

Julie (Right to Know)

Julie (Right to Know)

LEX ID	24057	Outcome	Refused
DVA file number		Charges notified (\$)	0.00
Applicant name	FOI - Julie (Right to Know)	Charges collected (\$)	0.00
DVA officer	Canberra - Leia s 47E(c) & (d)	Date received/valid	17 August 2018
Source	3. Email	Date dcn notif'd/wdn/trsf	
Group	FOI Primary	Date finalised	17 September 2018
PPI	No	Access level	Unrestricted
File request	Not required	Date created	22 August 2018
Practical refusal reasons	N/A	Last updated	5 November 2018
Response time	0-30 days	Due date	17 Sep 2018
Disclosure log	N/A	Days running	31
Status	Finalised	Days to go (if clock running)	
		Days running beyond timeframe (if clock stopped)	0

Client/Rep details Julie (Right to Know)
foi+request-4748-b310769c@righttoknow.org.au

Scope/Notes OUTCOME:
Three (3) docs ID'd. Access RIF (s 45).

REQUEST:
Dear Department of Veterans' Affairs,

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.

Yours faithfully,

Julie

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).

File notes

Date	Type	DVA officer	Timeframe days
s 22			
19 Sep 2018	1. File note	Amy [redacted]	
Applicant has sought IR of this decision. Registered as FOI 24563. Nick allocated.			
18 Sep 2018	1. File note	Amy [redacted]	
Emails sent from applicant			
17 Sep 2018	s45 - Material obtained in confidence	Leia [redacted]	
17 Sep 2018	4. Clock stop	Leia [redacted]	
Clock stopped. Reason: Decision issued to applicant by email 17/9/18			
17 Sep 2018	1. File note	Leia [redacted]	
Decision issued to applicant. Three (3) docs, all fully exempt under s 45.			
17 Sep 2018	1. File note	Leia [redacted]	
Called BA to discuss detriment is released. [redacted] s 47E (d) s 47E(d)			
[redacted] s 47E (d) Also advised the docs were not signed by SES and would then not be in scope. Most would not be as EL2 sign off for these. I advised am including as in scope as the DOA etc were sent to parties by SES. Strict reading of scope would result in no docs, but I believe these are the docs the applicant seeks. Also saves having to get applicant to register new FOI.			
Review of docs provided, spoke with George about this FOI, re next steps & decision. Advice as follows:			
Agreed to include in scope			
s 47E (d)			

6 Sep 2018 1. File note Amy [redacted]
Search result - CESS - docs identified - 2 main emails attached to response.

s 47E (d)

s 47E (d)

To talk with George.

3 Sep 2018 1. File note Amy [redacted]
Search result - NIL from ESGRD

30 Aug 2018 1.2 File note/email Amy [redacted]
Search request sent to ESGRD & CESS

22 Aug 2018 8. Acknowledgment Letter Amy [redacted]

By email

17 Aug 2018 1. File note Amy [redacted]
Correction to scope

17 Aug 2018 5. Clock start Amy [redacted] 30
Clock started

From: [REDACTED] Linda on behalf of INFORMATION.ACCESS
Sent: Wednesday, 22 August 2018 10:14 AM
To: Information.Law
Cc: INFORMATION.ACCESS
Subject: FW: Freedom of Information request - FOI - Veteran Mates Program - Services Agreement / Scope / Deliverables Documents [TO BE CLASSIFIED] [DLM=For-Official-Use-Only]

Categories: Amy

Hi Information Law

Please see to the following.

Regards.

Linda [REDACTED]
Assistant Information Access Officer
National Information Access Processing Team (NIAPT) Department of Veterans' Affairs Tel : [REDACTED] s 47E(c) & (d) Fax: (02) 9213 7400

-----Original Message-----

From: Julie [mailto:foi+request-4748-b310769c@righttoknow.org.au]
Sent: Friday, 17 August 2018 9:41 PM
To: FOI <AMBFOI@dva.gov.au>
Subject: Freedom of Information request - FOI - Veteran Mates Program - Services Agreement / Scope / Deliverables Documents [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

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.

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

Yours faithfully,

Julie

Please use this email address for all replies to this request:
foi+request-4748-b310769c@righttoknow.org.au

Is foi@dva.gov.au the wrong address for Freedom of Information requests to Department of Veterans' Affairs? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dva

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

From: [REDACTED] Amy on behalf of Information.Law
Sent: Wednesday, 22 August 2018 3:05 PM
To: 'foi+request-4748-b310769c@righttoknow.org.au'
Cc: Information.Law
Subject: Acknowledgement of FOI Request – FOI 24057 [DLM=For-Official-Use-Only]

Dear Julie,

Acknowledgement of FOI Request – FOI 24057

I refer to your request to access information held by our Department under the *Freedom of Information Act 1982* (FOI Act). The Department received your request on 17 August 2018. In accordance with section 15(5)(b) of the FOI Act, the Department has 30 days to process your request. As such, a decision on your request is due by 17 September 2018.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

In all communications please quote reference **FOI 24057**.

Kind Regards,

Information Law | Legal Services & Assurance Branch
Department of Veterans' Affairs
GPO Box 9998 Canberra ACT 2601
E: informationlaw@dva.gov.au



s 47C & 47E (d)



s 47C & 47E (d)



s 47C & 47E (d)



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From: INFORMATION.LAW
Sent: Monday, 17 September 2018 4:21 PM
To: 'foi+request-4748-b310769c@righttoknow.org.au'
Subject: FOI 24057 – Decision and Statement of Reasons [SEC=UNCLASSIFIED]
Attachments: FOI 24057 - Decision and Statement of Reasons - 17 September 2018.pdf

Good afternoon Julie,

FOI 24057 – Decision and Statement of Reasons

I refer to your request, received 17 August 2018, to access information held by the Department under the *Freedom of Information Act 1982*. Please find attached the decision in response to your request.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: informationlaw@dva.gov.au | W: www.dva.gov.au





Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of Position Number 62210022

Applicant: Julie
Decision date: 17 September 2018
FOI reference number: FOI 24057

Dear Julie

Freedom of Information Request: FOI 24057

1. I have made a decision to refuse access to the documents relevant to your request.

Summary

2. I, Position Number 62210022, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).
3. On 17 August 2018, you made a request for access to documents in the possession of the Department. You specifically 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.

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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..."

4. On the same day you made a correction to your request, noting:

"...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)..."*

5. As no extensions of time have been applied to process your request, a decision is due by 17 September 2018.
6. I have decided not to impose a charge in relation to this request, in accordance with regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*.
7. The Department has undertaken a reasonable search of its records and has identified three (3) documents relevant to your request, as set out above. Although the documents are not signed by Senior Executive staff, the main document was issued to the relevant third party alongside a letter authorised by a Senior Executive staff member. For this reason only, I have considered the documents to fall within the scope of your request. The documents relevant to your request are listed at Schedule 1.

Decision

8. I have made a decision to refuse access to the documents relevant to your request. The documents that I have chosen to refuse access to are set out in Schedule 1, together with the applicable exemption provisions.

Material taken into account

9. 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 the documents follows.
10. I have taken the following material into account in making my decision:
- the terms of your request;
 - the types of documents that are in the Department's possession;
 - the content of the documents 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 also considered section 45 of the FOI Act (Documents communicated in confidence); and

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

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

Reasons for Decision

12. I have decided to refuse access to documents within the scope of your request in accordance with the following exemptions in the FOI Act:

Documents containing material obtained in confidence (section 45)

13. I have found all three (3) documents to be exempt from disclosure in accordance with section 45 of the FOI Act, on the basis that the documents contain material obtained in confidence.

14. Section 45 of the FOI Act provides that a document is an exempt document if its disclosure under the FOI Act would found an action by a person for a breach of confidence. The FOI Guidelines provide that, to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- (a) it must be specifically identified;
- (b) it must have the necessary quality of confidentiality;
- (c) it must have been communicated and received on the basis of a mutual understanding of confidence;
- (d) it must have been disclosed or threatened to be disclosed, without authority; and
- (e) unauthorised disclosure of the information has or will cause detriment.

It must be specifically identified

15. The documents comprise a 2015 Deed of Agreement (Agreement) and two variations to that Agreement (2017 and 2018 respectively). The contents of these documents are confidential and are specifically identified as such.

It must have the necessary quality of confidentiality

16. The Agreement contains a confidentiality clause (clause 15), wherein the parties agreed, by signing the agreement, that parties must not, without the prior consent of the other party, disclose to third party information about the terms or the performance of the Agreement which is by its nature confidential. Any variations made to the Agreement are covered by this confidentiality clause.

It must have been communicated and received on the basis of a mutual understanding of confidence

17. By signing the Agreement, all parties accepted the inherent confidentiality of the Agreement. For example, the Department was aware that the Agreement was to be shared and used only by individuals within the Department, or with another agency, where it serves the legitimate interests of the Commonwealth or where details regarding the procurement were required to be published. Whilst the confidentiality clause provides that confidentiality may not apply in certain circumstances, such as if the information comes into the public domain or where it is required or authorised by law; disclosure under the FOI Act is not identified as being one of those exceptions. At the time the

parties executed the Agreement, they were aware of its terms including clause 15, and would have expressly understood and accepted a mutual obligation of confidence.

It must have been disclosed or threatened to be disclosed, without authority

18. The contents of the documents have not been disclosed outside the terms of the Agreement. The contents are known to a limited number of individuals on a need to know basis. Further, the wider terms of the Agreement, other than for example what is required for procurement purposes, has not entered the public domain and has not been distributed more widely. The information contained in the documents is only known to a limited number of individuals.
19. If the information was disclosed, it would be without the authority of the parties to the Agreement.

Unauthorised disclosure of the information has or will cause detriment

20. If I am of the view that a document is exempt from disclosure on the basis of confidentiality, I need to also be of the view that disclosure of the material will cause detriment.
21. Through this Agreement, the Department has developed the Veterans' Medicines Advice and Therapeutics Education Services (Veterans' MATES) project; a consumer health literacy and prescriber education program designed to improve quality use of medicines and reduce adverse medication events within the veteran community. As noted on the Veterans' MATES website, to date more than forty topics have been delivered involving more than 290,000 veterans, 32,000 doctors and 8,500 pharmacies and accredited pharmacists. There is a high degree of participant satisfaction and it is important that this work can continue.
22. The information contained within the documents has the necessary quality of confidentiality as it contains commercially valuable information that is not common knowledge or in the public domain. The documents as whole, detail the manner in which research would be targeted, prepared, disseminated and evaluated. If this information were to be released it would provide competitors with an unfair advantage over the contracted party. The Agreement has not concluded and the work is still underway.
23. Given the confidential nature of the Agreement, along with the express confidentiality clause, it is reasonable to adduce that if the documents were to be disclosed under the FOI Act without authorisation, the disclosure would found an action, by a person other than the Commonwealth, for breach of confidence. The documents that I have exempted under section 45 contain information that is confidential in nature and their release would constitute an unauthorised use of the information. They contain information that was communicated to the Department on the basis of a mutual understanding of confidence between the Department and a third party. The Department has a consistent practice of carefully protecting information as it is provided by third parties. In this instance, I have considered that whilst the public have a right to request access to information under the FOI Act, this must be balanced against the rights of parties who provide confidential information to the Department, and as such I have decided that these documents are exempt from release.
24. As I have found the documents to be exempt under section 45 of the FOI Act, I am not required to consider any public interest considerations.

