

Our ref: FOI-2020-10005

7 April 2020

[REDACTED]

Emailed to: [REDACTED]

Dear [REDACTED]

I refer to your email dated 6 February 2020, in which you requested access to certain documents from this Office. I have decided to treat your email as a request under the *Freedom of Information Act 1982* (the **FOI Act**).

With reference to the Commonwealth Ombudsman's report entitled 'Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme', your request was framed in the following way:

'...the Terms of Reference provided by the Ombudsman to the AG and KPMG to carry out financial modelling...'

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our Office under s 23 of the FOI Act.

Decision

The final scope of work agreed between the Ombudsman and both KPMG and the Australian Government Actuary (the AGA) was as set out in the reports of each of those two organisations, which are published on our Office's website.¹

In addition, we have searched the records held in this Office and identified two documents which fall within the scope of your request. These are the initial work orders which this Office issued to KPMG and the AGA for the performance of certain work concerning the Ombudsman's investigation of the Defence Force Retirement and Death Benefits (DFRDB) scheme. Subsequent to the issue of these work orders, staff of the Office refined the scope of the work to be performed in discussions with KPMG and the AGA. The work performed by KPMG and the AGA was in accordance with this Office's instructions.

I have decided to grant you access to the two documents falling within the scope of your request, with irrelevant material deleted.

A schedule setting out the relevant documents is at **Attachment B**.

Our Office identified the documents by searching our electronic records concerning the preparation of the Ombudsman's report into the administration of the DFRDB scheme.

¹ <https://www.ombudsman.gov.au/How-we-can-help/australian-defence-force/dfldb>.

Third party consultation

During the processing of your request we consulted a third party that would potentially be affected by the release of the requested documents. That third party has until 7 May 2020 to seek a review of my decision, after which time (subject to the outcome of any such review), I will provide the requested documents to you.

Review rights

Internal review

Under s 54 of the FOI Act, you may apply in writing to our Office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

Where possible, please attach reasons for why you believe review of the decision is necessary. The internal review will be carried out by another Ombudsman officer within 30 days.

Review by the Australian Information Commissioner

Under s 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:

- online at <https://forms.australia.gov.au/forms/oaic/foi-review/>
- via email to enquiries@oaic.gov.au
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- in person to Level 2, 175 Pitt Street, Sydney NSW.

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Complaints to the Information Commissioner

You may complain to the Information Commissioner about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way in which your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

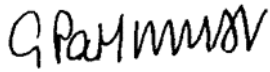
You may lodge your complaint in one of the following ways

- online at www.oaic.gov.au
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- by email to enquiries@oaic.gov.au.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact me using the contact information set out at the foot of the first page of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Parkhurst'.

Gregory Parkhurst
FOI Co-ordinator

ATTACHMENT A – Reasons for decision

Material taken into account

In making my decision I had regard to the following:

- the terms of your request
- the content of the documents to which you sought access
- consultation responses from third parties approached in accordance with the FOI Act
- consultation responses from other, relevant agencies
- relevant provisions of the FOI Act
- the Australian Information Commissioner's Guidelines on FOI, available at www.oaic.gov.au (**the Guidelines**).

Findings of fact and reasons for decision

Where the schedule of documents at **Attachment B** indicates that an exemption has been applied to a document, or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document, or part of that document, are set out below.

I have formed the view that parts of the documents which fall within the scope of your request are irrelevant to your request. I have redacted the irrelevant material under s 22 of the FOI Act.

Deletion of exempt or irrelevant matter: section 22

Section 22 of the FOI Act allows an agency to delete exempt or irrelevant matter from a document which is otherwise relevant to an applicant's FOI request, and to provide an applicant with access to an edited copy.

I have found parts of the documents falling within the scope of your request to be irrelevant to the terms of your request. I have deleted this information accordingly.

I have provided you with access to an appropriately edited version of the relevant documents.

Attachment B – Schedule of documents

Schedule of documents for: [REDACTED]				
Ombudsman's reference: FO [REDACTED]				
Item no.	Folio Nos	Description	Date	Decision
1		Instrument of acceptance (KPMG)	13-Aug-19	Deletions s 22
2		Instrument of acceptance (AGA)	19-Sep-19	Deletions s 22

11A Access to documents on request

Scope

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

- (2) This section applies subject to this Act.

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

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

Mandatory access—general rule

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

Exemptions and conditional exemptions

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

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

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

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

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

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

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

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

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

Access to edited copy

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

Notice to applicant

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