacted with consent.*

*Any proprietary IP, within documents in scope, if sensitive, may be redacted with consent.*

*Any individual names below SES level (or equivalent), within documents in scope, if sensitive, may be redacted with consent.*

*Any email addresses or other contact information equivalent), within documents in scope, if sensitive, may be redacted with consent.*

*Any ethics approval and any privacy impact assessment about or on Veterans Mates program is also in scope.*

5. On 17 August 2018, the same day, you wrote to the Department to amend your request in the following terms:

*Correction to scope - REMOVE*

*Any document not involving sign-off/approval below SES level (or equivalent) is excluded from scope (looking at the primary documents only, not ancillary material).*

*REPLACE WITH*

*Any document not involving sign-off/approval \*at\* SES level (or equivalent) is excluded from scope (looking at the primary documents only, not ancillary material).*

6. On 17 September 2018 you were provided with a decision relating to access to documents within scope of your request. The documents relevant to your request were exempted in full under section 45 of the FOI Act.
7. On 18 September 2018 you requested an internal review of the decision to exempt documents in full.
8. The Department has undertaken a further search of its records and has identified additional Request for Tender documentation relevant to your request, as set out above. Documents relevant to your request are listed in the schedule of documents at **Schedule 1**.

## **Decision**

9. I have made a decision to vary the original decision made by Position Number 62210022 on 17 September 2018. I have decided to release each of the documents identified in the original decision in part. In accordance with Section 22(2), I have decided to provide access to an edited copy, modified by deletions, of each of these documents. I have also decided to release other Request for Tender documentation in full.

10. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to grant partial access to documents follow.

## **Material taken into account**

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

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the comments you made in the request for internal review (dated 18 September 2018);
- consultation with the relevant business area regarding the request;
- consultation with a third party whose information appeared in the documents;
- 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 11B Public interest exemption – factors
  - Section 22 Access to edited copies with exempt or irrelevant material deleted
  - Section 47G Public interest conditional exemptions—business
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

12. A full extract of all provisions I used to make my decision are provided in **Schedule 2**.

## **Reasons for Decision**

### ***Unreasonable adverse effect on business affairs (s47G)***

13. A document is conditionally exempt from disclosure if, relevantly, it discloses information concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information would, or could reasonably be expected to, unreasonably adversely affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs (section 47G(1)(a)).

14. While I have decided that the bulk of documents 1-3 are to be released, they each contain some information relating to the business and commercial affairs of the University of South Australia which I have decided is conditionally exempt from release. The relevant information is known only to the University of South Australia and the Department. This information was provided to the Department as part of the University of South Australia's tender for the 'Veterans' Medicines Advice and Therapeutics

Education Services (Veterans' MATES) Program' and was provided as part of a competitive tender process.

15. I find that disclosure would, or could reasonably be expected to, adversely affect the University of South Australia in respect of its lawful business and commercial affairs. These adverse consequences include the University of South Australia's competitors learning of its resourcing and tender costings, which could adversely impact the University's ability to competitively bid for work with the Department or in other tenders. Disclosure could give competitors an unfair advantage over the University. In my view, these adverse effects would be unreasonable.
16. I find that the relevant parts of documents 1-3 are conditionally exempt under section 47G(1)(a) of the FOI Act.

***Public interest conditional exemption***

17. I must nevertheless give access to the relevant parts of these documents unless, in the circumstances, access at this time would, on balance, be contrary to the public interest (s 11A(5)).
18. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- (a) promote the objects of the Act;
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;

19. I also considered the following factors which do not favour disclosure:

- (a) the Department's ability to secure competitive tenders may be adversely impacted because third parties may be less willing to tender for Departmental contracts if they believe their commercial information is likely to be disclosed publicly;
- (b) it would be unreasonable to disclose the commercially sensitive information of a third party;
- (c) the promotion of effective financial oversight (listed in [18](c) above) is not enhanced by releasing the specific costing of the University of South Australia's provision of services. This is because the value of the contract is published annually online.

20. On balance, I considered that the public interest factors against disclosure are more persuasive than the public interest factors favouring disclosure. I am therefore satisfied that disclosure of this particular

information at this time would be contrary to the public interest and that the relevant information is therefore exempt from release.

## Access to documents

21. The documents released to you in accordance with the FOI Act are enclosed.

## Information Publication Scheme

22. The Information Publication Scheme requires the Department to publish information released in response to individual requests made under the FOI Act, except in specified circumstances. I am of the view that details of your request should be made available on the Department's disclosure log. As such, details of your request will be published by the Department on its disclosure log, which can be accessed at <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>

## Your rights of review

23. Under section 54L of the FOI Act, if you are dissatisfied with my decision, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner 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:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001

**Facsimile:** (02) 9284 9666

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

**In person:** Level 3, 175 Pitt Street, Sydney NSW.

24. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

## Contacts

25. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

**Post:** Legal Services & Assurance, Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601

**Facsimile:** (02) 6289 6337

**Email:** [information.law@dva.gov.au](mailto:information.law@dva.gov.au)

Yours Sincerely,

**Position Number 62209913**

A/g Director

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

18 October 2018



## Schedule of documents

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**Applicant:** Julie  
**Decision date:** 18 October 2018  
**IR reference number:** FOI 24563

Doc No	Date of document	Document description	Pages	Full, partial or nil release	Exemption provision
1	23 December 2018	Deed of Agreement between the Department and University of South Australia, as executed on 23 December 2018		Partial	s 47G
2	1 March 2018	Deed of Variation 1 to the Deed		Partial	s 47G
3	19 March 2018	Deed of Variation 2 to the Deed		Partial	s 47G
4	Multiple	Request for Tender documentation available during the Tender process for 'MATES' (multiple documents contained in one compressed folder)		Full	N/A



## Schedule of relevant provisions in the FOI Act

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### 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).

**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.

**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).

**47G Public interest conditional exemptions—business**

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or

concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
- (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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