Your rights of review

25. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

26. 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.
27. You can make your application for internal review in one of the following ways:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

Information Commissioner Review

28. Under section 54L of the FOI Act, 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:
29. You can make your application for Information Commissioner review in one of the following ways:

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

30. 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>

Contact us

31. If you wish to discuss this decision, please do not hesitate to contact me using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

Yours Sincerely,

Position number 62210022
Authorised officer

17 September 2018



Schedule of documents

Applicant: Julie
Decision date: 17 September 2018
FOI reference number: FOI 24057

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	23 December 2015	Deed of Agreement between the Commonwealth of Australia and the University of South Australia for the provision of the Veterans; Medicines Advice and Therapeutics Education Services Program	49	Access Refused	s 45
2	13 February 2017	Deed of Variation No. 1 to document 1 above	13	Access Refused	s 45
3	14 March 2018	Deed of Variation No. 2 to document 1 above	5	Access Refused	s 45



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).

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.

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).

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency, the Commonwealth or Norfolk Island.

From: Julie <foi+request-4748-b310769c@righttoknow.org.au>
Sent: Tuesday, 18 September 2018 2:14 PM
To: INFORMATION.LAW
Subject: Re: FOI 24057 – Decision and Statement of Reasons [SEC=UNCLASSIFIED]

Dear Department of Veterans' Affairs,

I would like to add the following to my Internal Review request:

Having checked AusTender, with respect to the deeds of agreement and contractual variations, all of the documents are reported as having no contract confidentiality clauses or output confidentiality clauses as are required to be mandatorily reported under Commonwealth procurement guidelines.

CN ID.....	Supplier.....	Desc.....	Confidentiality..	Confidentiality..	End Date...	Value (\$m)
			Contract.....	Outputs.		
CN3322135	UNI OF SA	Veterans' MATES	No	No	30-Jun-18	14mil
CN3497679	UNI OF SA	Veterans' MATES	No	No	30-Jun-21	11mil

These would be required to sustain a claim that absolutely no part of the contract signed (noting that are all high value multi-million dollar contracts, and therefore would reasonably be subject to some external scrutiny) could be disclosed on confidentiality grounds.

While contents that relate to trade secrets, other commercially sensitive proprietary information; and personal information would be reasonable to be redacted, it would be unreasonable given no restrictive confidentiality provisions were reported to AusTender (as is mandatorily required) to claim all of the contents of these documents are prohibited from any form of release.

Yours sincerely,

Julie

-----Original Message-----

Good afternoon Julie,

FOI 24057 – Decision and Statement of Reasons

I refer to your request, received 17 August 2018, to access information held by the Department under the Freedom of Information Act 1982. Please find attached the decision in response to your request.

Kind Regards,

Information Law Team

Department of Veterans' Affairs
E: [1][email address] | W: [2]www.dva.gov.au

[3]cid:image001.png@01D0027A.1DAB84F0

Please use this email address for all replies to this request:
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From: Julie <foi+request-4748-b310769c@righttoknow.org.au>
Sent: Tuesday, 18 September 2018 4:00 PM
To: INFORMATION.LAW
Subject: Re: FOI 24057 – Decision and Statement of Reasons [SEC=UNCLASSIFIED]

Dear Department of Veterans' Affairs

As you would be aware, the listing of confidentiality provisions in AusTender is part of a compliance regime to comply with the Senate Procedural Order of Continuing Effect: Entity Contracts which was introduced in 2001 to improve public access to information about government contracting. The main principle on which the Senate Order was based, as stated by ANAO, is that parliamentary and public access to government contract information should not be prevented, or otherwise restricted, through the use of confidentiality provisions, unless there is sound reason to do so. Successive governments have agreed to comply with the Senate Order and have required entities to put in place suitable procedures to support Ministers to comply with it.

Under the Senate Order, portfolio Ministers must table letters of advice for entities they administer in the Senate, confirm that these entities have published, on their websites, lists containing the following, where a confidentiality clause barring disclosures is part of the contract is claimed:

- * the contractor, the amount of the consideration, the subject matter of each such contract, the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings; and
- * whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality.

I have searched your website, and have not found and such disclosure for the Veteran MATES contracts, nor can I find any such document about the Veteran MATES contracts tendered in Parliament by your Portfolio Minister, stating that these contracts had confidentiality provisions which prohibited their release.

This accords the records of AusTender which similarly report no such confidentiality restrictions.

I also note that Finance's whole-of-government guidance Buying for the Australian Government, Confidentiality Throughout the Procurement Cycle (the Guidance)—contains the Confidentiality Test, which is designed to assist entities to determine the appropriate inclusion of confidentiality provisions in contracts. The Test consists of four criteria, all of which must be met for a supplier's commercial information to be considered confidential. These are:

- * the information to be protected must be specifically identified (which hasn't been identified in the statement of reasons, but rather a global claim has been made)
- * the information must be commercially 'sensitive' (again, no specifics in the statement of reasons)
- * disclosure would cause unreasonable detriment to the owner of the information or another party (vague claims not substantiated by specific reference); and
- * the information was provided under an understanding that it would remain confidential (contradicted as the notifications required to be made for such confidentiality provisions, that require notice to be given on your agency website, and for notification to be tabled in Parliament, and to be flagged to AusTender don't exist).

Can you explain this discrepancy as to the claimed refusal ground?

Yours sincerely,

Julie

-----Original Message-----

Good afternoon Julie,

FOI 24057 – Decision and Statement of Reasons

I refer to your request, received 17 August 2018, to access information held by the Department under the Freedom of Information Act 1982. Please find attached the decision in response to your request.

Kind Regards,

Information Law Team

Department of Veterans' Affairs

E: [1][email address] | W: [2]www.dva.gov.au

[3]cid:image001.png@01D0027A.1DAB84F0

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From: INFORMATION.LAW
Sent: Wednesday, 19 September 2018 10:00 AM
To: 'Julie'
Subject: FOI 24563 (Internal Review of FOI 24057) – Acknowledgment of request for internal review [SEC=UNCLASSIFIED]

Good morning Julie,

FOI 24563 (Internal Review of FOI 24057)

The Department acknowledges receipt of your request for an internal review of FOI 24057, received 18 September 2018. Your request has been registered and the reference number is FOI 24563. A decision on your request will be due by 18 October 2018. The officer assigned to finalise your request will have access to both your emails and the contents within when making a decision.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: informationlaw@dva.gov.au | W: www.dva.gov.au

-----Original Message-----

From: Julie [<mailto:foi+request-4748-b310769c@righttoknow.org.au>]
Sent: Tuesday, 18 September 2018 4:00 PM
To: INFORMATION.LAW <INFORMATION.LAW@dva.gov.au>
Subject: Re: FOI 24057 – Decision and Statement of Reasons [SEC=UNCLASSIFIED]

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Information Law Team

Department of Veterans' Affairs

E: [1][email address] | W: [2]www.dva.gov.au

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Julie (Right to Know)

Julie (Right to Know)

LEX ID	24563	Outcome	Greater access on rev - not full
DVA file number		Charges notified (\$)	0.00
Applicant name	IR - Julie (Right to Know)	Charges collected (\$)	0.00
DVA officer	Canberra - Nick [REDACTED]	Date received/valid	18 September 2018
Source	3. Email	Date dcn notif'd/wdn/trsf	
Group	FOI Int Review	Date finalised	18 October 2018
PPI	No	Access level	Unrestricted
File request	Not required	Date created	19 September 2018
Practical refusal reasons	N/A	Last updated	5 November 2018
Response time	0-30 days	Due date	18 Oct 2018
Disclosure log	Published	Days running	30
Status	Finalised	Days to go (if clock running)	
		Days running beyond timeframe (if clock stopped)	0

Client/Rep details Julie (Right to Know)
foi+request-4748-b310769c@righttoknow.org.au

Scope/Notes OUTCOME:
Decision granting greater access, in part. Provided other documents for info/context.

REQUEST:
See email for details. IR of FOI 24057

File notes

Date	Type	DVA officer	Timeframe days
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S 22

s 22

s 22

8 Oct 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
s 42, 47C & 47E (d)

8 Oct 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
s 42, 47C & 47E (d)

5 Oct 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
s 42, 47C & 47E (d)

4 Oct 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
s 42, 47C & 47E (d)

2 Oct 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
s 42, 47C & 47E (d)

28 Sep 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
POGPA complete. WO signed by Nick. Send out.

26 Sep 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
PGPA form given to GC

25 Sep 2018 1. File note Leia ^{s 47E(c) & 47E(d)}
Advised to handover all Julie (R2K) FOI matters to George (note however his transition out of section), may need to re-allocate.

As discussed, RFQ received. PGPA & WO to be organised.

25 Sep 2018 1.2 File note/email Leia ^{s 47E(c) & 47E(d)} Q

RFQ received - to discuss with George.

RFQ acknowledged.

21 Sep 2018 1.2 File note/email Leia [REDACTED]

RFQ sent for various FOI. Wait for response. Fwd to George.

19 Sep 2018 8. Acknowledgment Letter Amy [REDACTED]

19 Sep 2018 1. File note Leia [REDACTED]

s 47C & 47E (d)

18 Sep 2018 1.2 File note/email Amy [REDACTED]

Emails from applicant in primary FOI. See FOI 24057.

18 Sep 2018 5. Clock start Amy [REDACTED] 30
Clock started

From: [REDACTED] Linda on behalf of INFORMATION.ACCESS
Sent: Tuesday, 18 September 2018 11:07 AM
To: INFORMATION.LAW
Cc: INFORMATION.ACCESS
Subject: FW: Internal review of Freedom of Information request - FOI - Veteran Mates Program - Services Agreement / Scope / Deliverables Documents [TO BE CLASSIFIED] [DLM=For-Official-Use-Only]

Hi Information Law

Please see to the following.

Regards.

Linda [REDACTED]
Assistant Information Access Officer
National Information Access Processing Team (NIAPT) Department of Veterans' Affairs Tel : [REDACTED] Fax: (02) 9213 7400

-----Original Message-----

From: Julie [mailto:foi+request-4748-b310769c@righttoknow.org.au]
Sent: Monday, 17 September 2018 6:56 PM
To: FOI <FOI@dva.gov.au>
Subject: Internal review of Freedom of Information request - FOI - Veteran Mates Program - Services Agreement / Scope / Deliverables Documents [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'FOI - Veteran Mates Program - Services Agreement / Scope / Deliverables Documents'.

The FOI Act does not prescribe any procedure or criteria for the internal review decision but an agency should be guided by the principles put forward by the Administrative Review Council in a Best Practice Guide on internal review, Internal Review of Agency Decision Making, Report No 44 (2000), Chapter 8.

And given reference to a third party, to avoid all doubt, the FOI Act does not authorise an agency to extend the time for deciding an internal review in order to undertake third party consultation.

Similarly an agency must provide written notice of an internal review decision to the internal review applicant (s 54C(4)), with the notice of decision required to comply with s 26. The notice should state the findings and reasons underlying the internal review decision, and not merely refer to or restate the decision of the original FOI decision maker.

The guiding principles of FOI internal review are as follows:

1) The role of the internal review officer is to bring a fresh, independent and impartial mind to the review. To the extent possible, the officer should not have been involved in or consulted in the making of the decision under review (it is preferable that the review officer is senior to the officer who made the decision under review).

2) Internal review is a merit review process and the internal review officer should decide all issues raised by an applicant's FOI request, and exercise all the powers that were available to the original decision maker. For example, the review officer can decide (contrary to the decision reached by the original decision maker) that a document is not an exempt document under the FOI Act, that an exempt document should be provided to the applicant in accordance with s 3A, that a practical refusal reason under ss 24 and 24AA does not exist, or that an FOI charge should be reduced or waived.

