



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

Decision and reason for decision of Vanessa Goodspeed, Assistant Secretary, Governance

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**Applicant:** Anonymous  
**Decision date:** 9 March 2018  
**FOI reference number:** 15-1617  
**Documents:** SES Salaries – FY2013/14, 2014/15, 2015/16

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## Summary

1. I have made a decision not to release any documents subject to your request.

## Authority to make this decision

2. I, Vanessa Goodspeed, Assistant Secretary, Governance, am an officer authorised by the Secretary of the Department of Communications and the Arts (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).

## Background

3. On 22 December 2016 you made a request for access to documents in the possession of the Department. Your request sought access to:

*"...documents which detail the precise remuneration paid to each of the Department's SES officers in the following financial years - FY2013/14, FY 2014/15 and FY2015/16. The group certificates/end-of-year PAYG payments summaries issued by the Department, to each of its SES staff in those years, can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request."*

4. On 6 January 2017 the Department provided you with a notice of its intention to refuse your request on the basis that processing it would substantially and unreasonably divert the resources of the Department from its other operations.
5. On 19 January 2017 you responded to the notice of intent to refuse.
6. On 25 January 2017 the Department provided you with its decision to refuse your request on the basis that processing it would substantially and unreasonably divert the resources of the Department from its other operations.
7. On 3 April 2017 the Department received notification from the Office of the Australian Information Commissioner (OAIC) that it had received an application for the review of the Department's decision as noted above at point 6.
8. On 27 October 2017 the OAIC made the decision to set aside the Department's decision as noted at point 6, and substituted the decision that a practical refusal reason does not exist. In its decision ('MZ' and Department of Communications and the Arts (Freedom of Information) [2017] AICmr 109) the OAIC stated:

*"if a payroll of other summary document could be produced that would meet the terms of the request I consider that producing such a document may reasonably serve to somewhat reduce the request processing burden on the Department".*

## Charges for providing access

9. On 29 November 2017 the Department provided you with an estimate of charges in the amount of \$1,462.60, for the processing of your request.
10. On 22 December 2017 you contested the charges had been wrongly assessed and should be reduced or not be imposed. You referred to the OAIC's decision of 27 October 2017 in your contentions.

11. Taking into account the contentions you raised and the OAIIC's 27 October 2017 decision, the Department made the decision to reduce the charges to \$170.00. It was further decided to reduce the charges by 50% to \$85.00, with a deposit of \$20.00 required to progress the request. You were advised of this decision on 19 January 2018.
12. On 13 February 2018 you paid a deposit of \$20.00.
13. As no documents will be provided to you in relation to your request, I have decided to waive the remaining charges associated with the processing of your request.

### **Documents subject to this request**

14. The Department prepared a summary document to meet the scope of your FOI request, which was then considered for release under the provisions of the FOI Act.

### **Decision**

15. I have made a decision to refuse access to the document relevant to your request.
16. During the processing of your request we consulted third parties potentially affected by the release of the document. Those third parties will be provided with a copy of the decision.

### **Reasons for decision**

17. In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to refuse access to the document follows.
18. I have taken the following material into account in making my decision:
  - the content of the document that falls 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.
  - the following provisions of the FOI Act relevant to my decision:
    - section 11B public interest exemption – factors
    - section 22 access to edited copies with exempt or irrelevant material deleted
    - section 47E certain operations of agencies
    - section 47F personal privacy
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines);
  - the views of the Department; and
  - the views of third parties consulted by the Department under section 27A.
19. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 1.

### **Statement of reasons**

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

### ***Certain operations of agencies (section 47E)***

21. Section 47E conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operations.<sup>1</sup>
22. A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:
- ....
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or an agency or
- ....<sup>2</sup>
23. Where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:
- an effect would reasonably be expected following disclosure
  - the expected effect would be both substantial and adverse.<sup>3</sup>
24. For this exemption to apply, the documents must relate to either:
- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety
  - the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.<sup>4</sup>
25. The Department's SES employees are not covered under *the Department of Communications and the Arts Enterprise Agreement 2015-2018*. Rather, SES employees' remuneration and other conditions of employment are set by a collective section 24(1) Determination under the *Public Service Act 1999*. Under this determination, the exact remuneration and conditions are negotiated between the SES employee and the Secretary of the Department— a practice which is consistent across the Australian Public Service (APS).
26. The information about SES salaries relates to human resource activities, recruitment, promotion and compensation. It is also my view that the information relates to the assessment of personnel, insofar as the negotiation of an SES employee's salary would be based on performance management policies and activities concerning competency and assessment for bonus or eligibility for progression.
27. In the context of a confidential negotiation process, revealing the precise remuneration paid to specific SES employees would have a substantial and adverse effect on the Department and potentially the APS more broadly. I consider that release of this information would reasonably be expected to result in undermining the Department's bargaining position in current and future negotiations with SES employees, insofar as SES employees may compare precise salaries paid to other SES employees and use this as a benchmark for negotiating their salary.

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<sup>1</sup> *Guidelines*, [6.95].

<sup>2</sup> *Guidelines*, [6.96].

<sup>3</sup> *Guidelines*, [6.113].