3) The internal review officer may rely on record searches or third party consultation undertaken by the original decision maker, or may cause the same work to be undertaken again. For example, the review officer may rely upon an earlier agency search that located all requested documents the agency held, and may accept the record of consultation the agency undertook with a State, a foreign organisation, a business entity or a person. On the other hand, if there is a doubt as to the adequacy of those earlier record searches or consultation, the review officer may repeat those tasks, partially or in full, to reach a correct and preferable decision on the FOI request.

4) All the material available to the original decision maker should be available to the internal review officer. In reviewing an exemption claim, the internal review officer should examine each document claimed to be exempt.

5) The internal review officer must consider all issues raised by the person applying for internal review. The review officer may contact that person to seek further information or to discuss the issues raised by the request, including the option of redefining or narrowing the scope of the request.

6) The internal review officer may consult other agency staff when undertaking the review, including the original FOI decision maker. However, it is important that the review officer brings an independent mind to the task and does not act at the direction or behest of any other officer.

7) The internal review officer may consider additional material or submissions not considered by the original FOI decision maker. In particular, the review officer may decide that a change in circumstances occurring since the earlier decision has the result, for example, that disclosure would not be contrary to the public interest, or that a charge should be waived on public interest grounds.

I accept, given the identification of the three identified documents, which are within the scope of the FOI, that there may possibly be some commercial-in-confidence material within, but that such material could not reasonably be said to include every page and every paragraph of the aforementioned documents, and the claim that the confidential nature of a document would be jeopardised by selective release of any part of a document creates a high onus of proof to be met.

The mere fact that an agency has expressed concern that any disclosure, even selective, would cause a breach of confidence, is not enough to satisfy the exemption. The mere disclosure of ordinary business communications between parties revealing no more than the mere facts of consultation or collaboration will not, of itself, destroy trust and confidence between those parties.

Whether the information is, in fact, confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations, but the decision merely offers opinions on this, unsupported by factual evidence.

Purely factual material, which includes material such as statistical data, surveys and factual studies, for example, will rarely satisfy the test for confidentiality.

And notably, some information cannot be reasonably confidential given it is required to be mandatorily reported under existing disclosure schemes (i.e. Commonwealth procurement disclosures).

Section 45(1) provides that a document is an exempt document if its disclosure would found an action by a person (other than an agency or the Commonwealth) for breach of confidence. In other words, the exemption is available where the person who provided the confidential information would be able to bring an action under the general law for breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure.

It should not be presumed that the other party, if they have not been consulted, and could readily have been so, would object to disclosure, which is necessary if a confidentiality clause provides for only selective enforcement.

I would also draw your attention to *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434, in that the alleged confidential information must be identified specifically. It is not sufficient for the information to be identified in global terms, such as claiming it over the whole document/s, without specific consideration of each part of the document, as to whether such a commitment would be reasonable.

This is especially the case given the onus of the FOI to redact/exempt only that which is reasonably required, and to partially release wherever possible if an exemption may arise to a document being released in whole.

A full history of my FOI request and all correspondence is available on the Internet at this address:
https://www.righttoknow.org.au/request/foi_veteran_mates_program_servic

Yours faithfully,

Julie

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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).

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.

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).

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

34 Cabinet documents

General rules

- (1) A document is an exempt document if:
 - (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
 - (b) it is an official record of the Cabinet; or
 - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
 - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
- (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

37 Documents affecting enforcement of law and protection of public safety

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
 - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:
- (a) witnesses; or
 - (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
 - (c) any other people who, for any other reason, need or may need, such protection.
- (3) In this section, law means law of the Commonwealth or of a State or Territory.

38 Documents to which secrecy provisions of enactments apply

- (1) Subject to subsection (1A), a document is an exempt document if:
- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and
 - (b) either:

- (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.
- (1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.
- (2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.
- (3) This section applies in relation to a document so far as it contains personal information about a person if:
- (a) the person requests access to the document; and
 - (b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the Migration Act 1958 as affected by section 503D of that Act.
- (4) In this section: enactment includes a Norfolk Island enactment.

42 Documents subject to legal professional privilege

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
- (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
 - (b) the information is operational information of an agency.

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency, the Commonwealth or Norfolk Island.

46 Documents disclosure of which would be contempt of Parliament or contempt of court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) 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.
- (3) 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.

Public interest conditional exemptions

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or
- (c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or
- (d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or
- (e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or
- (f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
 - (a) an agency; or

- (b) a Minister; or
- (c) the Government of the Commonwealth; or
- (d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:
 - (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
 - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47D Public interest conditional exemptions—financial or property interests of the Commonwealth or Norfolk Island

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth, of Norfolk Island or of an agency.

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

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;

- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:
- qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:
- (a) a medical practitioner;
 - (b) a psychiatrist;
 - (c) a psychologist;
 - (d) a counsellor;
 - (e) a social worker.

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

47H Public interest conditional exemptions—research

A document is conditionally exempt if:

- (a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in Schedule 4; and
- (b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

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

47J Public interest conditional exemptions—the economy

- (1) A document is conditionally exempt if its disclosure under this Act would, or could be reasonably expected to, have a substantial adverse effect on Australia's economy by:
 - (a) influencing a decision or action of a person or entity; or
 - (b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

Note: A person includes a body corporate and a body politic (see subsection 2C(1) of the Acts Interpretation Act 1901). Examples of a body politic include the government of the Commonwealth, a State, a Territory or a foreign country.

- (2) For the purposes of subsection (1), a substantial adverse effect on Australia's economy includes a substantial adverse effect on:
 - (a) a particular sector of the economy; or
 - (b) the economy of a particular region of Australia.
- (2A) For the purposes of paragraph (2)(b), Norfolk Island is taken to be a region of Australia.
- (3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:
 - (a) currency or exchange rates;
 - (b) interest rates;
 - (c) taxes, including duties of customs or of excise;
 - (d) the regulation or supervision of banking, insurance and other financial institutions;
 - (e) proposals for expenditure;

- (f) foreign investment in Australia;
- (g) borrowings by the Commonwealth, Norfolk Island, a State or an authority of the Commonwealth, of Norfolk Island or of a State.

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

Julie (Right to Know)

Julie (Right to Know)

LEX ID	24297	Outcome	Refused
DVA file number		Charges notified (\$)	0.00
Applicant name	FOI - Julie (Right to Know)	Charges collected (\$)	0.00
DVA officer	Canberra - George [REDACTED] s 47E(c) & (d)	Date received/valid	31 August 2018
Source	3. Email	Date dcn	
Group	FOI Primary	notif'd/wdn/trsf	
PPI	No	Date finalised	2 October 2018
File request	Not required	Access level	Unrestricted
Practical refusal reasons	N/A	Date created	5 September 2018
Response time	0-30 days	Last updated	5 November 2018
Disclosure log	N/A	Due date	1 Oct 2018
Status	Finalised	Days running	32
		Days to go (if clock running)	
		Days running beyond timeframe (if clock stopped)	1

Client/Rep details Please use this email address for all replies to this request:

foi+request-4766-7f73f37e@righttoknow.org.au

Scope/Notes OUTCOME:
Refused in full to 11 documents - ss 47C & 47E(d) applied.

REQUEST:
Dear Department of Veterans' Affairs,

I seek copy of all the DVA Executive Management Board Minutes for FY16/17.

Yours faithfully,

Julie

File notes

Date	Type	DVA officer	Timeframe days
s 22			
2 Oct 2018	4. Clock stop	Leia [REDACTED] s 47E(c) & (d)	
Clock stopped. Reason: Decision issued to applicant by email 2/10/18			
2 Oct 2018	s47E - Certain operations of agencies	Leia [REDACTED] s 47E(c) & (d)	
2 Oct 2018	s47C - Deliberative processes	Leia [REDACTED] s 47E(c) & (d)	

2 Oct 2018 1. File note Leia **s 47E(c) & (d)**
Asked to take back. Decision issued as per discussion with George - exemptions applied under ss 47C & 47E(d) to all 11 documents.

28 Sep 2018 1. File note Leia **s 47E(c) & (d)**
George looked at docs following chat. **s 47C & 47E(d)**
s 47C & 47E(d)

14 Sep 2018 1. File note Leia **s 47E(c) & (d)**
Advised to handover matters to George. Discussed matter, **s 47C & 47E(d)**
s 47C & 47E(d)

6 Sep 2018 1. File note Amy **s 47E(c) & (d)**
EMB search results - 11 docs

5 Sep 2018 8. Acknowledgment Letter Amy **s 47E(c) & (d)**

5 Sep 2018 1. File note Amy **s 47E(c) & (d)**
Search request sent to EMB Secretariat

31 Aug 2018 5. Clock start Amy **s 47E(c) & (d)** 30
Clock started

From: [REDACTED] s 47E(c) & (d) Linda on behalf of INFORMATION.ACCESS
Sent: Tuesday, 4 September 2018 10:15 AM
To: Information.Law
Cc: INFORMATION.ACCESS
Subject: FW: Freedom of Information request - Department's Executive Management Board Minutes [TO BE CLASSIFIED] [DLM=For-Official-Use-Only]

Hi Information Law

Please see to the following request.

Regards.

Linda [REDACTED] s 47E(c) & (d)
Assistant Information Access Officer
National Information Access Processing Team (NIAPT) Department of Veterans' Affairs Tel [REDACTED] s 47E(c) & (d) Fax: (02) 9213 7400

-----Original Message-----

From: Julie [mailto:foi+request-4766-7f73f37e@righttoknow.org.au]
Sent: Friday, 31 August 2018 8:58 PM
To: FOI <AMBFOI@dva.gov.au>
Subject: Freedom of Information request - Department's Executive Management Board Minutes [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

I seek copy of all the DVA Executive Management Board Minutes for FY16/17.

Yours faithfully,

Julie

Please use this email address for all replies to this request:
foi+request-4766-7f73f37e@righttoknow.org.au

Is foi@dva.gov.au the wrong address for Freedom of Information requests to Department of Veterans' Affairs? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dva

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

From: s 47E(c) & (d) Amy on behalf of INFORMATION.LAW
Sent: Wednesday, 5 September 2018 9:37 AM
To: 'foi+request-4766-7f73f37e@righttoknow.org.au'
Cc: INFORMATION.LAW
Subject: Acknowledgement of FOI Request – FOI 24297 [DLM=For-Official-Use-Only]

Dear Julie,

Acknowledgement of FOI Request – FOI 24297

I refer to your request to access information held by our Department under the *Freedom of Information Act 1982* (FOI Act). The Department received your request on 31 August 2018. In accordance with section 15(5)(b) of the FOI Act, the Department has 30 days to process your request. As such, a decision on your request is due by 1 October 2018.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

In all communications please quote reference **FOI 24297**.

Kind Regards,

Information Law | Legal Services & Assurance Branch
Department of Veterans' Affairs
GPO Box 9998 Canberra ACT 2601
E: informationlaw@dva.gov.au



s 47C & 47E(d)

s 47C & 47E(d)

s 47E(c), s 47E(d)

s 47C & 47E(d)



s 47C & 47E(d)

s 22

From: INFORMATION.LAW
Sent: Tuesday, 2 October 2018 5:59 PM
To: 'foi+request-4766-7f73f37e@righttoknow.org.au'
Subject: FOI 24297 - Decision and Statement of Reasons [SEC=UNCLASSIFIED]
Attachments: FOI 24297 Decision and Statement of Reasons.pdf

Good evening Julie,

FOI 24297 Decision and Statement of Reasons

I refer to your FOI request received by the Department on 31 August 2018. Please find attached the decision in respond to your request.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: information.law@dva.gov.au | W: www.dva.gov.au

-----Original Message-----

From: Julie [mailto:foi+request-4766-7f73f37e@righttoknow.org.au]
Sent: Friday, 31 August 2018 8:58 PM
To: FOI <AMBFOI@dva.gov.au>
Subject: Freedom of Information request - Department's Executive Management Board Minutes [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

I seek copy of all the DVA Executive Management Board Minutes for FY16/17.