<sup>4</sup> *Guidelines*, [6.114].

28. There is a reasonable expectation that disclosure of this information would also prejudice the Department's ability to attract SES employees to the Department in future, out of fear the individual's right to privacy may be compromised.
29. Accordingly, I have decided that the summary document – with salaries provided by financial year and listed against a unique identifier - meets the criteria for conditional exemption. under subsection 47E(c) of the FOI Act.
30. I also find that the payment summaries, which contain the name, tax file number, salary, deductions, tax withheld and other information relating to a persons financial affairs, also meet the criteria for conditional exemption.
31. 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:*

32. 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.
33. 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;
  - (b) disclosure would inform debate on a matter of public importance;
  - (c) disclosure would promote effective oversight of public expenditure; and
  - (d) disclosure would allow a person to access his or her personal information.
34. I agree that disclosure of the document would broadly promote the objects of the FOI Act and may generally promote oversight of public expenditure.
35. However, the objects of the FOI Act and the oversight of public expenditure can be attained by referring to publicly available information which includes material relating to SES salaries.
36. The Department's annual reports contain information about remuneration paid to its staff, including SES employees, for each of the relevant financial years as follows:
- 2015-16 - <<http://annualreport.communications.gov.au/2017/pages/05-appendices/03-staffing-statistics/>>
  - 2014-15 - <<http://annualreport.communications.gov.au/2015/pages/5/3/1.php>>
  - 2013-14 – located from page 119 - <[www.communications.gov.au/sites/g/files/net301/f/DeptCommunication-AR-13.14-web.pdf](http://www.communications.gov.au/sites/g/files/net301/f/DeptCommunication-AR-13.14-web.pdf)>
37. The Australian Public Service Commission (APSC) also conducts an annual census across the APS agencies that informs APS-wide remuneration practices. A copy of these annual reports is available from the APSC website at: <[www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys](http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys)>
38. I am not satisfied that disclosure of the documents would inform debate in any additional way to the material which is already publicly available, as referred above.

39. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to his/her personal information.
40. I am not satisfied that disclosing the information you have requested would serve the public interest in any greater way than the material that is already publicly available, as referred above.
41. In making my decision I also considered the following factors which do not favour disclosure:
- (a) disclosure would reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Department; and
  - (b) disclosure would reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the APS more broadly.
42. As set out in section 11B(4) of the FOI Act, 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 in 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 documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
  - (d) access to the document could result in confusion or unnecessary debate.
43. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
44. 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.

### ***Personal privacy (section 47F)***

45. Section 47F of the FOI Act provides that a document is conditionally exempt if its release would involve the unreasonable disclosure of personal information about any person (including a deceased person).
46. The FOI Act shares the same definition of 'personal information' as the Privacy Act, which regulates the handling of personal information about individuals. The cornerstone of the Privacy Act's privacy protection framework is the Australian Privacy Principles (APPs), a set of legally binding principles that apply to both Australian Government agencies and private sector organisations that are subject to the Act.<sup>5</sup>
47. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
- a) whether the information or opinion is true or not; and
  - b) whether the information or opinion is recorded in a material form or not.<sup>6</sup>

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<sup>5</sup> Guidelines, [6.127]

<sup>6</sup> Guidelines, [6.128]

48. What constitutes personal information will vary, depending on whether an individual can be identified or is reasonably identifiable in the particular circumstances. For particular information to be personal information, an individual must be identified or reasonably identifiable.<sup>7</sup>
49. Where it may be possible to identify an individual using available resources, the practicability, including the time and cost involved, will be relevant to deciding whether an individual is 'reasonably identifiable'.<sup>8</sup>
50. While you have agreed for the information to be released to you in summary form, without the names of SES employees, the individual salary paid to each SES employee is, in my opinion, personal financial information. Each piece of this information on its own, not put into context with past salary information, would likely not be able to be used to identify a person. However, you are not seeking an individual number. You are seeking the salaries of each individual SES employee, by financial year, listed against a unique identifier.
51. Given the small size of the Department, particularly in the 2013-14 and 2014-15 financial years, even with the removal of names and the inclusion of a unique identifier, the identity of the SES employees can be inferred through a process of deductive reasoning. By comparing the information in the summary form as agreed, with historical organisational charts of the Department (which are publicly available documents), it would be relatively easy for a person to identify the SES employee to their corresponding salary.
52. Disclosure of this information would also reveal other information about the individuals, such as periods of unpaid leave taken and may have an impact on their personal lives in ways which we cannot quantify without knowing each of the SES employees personal and financial circumstances.
53. I have also considered that there is a presumption of confidentiality between the Secretary and SES employees in relation to individual contractual arrangements regarding their remuneration and conditions. It is vital to the effective management of this agency, and the public service more broadly, to uphold the personal privacy expectations of the Department's employees and the broader community expectations of the Australian workforce by protecting these documents from disclosure. If I were to agree to release of this information I am concerned that it could set a precedent for the disclosure of the exact remuneration of all public officials across the entire APS. Again, such disclosure may on face value appear to be for the purpose of transparency across government, but at what cost to the individuals. Without knowing the exact personal and financial circumstances of each individual, it is not appropriate to disclose information.
54. During the processing of your request the Department undertook consultation with each of the 38 affected SES employees/former employees. While 12 of these employees agreed to the release of the summary document with a unique identifier, one of these did raise concerns about the "invasion of personal privacy". Five SES employees objected to the release on the basis of personal privacy, two employees were unable to be contacted and a further 18 did not provide a response to the consultation request within the requested timeframe.
55. If I were to release the information of the 12 employees who did not object to disclosure, this could in fact open up further privacy implications. These 12 employees could be identified by deductive reasoning, as discussed above, which would in turn identify the identities of those SES employees who objected to, or did not provide comment on the release of their information. This then has the potential to open up those employees to further and unnecessary scrutiny.