Yours faithfully,

Julie

Please use this email address for all replies to this request:
foi+request-4766-7f73f37e@righttoknow.org.au

Is foi@dva.gov.au the wrong address for Freedom of Information requests to Department of Veterans' Affairs? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dva

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of Position Number 62210022

Applicant: Julie
Decision date: 2 October 2018
FOI reference number: FOI 24297

Dear Julie,

Freedom of Information Request: FOI 24297

1. I have made a decision to refuse access to the documents relevant to your request.

Summary

2. I, Position Number 62210022, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).
3. On 31 August 2018, you made a request for access to documents in the possession of the Department. You specifically sought access to:

"...I seek copy of all the DVA Executive Management Board Minutes for FY16/17..."
4. As no extensions of time have been applied to process your request, a decision is due by 2 October 2018.
5. I have decided not to impose a charge in relation to this request, in accordance with regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*.
6. The Department has undertaken a reasonable search of its records and has identified 11 documents relevant to your request. The documents relevant to your request are listed at Schedule 1.

Documents subject to this request

7. The documents under assessment are the minutes that arose from Department's Executive Board meetings for the 2015/16 Financial Year. For ease of reference, the documents will be referred to as the "Minutes" and the Executive Board will be referred to as the "Board".

Decision

8. I have made a decision to refuse access to the documents relevant to your request. The documents that I have chosen to refuse access to are set out in Schedule 1, together with the applicable exemption provisions.

Material taken into account

9. 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 the documents follows.
10. I have taken the following material into account in making my decision:
- the terms of your request;
 - the types of documents that are in the Department's possession;
 - the content of the documents that fall within the scope of your request;
 - Departmental practice around the dissemination and access to the Minutes;
 - 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 provision[s] of the FOI Act relevant to my decision:
 - Section 11B Public interest exemption – factors
 - Section 47C Public interest conditional exemptions--deliberative processes
 - Section 47E Public interest conditional exemptions--certain operations of agencies; and
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).
11. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

Reasons for Decision

12. I have decided to refuse access to documents within the scope of your request in accordance with the following exemptions in the FOI Act:

Public interest conditional exemptions--deliberative processes (section 47C)

13. I consider that the Minutes contain discussions and recommendations by the Board in relation to a broad range of issues and that this material is conditionally exempt in accordance with section 47C of the FOI Act.

14. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

15. The Australian Information Commissioner has issued Guidelines under section 93A of the FOI Act to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. As the Guidelines explain:

... the deliberative processes involved in the functions of an agency are its thinking processes—the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

16. Further, while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact it may potentially come within the deliberative document exemption.

17. The Minutes are official records of actions and decisions of the board, including discussions and opinions about sensitive policy, proposals, activities and other matters of concern. The Minutes contain high level advice and discussions outlining options and strategies that were or are under consideration in relation to a number of matters concerning the Department. Due to the sensitivity of some discussions, restrictions are placed within the Department as to who can access the Minutes, noting that some material is restricted to Board members only.

18. Release of the Minutes under the FOI Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth. Some of these deliberations are of a sensitive nature. Upon inspection of the Minutes, I am of the view that where factual material is provided, it is done so in the course of assisting with the Board's deliberations.

19. The information does not fall within any of the exclusions in subsections 47C (2) and (3) of the FOI Act. Accordingly, I have decided that the Minutes which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

20. Section 11A(5) provides that an agency 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 would, on balance, be contrary to the public interest.

21. 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) disclosure would promote the objects of the FOI Act, including:
 - (i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
 - (ii) reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - (iii) enhance the scrutiny of government decision making.

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

- (a) disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth;
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- (d) disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency (insofar as content relates to the commercial affairs of the Commonwealth).

23. Releasing the documents sought may significantly reduce the quality, clarity or frankness of discussions between Board members and ultimately, the advice and recommendations that arise from these meetings. This potential detriment to the public interest of release of the documents outweighs the factors in favour of access.

24. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

25. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Public interest conditional exemptions--certain operations of agencies (section 47E)

26. I also consider that the Minutes contain information about the operation of the Department, which if it were to be released, could have a substantial adverse effect on the proper and efficient conduct of those operations. As such, the Minutes are also conditionally exempt in accordance with section 47E(d) of the FOI Act.
27. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:
 - (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
 - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
 - (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
 - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
28. As noted above, the Minutes derive from the meetings of the Board. Discussions in these meetings can be highly sensitive, with access to those deliberations restricted on a need to know basis.
29. Disclosure could allow individual's access to sensitive information about the Department's operations, including where certain issues discussed in those Board meetings are controversial and/or have not yet been resolved. It is important Board members are open and honest in these meetings and that they can share confidential information or views without recourse where that is in the best interests of the Department and ultimately, its operations. Disclosing this type of information could reasonably be expected to diminish the type of information discussed in the meetings and subsequently, the quality of the decisions made in those meetings.
30. Accordingly, I have decided that the documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

31. Section 11A(5) provides that an agency 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 would, on balance, be contrary to the public interest.

32. 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) disclosure would promote the objects of the FOI Act, including:
 - (iv) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
 - (v) reveal the reason for a government decision and any background or contextual information that informed the decision; and
 - (vi) enhance the scrutiny of government decision making.
33. I also considered the following factors which do not favour disclosure:
- (a) disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth;
 - (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;
 - (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
 - (d) disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency (insofar as content relates to the commercial affairs of the Commonwealth).
34. Release of the Minutes would be contrary to public interest. Board members need to be able to undertake rigorous and candid assessment of all information relevant to the Department's operations, and to consider in confidence, the most effective options and solutions to address the Department's affairs. It is important that Board members feel able to provide information, consider options and deliberate without restriction in order to ensure that the Board always considers all relevant information and opinions.
35. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
36. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Your rights of review

37. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

38. 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.
39. You can make your application for internal review in one of the following ways:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

Information Commissioner Review

40. Under section 54L of the FOI Act, 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:
41. You can make your application for Information Commissioner review in one of the following ways:

Online: 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
In person: Level 3, 175 Pitt Street, Sydney NSW

42. 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>

Contact us

43. If you wish to discuss this decision, please do not hesitate to contact me 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

Yours Sincerely,

Position number 62210022
Authorised officer

2 October 2018



Schedule of documents

Applicant: Julie
Decision date: 2 October 2018
FOI reference number: FOI 24297

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	13 July 2016	Final Minutes of July Meeting	8	13 July 2016	ss 47C & 47E(d)
2	16 August 2016	Final Minutes of August Meeting	7	16 August 2016	ss 47C & 47E(d)
3	13 September 2016	Final Minutes of September Meeting	7	13 September 2016	ss 47C & 47E(d)
4	17 October 2016	Final Minutes of October Meeting	6	17 October 2016	ss 47C & 47E(d)
5	16 November 2016	Final Minutes of November Meeting	6	16 November 2016	ss 47C & 47E(d)
6	14 December 2016	Final Minutes of December Meeting	7	14 December 2016	ss 47C & 47E(d)
7	16 February 2017	Final Minutes of February Meeting	7	16 February 2017	ss 47C & 47E(d)
8	16 March 2017	Final Minutes of March Meeting	8	16 March 2017	ss 47C & 47E(d)
9	13 April 2017	Final Minutes of April Meeting	9	13 April 2017	ss 47C & 47E(d)
10	18 May 2017	Final Minutes of May Meeting	6	18 May 2017	ss 47C & 47E(d)
11	15 June 2017	Final Minutes of June Meeting	7	15 June 2017	ss 47C & 47E(d)



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).

11 B Public interest exemptions--factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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).

Public interest conditional exemptions

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth; or
- (d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:
 - (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
 - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

Julie (Right to Know)

Julie (Right to Know)

LEX ID	24465	Outcome	
DVA file number		Charges notified (\$)	0.00
Applicant name	FOI - Julie (Right to Know)	Charges collected (\$)	0.00
DVA officer	Canberra - George [REDACTED]	Date received/valid	12 September 2018
Source	3. Email	Date dcn	
Group	FOI Primary	notif'd/wdn/trsf	
PPI	No	Date finalised	
File request	Not required	Access level	Unrestricted
Practical refusal reasons	N/A	Date created	13 September 2018
Response time		Last updated	5 November 2018
Disclosure log		Due date	12 Oct 2018
Status	In progress	Days running	54
		Days to go (if clock running)	-24
		Days running beyond timeframe (if clock stopped)	

Client/Rep details Please use this email address for all replies to this request:

foi+request-4803-7dcd2b85@righttoknow.org.au

Scope/Notes OUTCOME:
TBC

REQUEST:
Dear Department of Veterans' Affairs,

It occurred to me that understanding a bit more about RACER, DVA's new claims performance management system would assist me to better understand DVA's new veteran centric policies, especially given it is a system introduced as part of those 'reform' policies.

I therefore seek under FOI any document sent or received by any DVA SES level officer (just to reduce the scope, as otherwise it might unreasonably catch too many documents about inane and irrelevant things), whether by email or other method of passing, about RACER, from today back until 12 September 2017.

If that exceeds more than 50 documents, please exclude any document which also mentions or refers to anything not about RACER, and if that still exceeds 50 documents, can you please compile a list of said documents (with page count for each document) and I will tell you which ones I want from the list (up to a total of 50).

Yours faithfully,

Julie

File notes

Date	Type	DVA officer	Timeframe days
------	------	-------------	----------------

s 22

s 22

s 22

10 Oct 2018 1. File note Leia s 47E(c) & (d)

Email from applicant re 'secretly' applying for EOT. Discussed with Nick and advised NFA as we have not sought EOT.

8 Oct 2018 1. File note Leia s 47E(c) & (d)

Spoke with George as I appear to still be managing/following up this FOI, not as previously advised to hand over to George.

Advised will need to look at docs and then go back to BA as they state they have applied redactions -will need unredacted versions

A lot of documents to look through and need to go back to BA for full copies. In interim need to create list as BA still has not provided it. Need 15AB EOT as need more time to consult with applicant re the list and revising and due to number of docs & complexity of the project/content within docs.

Advised I wanted to send email to applicant before seeking EOT

8 Oct 2018 1. File note Leia s 47E(c) & (d)

Received email from CBD with docs in zip file

8 Oct 2018 1. File note Leia s 47E(c) & (d)

Sent email to Maralyn advising decision is due this week. Asked for the list again.

5 Oct 2018 1. File note Leia s 47E(c) & (d)

Copied into email from Maarten to Maralyn re docs and issues.

4 Oct 2018 1. File note Leia s 47E(c) & (d)

Email to Maarten advising we highlighted potential for misconception. Advised will wait to hear back & that if we need EOT we need more info.

4 Oct 2018 1. File note Amy s 47E(c) & (d)

Email copied in from Maarten that she sent to Michelle re docs and issues.

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Email from Maarten advising may be more manageable. Will review & send through. Also mentioned concern that applicant has a misconception of what RaCER is and the stage of development.