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<sup>7</sup> *Guidelines*, [6.131]

<sup>8</sup> *Guidelines*, [6.132]

56. If we were to revert to your original request which seeks payment summaries of each SES employee, because you are seeking to match salaries and names, this in itself would cause concerns with the protection of personal privacy.
57. Disclosure of this information would also reveal other information about the individuals, such as periods of unpaid leave taken, salary sacrifice payments and other payments or deductions. This too may have an impact on their personal lives in ways which we cannot quantify without knowing each of the SES employees personal and financial circumstances.
58. Further, the disclosure of this information with names and salaries would provide immediate intrusion of individuals' personal financial information and I would consider this information to meet conditional exemption in full in accordance with section 47F of the FOI Act.
59. Section 47(2) of the FOI Act provides a list of matters that must be regarded when determining whether the disclosure of a document would involve the unreasonable disclosure of personal information. This includes whether it is well known, whether it is available publicly, whether the person to whom the information relates is known to be (or have been) associated with the matters dealt with in the document, and any other relevant matters.
60. I confirm that the information contained within each payment summary is not available from publicly accessible sources. The information contained within the Department's annual reports provides a salary range and is not detailed by individual. Therefore the information is not well known.
61. I am satisfied that release of the information, in summary form or otherwise, would constitute the unreasonable disclosure of personal information and would be inconsistent with the Department's obligations under the *Privacy Act 1988*.
62. Accordingly, I have decided that the summary document – with salaries provided by financial year and listed against a unique identifier meets the criteria for conditional exemption under section 47F of the FOI Act.
63. I also find that the payment summaries, which contain the name, tax file number, salary, deductions, tax withheld and other information relating to a persons' financial affairs, also meet the criteria for conditional exemption.
64. 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:*

65. 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.
66. 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;
  - (b) disclosure would inform debate on a matter of public importance;
  - (c) disclosure would promote effective oversight of public expenditure; and
  - (d) disclosure would allow a person to access his or her personal information.



67. I agree that disclosure of the document would broadly promote the objects of the FOI Act and may generally promote oversight of public expenditure.
68. However, the objects of the FOI Act and the oversight of public expenditure can be attained by referring to publicly available information which includes material relating to SES salaries. I refer to paragraphs (35-40) above.
69. I am not satisfied that disclosure of the documents would inform debate in any additional way to the material which is already publicly available, as referred above.
70. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to his/her personal information.
71. I also considered the following factors which do not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.
72. As set out in section 11B(4) of the FOI Act, 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 in 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 documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
  - (d) access to the document could result in confusion or unnecessary debate.
73. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
74. 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.

### **Irrelevant material**

75. Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, section 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions. Where this section applies, section 11A provides that access to the edited copy is required to be given.
76. In this case, considering the document in summary form, there is no irrelevant material contained within the document and the remainder of the document is exempted in full. Therefore it is not possible to provide a copy of the document with irrelevant material deleted.
77. Further, in the case of reverting to your original request, the deletion of irrelevant material along with the deletion of exempt material would result in the documents being redacted in their entirety and it is therefore not practical to provide you with a copy of the documents modified by deletions.

### **Third party consultation**

78. During the processing of your request the Department consulted third parties potentially affected by the release of the documents. Those third parties will be notified of my decision.

### **Your rights of review**

79. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

#### ***Internal Review***

80. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Communication and the Arts  
GPO Box 2154, Canberra ACT 2601  
**Email:** <FOI@communications.gov.au>

#### ***Information Commissioner Review***

81. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
82. You can ask the OAIC to review the Department's decision. You do not need to seek an internal review from the Department before seeking a review from the OAIC. However, going through the Department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
83. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
84. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** <[www.oaic.gov.au](http://www.oaic.gov.au)>  
**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Email:** <[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)>  
**In person:** Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <[www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights)>.

## Contacts

85. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6271 1652 or via email at <[FOI@communications.gov.au](mailto:FOI@communications.gov.au)>.



Vanessa Goodspeed  
Assistant Secretary  
Governance

9 March 2018



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

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

### 11 Right of access

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

### 11A Access to documents on request

#### *Scope*

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

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

- (a) section 12 (documents otherwise available);

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

*Mandatory access—general rule*

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

*Exemptions and conditional exemptions*

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

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

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

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

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

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

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

**11B 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;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

- (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.

## **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).

## **Public interest conditional exemptions**

### **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).