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Sent info to Maarten, asked to revise search etc

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Further email from Applicant re contacting RaCER etc. We already did & that is who is searching & assisting. NFA.

3 Oct 2018 1. File note Leia s 47E(c) & (d)

response from applicant. Sent to Maarten to see if assists & if still fall within scope.

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Response from Maarten re key docs. 100+ docs. Sent email to applicant.

3 Oct 2018 1. File note Leia s 47E(c) & (d)

s 47C & 47E(d)

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Email from business area s 47C & 47E(d)

s 47C & 47E(d)

3 Oct 2018 1. File note Amy s 47E(c) & (d)

Email from applicant

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Sent another follow up to BA re search results (Maarten & CBD)

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Email to applicant as advised by Nick. Advised searches & follow up etc

2 Oct 2018	1. File note	Leia [REDACTED]	
Email from applicant. As such, sought to find out from George what was happening. Advised Nick re the EOT responses			
27 Sep 2018	1. File note	Amy [REDACTED]	
Response from applicant. Not agreed.			
27 Sep 2018	1. File note	Amy [REDACTED]	
sought EOT from applicant			
26 Sep 2018	1. File note	Leia [REDACTED]	
Sent follow up on searches			
26 Sep 2018	1. File note	Leia [REDACTED]	
Follow up email sent to Maarten (CC in CBD)			
24 Sep 2018	1. File note	Leia [REDACTED]	
Advised to handover to George.			
20 Sep 2018	1. File note	Amy [REDACTED]	
Search forward to Maarten by CBD as he is working on RaCER			
17 Sep 2018	1. File note	Amy [REDACTED]	
Search request to CBD - due 25/9 FOI acknowledgment sent.			
12 Sep 2018	5. Clock start	Amy [REDACTED]	30
Clock started			

s 22

From: [REDACTED] Linda on behalf of INFORMATION.ACCESS
Sent: Wednesday, 12 September 2018 2:23 PM
To: INFORMATION.LAW
Cc: INFORMATION.ACCESS
Subject: FW: Freedom of Information request - Documents about RACER [TO BE CLASSIFIED]
[DLM=For-Official-Use-Only]

Good afternoon.

Please see to the following.

Regards.

Linda [REDACTED]
Assistant Information Access Officer
National Information Access Processing Team (NIAPT) Department of Veterans' Affairs Tel: [REDACTED] fax: (02) 9213 7400

-----Original Message-----

From: Julie [mailto:foi+request-4803-7dcd2b85@righttoknow.org.au]
Sent: Wednesday, 12 September 2018 1:18 PM
To: FOI <FOI@dva.gov.au>
Subject: Freedom of Information request - Documents about RACER [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

It occurred to me that understanding a bit more about RACER, DVA's new claims performance management system would assist me to better understand DVA's new veteran centric policies, especially given it is a system introduced as part of those 'reform' policies.

I therefore seek under FOI any document sent or received by any DVA SES level officer (just to reduce the scope, as otherwise it might unreasonably catch too many documents about inane and irrelevant things), whether by email or other method of passing, about RACER, from today back until 12 September 2017.

If that exceeds more than 50 documents, please exclude any document which also mentions or refers to anything not about RACER, and if that still exceeds 50 documents, can you please compile a list of said documents (with page count for each document) and I will tell you which ones I want from the list (up to a total of 50).

Yours faithfully,

Julie

Please use this email address for all replies to this request:
foi+request-4803-7dcd2b85@righttoknow.org.au

Is foi@dva.gov.au the wrong address for Freedom of Information requests to Department of Veterans' Affairs? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dva

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

s 47C & 47E(d)



s 47C & 47E(d)

s 47C & 47E(d)

s 47C & 47E(d)

s 47C & 47E(d)

s 22

From: Julie <foi+request-4803-7dcd2b85@righttoknow.org.au>
Sent: Thursday, 27 September 2018 8:25 PM
To: INFORMATION.LAW
Subject: Re: FOI 24465 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Follow Up Flag: Follow up
Flag Status: Completed

Dear INFORMATION.LAW,

I don't have enough information from what you have provided to assess whether an extension would be reasonable, or even whether the time frame sought is reasonable.

You have basically just inferred you haven't done any work to date on this FOI, but now realising the due date is coming up, want to treat the FOI as if it was made next week, instead of nearly a month ago.

Whether this is actually true or not, I have no information to determine either way.

I do note that the Information Commissioner has previously determined that if an agency's mismanagement or failure to adequately resource its FOI functions had caused a delay, the FOI applicant should not be penalised for it (because it's not their fault).

While I would consider agreeing to a reasonable extension, I have no information before me from DVA to assess what is reasonable in the circumstances (which may be 30 days or something lesser or not at all).

I am also concerned that despite citing a higher FOI workload, it seems that many people are being told they will have ongoing delays to their FOI by DVA at the moment, so it is unclear what DVA is actually working on right now that is causing these delays (especially if everyone is getting these delay notices).

So, as I do not want to treat you unfairly by just making a decision on very limited information from you, can you please advise the following before Oct 3:

- * What work to date has already taken place on this FOI?
- * What timetable of steps can DVA outline for this FOI if the extension is granted (maybe I can save you some time by letting you know what's not necessary)?
- * Will DVA agree not to make any charges notices or not to refuse to release anything, if the extension is agreed (there is not much point giving extra time if you have no intent to provide access)?
- * Can you provide some transparency about this higher workload? Is it due to more FOIs, or higher priority FOIs, or staff absences or some other factor (and was there a reason DVA did not foresee it)?

I look forward to your response, which will hopefully provide the missing detail necessary to make an informed and fair decision on your application.

Yours sincerely,

Julie

-----Original Message-----

Dear Julie,

Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act)

FOI 24465

A decision is due on your request by 12 October 2018.

Unfortunately, the Department will be unable to finalise your request by this date due to a large competing case load. While it is our goal to process your request as soon as practicable, we would be grateful if you would agree to a 30 day extension of time to process your request under section 15AA of the FOI Act. If you are agreeable to the extension, the revised due date for the decision will be 11 November 2018.

Please advise whether you agree to the extension of time by 5 October 2018.

If you agree to an extension, we will advise the Office of the Australian Information Commissioner (OAIC) of the extension. As part of this, the Department will provide your name and email address in case the OAIC needs to contact you in about your FOI request.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs

GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: [1][email address]

Kind regards,

Information Law Team

Information Law | Legal Services & Assurance Branch

Department of Veterans' Affairs

Gnabra House – 21 Genge Street Canberra City ACT 2601 | GPO Box 9998 Canberra ACT 2601

E: [2][email address]

[3]cid:image001.png@01D0027A.1DAB84F0

Please use this email address for all replies to this request:
foi+request-4803-7dcd2b85@righttoknow.org.au

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

s 47C & 47E(d)

s 22

From: Julie <foi+request-4803-7dcd2b85@righttoknow.org.au>
Sent: Wednesday, 3 October 2018 12:43 PM
To: INFORMATION.LAW
Subject: Re: FOI 24465 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

So, to summarise your carbon copy response (which is the same response given to all the FOIs of mine you have delayed, despite them being on very different topics and even different in scope capture and even different application dates):

^ Despite, according to Prime Minister and Cabinet guidelines someone else posted here on Right to Know, agencies commit no more than 2 calendar days to the conducting searches phases (and then only up to a maximum of one hour of staff time), the DVA has only just started this step and has yet to complete it (I note the DVA did not state when it first conducted these searches, nor state when they would be completed, despite the DVA being aware there is a hard limit on the time the DVA will conduct such searches);

^ Despite that the DVA has not completed any steps, even though the 30 day s 15(5)(b) deadline has almost expired, the DVA has not and will not commit nor consider what time it will commit to completing all the FOI steps by (which is concerning given the DVA has hard limits as to how much time it will spend on any FOI step, and should be planning and managing FOIs, not asserting that they are treated as ad hoc by the DVA's specialised FOI staff);

The DVA may cause further delay by issuing a very late practical refusal, or very late charges notice, or very late intent to refuse access decision, all which will extend this FOI by months (possibly years if it goes to IC Review).

It is concerning that, having failed to substantiate any reasonable grounds for the initial failure to handle this FOI in accordance with the statutory obligations, that the DVA has just sat on the FOI for the vast majority of the s 15(5)(b) statutory period, to create delay. That is inconsistent with the aims and objects of the Freedom of Information Act.

It is also concerning that the 30 day extension sought, was not based on any reasonable need assessment, but rather to just claim the maximum extension possible (again inconsistent with the aims and objects of the Act).

You have not provided me with any substantive evidence that would justify that they delays caused were due to factors outside your control, to support extension. There is a worrying lack of transparency here, especially when the DVA has sought extensions to all my FOIs, regardless of simplicity or narrowness of scope.

I do note however that there remains another 8 business days before the s 15(5)(b) statutory deadline expires and that according to the Prime Minister and Cabinet guidance, this is ample time to complete a number of steps (including assessment).

If the DVA can update me on the progress it has made by COB Tuesday 9 October 2018, and if there has been substantive progress made, I will consider an extension at that time.

It is still something of a concern however, that the DVA is processing FOIs in an ad hoc haphazard way (which is the most generous and positive interpretation you can put on in), instead of planning and managing them professionally and competently in line with the aims, objects and purposes of the FOI Act and the various directives and guidelines that apply.

Yours sincerely,

Julie

-----Original Message-----

Good morning Julie,

Thank you for your replies.

The Department has undertaken steps to process your request, including search requests to identify the documents you have sought access to. The Information Law Section is following up the results of those searches. We are unable to provide you with a timetable as such, but can advise that once the documents are identified and received, this section will need to review the material and then ultimately make a decision on your request. As the documents have not yet been received by this section, we cannot advise at this stage how voluminous it may be. The Department is unable to agree that a charges notice will not be applied nor can we provide an undertaking that full access will be provided in lieu of you agreeing to an extension of time.

Although we have asked for an extension of 30 days, we would welcome any extension you are agreeable with.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: [email address] | W: www.dva.gov.au

Please use this email address for all replies to this request:
foi+request-4803-7dcd2b85@righttoknow.org.au

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

s 47C & 47E(d)

s 22

s 47C & 47E(d)

s 47C & 47E(d)

s 22

s 22

From: INFORMATION.LAW
Sent: Wednesday, 3 October 2018 2:47 PM
To: 'foi+request-4803-7dcd2b85@righttoknow.org.au'
Subject: FOI 24465 - Request to revise scope of the request [DLM=For-Official-Use-Only]

Good afternoon Julie,

FOI 24465 - Request to revise the scope of your request

We have received advice from the relevant business area that there are in excess of 100 documents potentially within scope of your request, with most of those documents relating to emails across the SES. As such, we would like to know if you would be willing to revise the scope of your request to the key documents which have been identified as:

- the RaCER business requirements;
- occasional 'newsletters' to business (three to date); and
- meeting minutes and papers, which include the above (14 meetings to date).

The business area wanted to note that there may be a misconception that RaCER is a "new claims performance management system"; with advice being that it is rather a "performance reporting system". As such RaCER provides data for performance management rather than take on the role itself.

We would be grateful if you could advise whether you agree to the revised scope.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: informationlaw@dva.gov.au | W: www.dva.gov.au

s 22

s 22

s 47C & 47E(d)

From: INFORMATION.LAW

Sent: Wednesday, 3 October 2018 4:01 PM

To: s 47E(c) & (d) Maarten <Maarten.s 47E(c) & (d)@dva.gov.au>

Subject: RE: ***follow up on search request*** FOI 24465 JULIE (Right to Know) - Please provide by 25 Sept 2018 (or advise if this should be forwarded to another area to respond) [DLM=For-Official-Use-Only]

Hi Maarten,

The applicant has responded by advising:

"...Without requiring a detailed schedule to be created, I would refer you back to the FOI scope as made, which stated:

If that exceeds more than 50 documents, please exclude any document which also mentions or refers to anything not about RaCER, and if that still exceeds 50 documents, can you please compile a list of said documents (with page count for each document) and I will tell you which ones I want from the list (up to a total of 50).

It is likely many of the emails referred to mention RaCER coincidentally but are actually discussing something else, and therefore falls out of scope.

The scope is particularly targeted towards documents (in whatever format) that explain the purposes and functions of RaCER and it's capabilities, rather than just general references or coincidental inclusion.

As a new system there would have been a brief to the Minister and one to the Secretary of the Department too, about RaCER and what it hoped to achieve.

The context within which RaCER was mentioned in all these documents identified would be quickly evident from a five second skim of the document involved.

As I placed a hard limit of no more than 50 documents on my FOI request, I recommend that those documents the search has returned be whittled down in accordance with the following priority:

- * Documents that are not emails, but that are Briefs or Minutes, which only discuss RaCER (and no other topic);*
- * Other documents that are not emails, which only discuss RaCER (and no other topic);*
- * Emails that only include attachments, where at least one attachment only discusses RaCER (all other parts of the email and attachments can be excluded from consideration as irrelevant)*

If there are still less than 50 documents after that, any email without attachments which only discusses RaCER may also be included, up to the cap of 50 documents.

Duplicates of documents or attachments can be excluded, so to any draft documents or preliminary working papers..."

s 47C & 47E(d)

Kind Regards,
Leia

s 47C & 47E(d)

s 47C & 47E(d)



s 47C & 47E(d)

s 22

s 22

From: INFORMATION.LAW
Sent: Friday, 12 October 2018 3:21 PM
To: 'foi+request-4803-7dcd2b85@righttoknow.org.au'
Subject: RE: FOI 24465 - Request to revise scope of the request [DLM=For-Official-Use-Only]

Good afternoon Julie,

FOI 24465 - Notice of extension request

Further to the below and previous emails, we would like to inform you that we will be seeking an extension of time in accordance with section 15AB with the Office of the Australian Information Commissioner (OAIC) to process your request. For your information, the Department will seek an extension of 30 days, but will aim to finalise the request prior to that timeframe if possible.

As you aware, earlier this month the Department identified a high number of documents relevant to your request and the Department engaged with you to see if the scope could be revised. You asked for a list of those documents to be provided so that you can refine to a maximum of 50 documents. The Department is in the process of putting the list together, but will need more time to consult with you on the final scope and to then assess those documents for release.

It has taken time to source documents subject to your FOI as your request came at a time that is crucial to the RaCER project and resources had to be subsequently diverted to undertake relevant searches.

The terms of our request will be based on the above. As part of this process, your name and email will be provided to the OAIC.

Kind Regards,

Information Law Section | Legal Services and General Counsel Branch Legal Assurance and Governance Division
Department of Veterans' Affairs
E: information.law@dva.gov.au | W: www.dva.gov.au

-----Original Message-----

From: Julie [<mailto:foi+request-4803-7dcd2b85@righttoknow.org.au>]
Sent: Wednesday, 10 October 2018 5:56 PM
To: INFORMATION.LAW <INFORMATION.LAW@dva.gov.au>
Subject: Re: FOI 24465 - Request to revise scope of the request [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

Have you secretly applied for a s 15AB extension here too? If so, please stop being unethical, and provide me with a copy, so that I can exercise my right to be heard before any decision is made.

Yours sincerely,

Julie

-----Original Message-----

s 22

s 22

From: INFORMATION.LAW
Sent: Monday, 17 September 2018 2:18 PM
To: 'foi+request-4803-7dcd2b85@righttoknow.org.au'
Cc: INFORMATION.LAW
Subject: Acknowledgement of FOI Request – FOI 24465 [DLM=For-Official-Use-Only]

Dear Julie,

Acknowledgement of FOI Request – FOI 24465

I refer to your request to access information held by our Department under the *Freedom of Information Act 1982* (FOI Act). The Department received your request on 12 September 2018. In accordance with section 15(5)(b) of the FOI Act, the Department has 30 days to process your request. As such, a decision on your request is due by 12 October 2018.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

In all communications please quote reference **FOI 24465**.

Kind Regards,

Information Law Team

Department of Veterans' Affairs
GPO Box 9998 Canberra ACT 2601
E: informationlaw@dva.gov.au



s 47C & 47E(d)

s 47C & 47E(d)



s 47C & 47E(d)

s 47C & 47E(d)

s 22

s 47C & 47E(d)

s 22

From: INFORMATION.LAW
Sent: Thursday, 27 September 2018 5:03 PM
To: 'foi+request-4803-7dcd2b85@righttoknow.org.au'
Cc: INFORMATION.LAW
Subject: FOI 24465 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Dear Julie,

Request for Extension of time under s15AA of the *Freedom of Information Act 1982* (FOI Act)

FOI 24465

A decision is due on your request by 12 October 2018.

Unfortunately, the Department will be unable to finalise your request by this date due to a large competing case load. While it is our goal to process your request as soon as practicable, we would be grateful if you would agree to a 30 day extension of time to process your request under section 15AA of the FOI Act. If you are agreeable to the extension, the revised due date for the decision will be 11 November 2018.

Please advise whether you agree to the extension of time by 5 October 2018.

If you agree to an extension, we will advise the Office of the Australian Information Commissioner (OAIC) of the extension. As part of this, the Department will provide your name and email address in case the OAIC needs to contact you in about your FOI request.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

Kind regards,

Information Law Team

Information Law | Legal Services & Assurance Branch
Department of Veterans' Affairs
Gnabra House – 21 Genge Street Canberra City ACT 2601 | GPO Box 9998 Canberra ACT 2601
E: informationlaw@dva.gov.au



s 47C & 47E(d)

s 22

s 47C & 47E(d)

s 22

s 47C & 47E(d)

s 22

From: Julie <foi+request-4803-7dcd2b85@righttoknow.org.au>
Sent: Wednesday, 3 October 2018 3:08 PM
To: INFORMATION.LAW
Subject: Re: FOI 24465 - Request to revise scope of the request [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

So the search process is now completed, and you have a rough schedule of sorts. Does highlight that the search step does not take excessive time, and is of limited duration.

Without requiring a detailed schedule to be created, I would refer you back to the FOI scope as made, which stated:

If that exceeds more than 50 documents, please exclude any document which also mentions or refers to anything not about RACER, and if that still exceeds 50 documents, can you please compile a list of said documents (with page count for each document) and I will tell you which ones I want from the list (up to a total of 50).

It is likely many of the emails referred to mention RaCER coincidentally but are actually discussing something else, and therefore falls out of scope.

The scope is particularly targeted towards documents (in whatever format) that explain the purposes and functions of RaCER and it's capabilities, rather than just general references or coincidental inclusion.

As a new system there would have been a brief to the Minister and one to the Secretary of the Department too, about RaCER and what it hoped to achieve.

The context within which RaCER was mentioned in all these documents identified would be quickly evident from a five second skim of the document involved.

As I placed a hard limit of no more than 50 documents on my FOI request, I recommend that those documents the search has returned be whittled down in accordance with the following priority:

- * Documents that are not emails, but that are Briefs or Minutes, which only discuss RaCER (and no other topic);
- * Other documents that are not emails, which only discuss RaCER (and no other topic);
- * Emails that only include attachments, where at least one attachment only discusses RaCER (all other parts of the email and attachments can be excluded from consideration as irrelevant)

If there are still less than 50 documents after that, any email without attachments which only discusses RaCER may also be included, up to the cap of 50 documents.

Duplicates of documents or attachments can be excluded, so to any draft documents or preliminary working papers.

I hope this clarifies the refined scope.

Yours sincerely,

Julie

-----Original Message-----

Good afternoon Julie,

FOI 24465 - Request to revise the scope of your request

We have received advice from the relevant business area that there are in excess of 100 documents potentially within scope of your request, with most of those documents relating to emails across the SES. As such, we would like to know if you would be willing to revise the scope of your request to the key documents which have been identified as:

- the RaCER business requirements;
- occasional 'newsletters' to business (three to date); and
- meeting minutes and papers, which include the above (14 meetings to date).

The business area wanted to note that there may be a misconception that RaCER is a "new claims performance management system"; with advice being that it is rather a "performance reporting system". As such RaCER provides data for performance management rather than take on the role itself.

We would be grateful if you could advise whether you agree to the revised scope.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: [email address] | W: www.dva.gov.au

Please use this email address for all replies to this request:
foi+request-4803-7dcd2b85@righttoknow.org.au

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<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

From: Julie <foi+request-4803-7dcd2b85@righttoknow.org.au>
Sent: Wednesday, 3 October 2018 3:11 PM
To: INFORMATION.LAW
Subject: Re: FOI 24465 - Request to revise scope of the request [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

You may also find it beneficial to contact whoever was in the DVA project team that implemented RaCER to have them highlight the most relevant documents as to RaCER's purpose, scope and functions.

Yours sincerely,

Julie

-----Original Message-----

Good afternoon Julie,

FOI 24465 - Request to revise the scope of your request

We have received advice from the relevant business area that there are in excess of 100 documents potentially within scope of your request, with most of those documents relating to emails across the SES. As such, we would like to know if you would be willing to revise the scope of your request to the key documents which have been identified as:

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We would be grateful if you could advise whether you agree to the revised scope.

Kind Regards,

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s 47C & 47E(d)

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s 47C & 47E(d)

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s 47C & 47E(d)

s 47C & 47E(d)

s 47C & 47E(d)

s 47C & 47E(d)

From: Julie <foi+request-4803-7dcd2b85@righttoknow.org.au>
Sent: Wednesday, 10 October 2018 5:56 PM
To: INFORMATION.LAW
Subject: Re: FOI 24465 - Request to revise scope of the request [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

Have you secretly applied for a s 15AB extension here too? If so, please stop being unethical, and provide me with a copy, so that I can exercise my right to be heard before any decision is made.

Yours sincerely,

Julie

-----Original Message-----

Good afternoon Julie,

FOI 24465 - Request to revise the scope of your request

We have received advice from the relevant business area that there are in excess of 100 documents potentially within scope of your request, with most of those documents relating to emails across the SES. As such, we would like to know if you would be willing to revise the scope of your request to the key documents which have been identified as:

- the RaCER business requirements;
- occasional 'newsletters' to business (three to date); and
- meeting minutes and papers, which include the above (14 meetings to date).

The business area wanted to note that there may be a misconception that RaCER is a "new claims performance management system"; with advice being that it is rather a "performance reporting system". As such RaCER provides data for performance management rather than take on the role itself.

We would be grateful if you could advise whether you agree to the revised scope.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: [email address] | W: www.dva.gov.au

Please use this email address for all replies to this request:
foi+request-4803-7dcd2b85@righttoknow.org.au

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<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

Julie (Right to Know)

Julie (Right to Know)

LEX ID	24432	Outcome	
DVA file number		Charges notified (\$)	0.00
Applicant name	FOI - Julie (Right to Know)	Charges collected (\$)	0.00
DVA officer	Canberra - George [REDACTED]	Date received/valid	11 September 2018
Source	3. Email	Date dcn	
Group	FOI Primary	notif'd/wdn/trsf	
PPI	No	Date finalised	
File request	Not required	Access level	Unrestricted
Practical refusal reasons	N/A	Date created	12 September 2018
Response time		Last updated	6 November 2018
Disclosure log		Due date	11 Oct 2018
Status	Registered	Days running	56
		Days to go (if clock running)	-26
		Days running beyond timeframe (if clock stopped)	

Client/Rep details Please use this email address for all replies to this request:

foi+request-4797-34a0582d@righttoknow.org.au

Scope/Notes Dear Department of Veterans' Affairs,

I understand from a recent ANAO report that DVA compiles monthly statistics about its Rehabilitation & Compensation (R&C) functions via its Rehabilitation and Compensation Integrated Support Hub (ISH) system and associated spreadsheets.

I understand liability decisions are stored electronically now, with no paper files existing (other than as short term working documents, and that the exercise of delegations are digital only) on ISH and HP Content Manager, which ANAO stated was DVA's primary records management systems.

So under FOI I seek copy of the summary statistic report for the month of June 2018 that details the number of liability claims accepted and rejected in that month, for VEA, DRCA and MRCA liability claims.

If such a document cannot be located, I seek under s 17 of the FOI Act for such a compilation to be compiled from DVA's primary electronic records management systems ISH and HP Content Manager (which I believe DVA refers to as TRIM).

I searched the DVA website but I could not find any such published statistics, nor has DVA contributed any datasets to data.gov.au (unlike other Commonwealth agencies), so it appears FOI is the only option here.

Yours faithfully,

Julie

File notes

Date	Type	DVA officer	Timeframe days
------	------	-------------	----------------

[REDACTED] s 22

s 22

s 22

s 22

11 Oct 2018 1. File note Leia s 47E(c) & (d)

s 47C & 47E(d) Advised again urgency as decision is due.

11 Oct 2018 1. File note Leia s 47E(c) & (d)

s 47C & 47E(d)

10 Oct 2018 1. File note Leia s 47E(c) & (d)

Email from applicant. Advised George & Nick.

10 Oct 2018 1. File note Leia s 47E(c) & (d)

s 47C & 47E(d)

10 Oct 2018 1. File note Leia s 47E(c) & (d)

Email from CBD with info.

10 Oct 2018 1.2 File note/email Leia s 47E(c) & (d)

s 47C & 47E(d)

8 Oct 2018 1.2 File note/email Leia s 47E(c) & (d)

Follow up email re searches. Advised George and Nick.

3 Oct 2018 1. File note Amy s 47E(c) & (d)

Email reply from applicant. Advised George & Nick.

3 Oct 2018 1. File note Leia s 47E(c) & (d)

Email reply to Julie as advised by Nick.

2 Oct 2018 1.2 File note/email Leia s 47E(c) & (d)

Email from applicant. Advised George & Nick.

2 Oct 2018 1. File note Leia s 47E(c) & (d)

Sought advice from Nick re how he wants to respond to the various emails from Julie re EOTs

2 Oct 2018 1.2 File Leia s 47E(c) & (d)
note/email

Noticed no docs yet. Followed up again. Advised George.

27 Sep 2018 1.2 File Amy s 47E(c) & (d)
note/email

Sent 15AA request to applicant. Did not agree. See email.

25 Sep 2018 1. File note Leia s 47E(c) & (d)

Advised to handover Julie's matters to George.

Said would follow up searches as not yet received from BA.

Follow up email to CBD re search request - was due 24/9

s 47C & 47E(d)

12 Sep 2018 8. Amy s 47E(c) & (d)
Acknowledgment
Letter

12 Sep 2018 1. File note Amy s 47E(c) & (d)

Search request to CBD - due 24/9/18 including additional info from email from app

11 Sep 2018 5. Clock start Amy s 47E(c) & (d) 30
Clock started

From: [REDACTED] Linda on behalf of INFORMATION.ACCESS
Sent: Tuesday, 11 September 2018 2:12 PM
To: INFORMATION.LAW
Cc: INFORMATION.ACCESS
Subject: FW: Freedom of Information request - Liability Acceptances and Refusals for June 2018 [TO BE CLASSIFIED] [DLM=For-Official-Use-Only]

Good afternoon.

Please see to the following.

Regards.

Linda [REDACTED]
Assistant Information Access Officer
National Information Access Processing Team (NIAPT) Department of Veterans' Affairs Tel: [REDACTED] Fax: (02) 9213 7400

-----Original Message-----

From: Julie [mailto:foi+request-4797-34a0582d@righttoknow.org.au]
Sent: Tuesday, 11 September 2018 12:30 PM
To: FOI <FOI@dva.gov.au>
Subject: Freedom of Information request - Liability Acceptances and Refusals for June 2018 [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

I understand from a recent ANAO report that DVA compiles monthly statistics about its Rehabilitation & Compensation (R&C) functions via its Rehabilitation and Compensation Integrated Support Hub (ISH) system and associated spreadsheets.

I understand liability decisions are stored electronically now, with no paper files existing (other than as short term working documents, and that the exercise of delegations are digital only) on ISH and HP Content Manager, which ANAO stated was DVA's primary records management systems.

So under FOI I seek copy of the summary statistic report for the month of June 2018 that details the number of liability claims accepted and rejected in that month, for VEA, DRCA and MRCA liability claims.

If such a document cannot be located, I seek under s 17 of the FOI Act for such a compilation to be compiled from DVA's primary electronic records management systems ISH and HP Content Manager (which I believe DVA refers to as TRIM).

I searched the DVA website but I could not find any such published statistics, nor has DVA contributed any datasets to data.gov.au (unlike other Commonwealth agencies), so it appears FOI is the only option here.

Yours faithfully,

Julie

Please use this email address for all replies to this request:
foi+request-4797-34a0582d@righttoknow.org.au

Is foi@dva.gov.au the wrong address for Freedom of Information requests to Department of Veterans' Affairs? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dva

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If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

From: [REDACTED] Linda on behalf of INFORMATION.ACCESS
Sent: Tuesday, 11 September 2018 2:13 PM
To: INFORMATION.LAW
Cc: INFORMATION.ACCESS
Subject: FW: Freedom of Information request - Liability Acceptances and Refusals for June 2018 [TO BE CLASSIFIED] [DLM=For-Official-Use-Only]

Good afternoon.

Please see to the following.

Regards.

Linda [REDACTED]
Assistant Information Access Officer
National Information Access Processing Team (NIAPT) Department of Veterans' Affairs Tel: [REDACTED] Fax: (02) 9213 7400

-----Original Message-----

From: Julie [mailto:foi+request-4797-34a0582d@righttoknow.org.au]
Sent: Tuesday, 11 September 2018 12:41 PM
To: FOI <FOI@dva.gov.au>
Subject: Re: Freedom of Information request - Liability Acceptances and Refusals for June 2018 [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

I understand DVA has is currently implementing a new reporting system called RACER, which was supposed to be operational by now, so the document sought (or its compilation) may also be available through that electronic information system as well.

Yours faithfully,

Julie

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From: INFORMATION.LAW
Sent: Wednesday, 12 September 2018 10:45 AM
To: 'foi+request-4797-34a0582d@righttoknow.org.au'
Cc: INFORMATION.LAW
Subject: Acknowledgement of FOI Request – FOI 24432 [DLM=For-Official-Use-Only]

Dear Julie,

Acknowledgement of FOI Request – FOI 24432

I refer to your request to access information held by our Department under the *Freedom of Information Act 1982* (FOI Act). The Department received your request on 11 September 2018. In accordance with section 15(5)(b) of the FOI Act, the Department has 30 days to process your request. As such, a decision on your request is due by 11 October 2018.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

In all communications please quote reference **FOI 24432**.

Kind Regards,

Information Law Team
Legal Services & Assurance Branch
Department of Veterans' Affairs
GPO Box 9998 Canberra ACT 2601
E: informationlaw@dva.gov.au



-----Original Message-----

From: Julie [mailto:foi+request-4797-34a0582d@righttoknow.org.au]
Sent: Tuesday, 11 September 2018 12:30 PM
To: FOI <FOI@dva.gov.au>
Subject: Freedom of Information request - Liability Acceptances and Refusals for June 2018 [TO BE CLASSIFIED]

Dear Department of Veterans' Affairs,

I understand from a recent ANAO report that DVA compiles monthly statistics about its Rehabilitation & Compensation (R&C) functions via its Rehabilitation and Compensation Integrated Support Hub (ISH) system and associated spreadsheets.

I understand liability decisions are stored electronically now, with no paper files existing (other than as short term working documents, and that the exercise of delegations are digital only) on ISH and HP Content Manager, which ANAO stated was DVA's primary records management systems.

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Yours faithfully,

Julie

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s 47C & 47E(d)



From: INFORMATION.LAW
Sent: Thursday, 27 September 2018 4:58 PM
To: 'foi+request-4797-34a0582d@righttoknow.org.au'
Cc: INFORMATION.LAW
Subject: FOI 24432 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Dear Julie,

Request for Extension of time under s15AA of the *Freedom of Information Act 1982* (FOI Act)

FOI 24432

A decision is due on your request by 11 October 2018.

Unfortunately, the Department will be unable to finalise your request by this date due to a large competing case load. While it is our goal to process your request as soon as practicable, we would be grateful if you would agree to a 30 day extension of time to process your request under section 15AA of the FOI Act. If you are agreeable to the extension, the revised due date for the decision will be 10 November 2018.

Please advise whether you agree to the extension of time by 5 October 2018.

If you agree to an extension, we will advise the Office of the Australian Information Commissioner (OAIC) of the extension. As part of this, the Department will provide your name and email address in case the OAIC needs to contact you in about your FOI request.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

Kind regards,

Information Law Team

Information Law | Legal Services & Assurance Branch
Department of Veterans' Affairs
Gnabra House – 21 Genge Street Canberra City ACT 2601 | GPO Box 9998 Canberra ACT 2601
E: informationlaw@dva.gov.au



From: Julie <foi+request-4797-34a0582d@righttoknow.org.au>
Sent: Thursday, 27 September 2018 8:15 PM
To: INFORMATION.LAW
Subject: Re: FOI 24432 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Follow Up Flag: Follow up
Flag Status: Completed

Dear INFORMATION.LAW,

I don't have enough information from what you have provided to assess whether an extension would be reasonable, or even whether the time frame sought is reasonable.

You have basically just inferred you haven't done any work to date on this FOI, but now realising the due date is coming up, want to treat the FOI as if it was made next week, instead of nearly a month ago.

Whether this is actually true or not, I have no information to determine either way.

I do note that the Information Commissioner has previously determined that if an agency's mismanagement or failure to adequately resource its FOI functions had caused a delay, the FOI applicant should not be penalised for it (because it's not their fault).

While I would consider agreeing to a reasonable extension, I have no information before me from DVA to assess what is reasonable in the circumstances (which may be 30 days or something lesser or not at all).

I am also concerned that despite citing a higher FOI workload, it seems that many people are being told they will have ongoing delays to their FOI by DVA at the moment, so it is unclear what DVA is actually working on right now that is causing these delays (especially if everyone is getting these delay notices).

So, as I do not want to treat you unfairly by just making a decision on very limited information from you, can you please advise the following before Oct 3:

- * What work to date has already taken place on this FOI?
- * What timetable of steps can DVA outline for this FOI if the extension is granted (maybe I can save you some time by letting you know what's not necessary)?
- * Will DVA agree not to make any charges notices or not to refuse to release anything, if the extension is agreed (there is not much point giving extra time if you have no intent to provide access)?
- * Can you provide some transparency about this higher workload? Is it due to more FOIs, or higher priority FOIs, or staff absences or some other factor (and was there a reason DVA did not foresee it)?

I look forward to your response, which will hopefully provide the missing detail necessary to make an informed and fair decision on your application.

Yours sincerely,

Julie

-----Original Message-----

Dear Julie,

Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act)

FOI 24432

A decision is due on your request by 11 October 2018.

Unfortunately, the Department will be unable to finalise your request by this date due to a large competing case load. While it is our goal to process your request as soon as practicable, we would be grateful if you would agree to a 30 day extension of time to process your request under section 15AA of the FOI Act. If you are agreeable to the extension, the revised due date for the decision will be 10 November 2018.

Please advise whether you agree to the extension of time by 5 October 2018.

If you agree to an extension, we will advise the Office of the Australian Information Commissioner (OAIC) of the extension. As part of this, the Department will provide your name and email address in case the OAIC needs to contact you in about your FOI request.

If you have any questions about your FOI matter, please contact us using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs

GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: [1][email address]

Kind regards,

Information Law Team

Information Law | Legal Services & Assurance Branch

Department of Veterans' Affairs

Gnabra House – 21 Genge Street Canberra City ACT 2601 | GPO Box 9998 Canberra ACT 2601

E: [2][email address]

[3]cid:image001.png@01D0027A.1DAB84F0

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From: Julie <foi+request-4797-34a0582d@righttoknow.org.au>
Sent: Tuesday, 2 October 2018 11:19 PM
To: INFORMATION.LAW
Subject: Re: FOI 24432 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

I am disappointed that my request for any information, beyond just that you are busy and put a low priority on this FOI, to support your extension request has not been provided.

I can only assume, that in DVA failing to substantiate any reasonable grounds, there are no reasonable grounds for extension.

If a response is not given by COB tomorrow, especially as to whether DVA intends to refuse or levy charges if extension is granted, then I can only go on the information before me - which is a generic and unsubstantiated claim that, basically, is the same as 'the dog ate your homework'.

I had anticipated a professional response from DVA, but it appears there is none forthcoming.

Yours sincerely,

Julie

-----Original Message-----

Dear Julie,

Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act)

FOI 24432

A decision is due on your request by 11 October 2018.

Unfortunately, the Department will be unable to finalise your request by this date due to a large competing case load. While it is our goal to process your request as soon as practicable, we would be grateful if you would agree to a 30 day extension of time to process your request under section 15AA of the FOI Act. If you are agreeable to the extension, the revised due date for the decision will be 10 November 2018.

Please advise whether you agree to the extension of time by 5 October 2018.

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If you have any questions about your FOI matter, please contact us using the following details:

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GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: [1][email address]

Kind regards,

Information Law Team

Information Law | Legal Services & Assurance Branch

Department of Veterans' Affairs

Gnabra House – 21 Genge Street Canberra City ACT 2601 | GPO Box 9998 Canberra ACT 2601

E: [2][email address]

[3]cid:image001.png@01D0027A.1DAB84F0

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From: Julie <foi+request-4797-34a0582d@righttoknow.org.au>
Sent: Wednesday, 3 October 2018 12:36 PM
To: INFORMATION.LAW
Subject: Re: FOI 24432 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Dear INFORMATION.LAW,

So, to summarise your response:

^ Despite, according to Prime Minister and Cabinet guidelines someone else posted here on Right to Know, agencies commit no more than 2 calendar days to the conducting searches phases (and then only up to a maximum of one hour of staff time), the DVA has only just started this step and has yet to complete it (I note the DVA did not state when it first conducted these searches, nor state when they would be completed, despite the DVA being aware there is a hard limit on the time the DVA will conduct such searches);

^ Despite that the DVA has not completed any steps, even though the 30 day s 15(5)(b) deadline has almost expired, the DVA has not and will not commit nor consider what time it will commit to completing all the FOI steps by (which is concerning given the DVA has hard limits as to how much time it will spend on any FOI step, and should be planning and managing FOIs, not asserting that they are treated as hoc by the DVA's specialised FOI staff);

^ The DVA may cause further delay by issuing a very late practical refusal, or very late charges notice, or very late intent to refuse access decision, all which will extend this FOI by months (possibly years if it goes to IC Review).

It is concerning that, having failed to substantiate any reasonable grounds for the initial failure to handle this FOI in accordance with the statutory obligations, that the DVA has just sat on the FOI for the vast majority of the s 15(5)(b) statutory period, to create delay. That is inconsistent with the aims and objects of the Freedom of Information Act.

It is also concerning that the 30 day extension sought, was not based on any reasonable need assessment, but rather to just claim the maximum extension possible (again inconsistent with the aims and objects of the Act).

You have not provided me with any substantive evidence that would justify that they delays caused were due to factors outside your control, to support extension. There is a worrying lack of transparency here, especially when the DVA has sought extensions to all my FOIs, regardless of simplicity or narrowness of scope.

I do note however that there remains another 7 business days before the s 15(5)(b) statutory deadline expires and that according to the Prime Minister and Cabinet guidance, this is ample time to complete a number of steps (including assessment).

If the DVA can update me on the progress it has made by COB Tuesday 9 October 2018, and if there has been substantive progress made, I will consider an extension at that time.

It is still something of a concern however, that the DVA is processing FOIs in an ad hoc haphazard way (which is the most generous and positive interpretation you can put on it), instead of planning and managing them professionally and competently in line with the aims, objects and purposes of the FOI Act and the various directives and guidelines that apply.

Yours sincerely,

Julie

-----Original Message-----

Good morning Julie,

Thank you for your replies.

The Department has undertaken steps to process your request, including search requests to identify the documents you have sought access to. The Information Law Section is following up the results of those searches. We are unable to provide you with a timetable as such, but can advise that once the documents are identified and received, this section will need to review the material (and consider if a document can or needs to be created as noted in your request), and then ultimately make a decision on your request. As the documents have not yet been received by this section, we cannot advise at this stage how voluminous it may be. The Department is unable to agree that a charges notice will not be applied nor can we provide an undertaking that full access will be provided in lieu of you agreeing to an extension of time.

Although we have asked for an extension of 30 days, we would welcome any extension you are agreeable with.

Kind Regards,

Information Law Team
Department of Veterans' Affairs
E: [email address] | W: www.dva.gov.au

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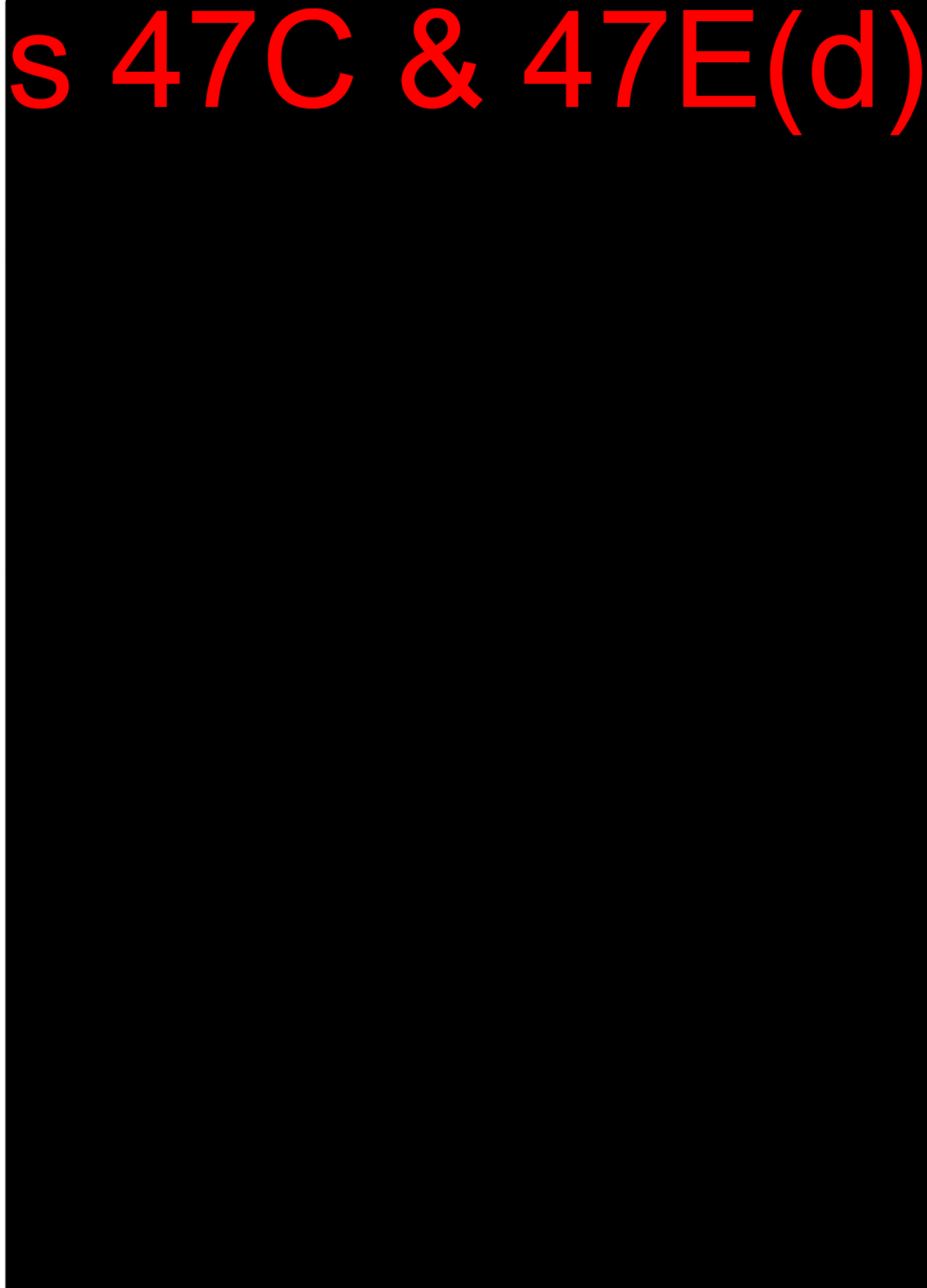
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s 47C & 47E(d)



From: Julie <foi+request-4797-34a0582d@righttoknow.org.au>
Sent: Wednesday, 10 October 2018 6:00 PM
To: INFORMATION.LAW
Subject: Re: FOI 24432 Request for Extension of time under s15AA of the Freedom of Information Act 1982 (FOI Act) [DLM=For-Official-Use-Only]

Categories: Already filed in Ydrive, Leia

Dear INFORMATION.LAW,

I note you have failed to respond as requested, to give sufficient information to determine your s 15AA extension request.

So have you secretly applied to the OAIC for a s 15AB extension here as well? If so, it should be (and should have been) disclosed to me, so I can exercise my right to be heard before any decision is made.

I find the DVA's conduct here, from a governance perspective, to be worrying and indicative of a culture of some concern within DVA.

Yours sincerely,

Julie

-----Original Message-----

Good morning Julie,

Thank you for your replies.

The Department has undertaken steps to process your request, including search requests to identify the documents you have sought access to. The Information Law Section is following up the results of those searches. We are unable to provide you with a timetable as such, but can advise that once the documents are identified and received, this section will need to review the material (and consider if a document can or needs to be created as noted in your request), and then ultimately make a decision on your request. As the documents have not yet been received by this section, we cannot advise at this stage how voluminous it may be. The Department is unable to agree that a charges notice will not be applied nor can we provide an undertaking that full access will be provided in lieu of you agreeing to an extension of time.

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