



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

Decision and reason for decision of Alexander Gent, Legal Officer, Information Law, Legal Services & Assurance

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Applicant: Verity-Pane  
Decision date: 15 January 2018  
FOI reference number: FOI 19928

Dear Verity Pane

### Freedom of Information Request: FOI 19928

1. I have made a decision to release the documents relevant to your request in part.

#### Summary

2. I, Alexander Gent, Legal Officer, Information Law, Legal Services & Assurance, 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 14 December 2017 you made a request for access to documents in the possession of the Department. Your request sought access to:
  - i. A copy of the Inquiry Report of the Joint Inquiry into the facts surrounding the management of Mr Jesse Bird's case, not limited to just the recommendations.
  - ii. Any documents which relate to the disclosure of the report to others outside the Department itself.
4. 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*.
5. The Department has undertaken a reasonable search of its records and has identified 19 documents relevant to your request, as set out above. The documents relevant to your request are listed at Schedule 1.

## Decision

6. I have made a decision to release the documents relevant to your request in part. The documents that I have chosen to grant access in full or in part or refuse access to are set out in Schedule 1, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of documents, modified by deletions in accordance with section 22(2) of the FOI Act.

## Material taken into account

7. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to grant partial access to the documents follow.
8. I have taken the following material into account in making my decision:
  - the content of the documents that fall within the scope of your request;
  - your correspondence of 14 December 2017 and 7 January 2018;
  - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
    - Section 11B Public interest exemption – factors
    - Section 47C Public interest conditional exemptions--deliberative processes
    - Section 47E Public interest conditional exemptions--certain operations of agencies
    - Section 47F Public interest conditional exemptions--personal privacy
    - Section 47G Public interest conditional exemptions--business
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines);
9. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

## Reasons for Decision

10. I have decided to grant access to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

### ***Public interest conditional exemptions--deliberative processes***

11. 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.
12. The material considered exempt in accordance with this provision is a recommendation from the Department to the former Minister for Veterans' Affairs, contained in proposed talking points for the Minister. I am satisfied the material is neither purely factual material nor operational information, and that it has a deliberative character in that it records a recommendation.

13. Accordingly, I have decided that the part of the document, which is listed as exempt in accordance with this provision in Schedule 1, meets 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:*

14. 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.
15. 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) reveal the reason for a government decision and any background or contextual information that informed the decision; and
    - (ii) enhance the scrutiny of government decision making.
  - (b) disclosure would inform debate on a matter of public importance;
16. 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; and
  - (b) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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**

19. Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
20. Document 1.2 contains the names and contact details of departmental staff members. Surnames and contact details, including phone numbers and email addresses, have been redacted under s 47E(d).

22. As you would be aware, the Department provides support and information for veterans and their dependants, including pensions and compensation, health care, rehabilitation and counselling services. It is important that the Department is able to continue to efficiently provide these services to the veteran community, as well as to carry out the other administrative and operational processes required of the Department.
23. Certain processes and channels of communication allowing clients and other relevant stakeholders to be able to contact the Department have been established to ensure all contact and resources are managed as efficiently as possible. Release of other contact details would adversely affect the operations of the Department, as staff could then be contacted directly rather than through established lines of communication, and it is reasonable to expect that this would disrupt and adversely affect the Department's operations. As the Department's allocation of email addresses allows a staff member's direct email address to be determined through knowledge of their first and last name, release of full staff names would also disclose direct contact information.

*Application of the public interest test:*

24. As set out above, 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.
25. In order to assess whether release of the material conditionally exempt under section 47E(d) 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) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official; and
    - (ii) enhance the scrutiny of government decision making.
  - (b) disclosure could advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.
26. I also considered the following factor which does not favour disclosure:
  - (a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
27. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
28. 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--personal privacy***

29. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

30. A number of documents that fall within the scope of your request contain material which is considered exempt under s 47F. This material includes:
- a. Detailed information regarding the circumstances of Mr Bird, including health information;
  - b. Personal information, including contact details, of the family of Mr Bird;
  - c. Correspondence between the Department and the family of Mr Bird;
  - d. The identity of individuals seeking access to documents and the nature of their requests, relevant to part (ii) of your request; and
  - e. Personal information regarding deceased members of the Australian Defence Force.
31. As set out in paragraph 6.140 of the FOI guidelines, I have had regard to the following matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information:
- a. *The extent to which the information is well known*

The information considered conditionally exempt in accordance with this provision are not well known. It appears that the information is only known to the Department and to the individuals directly concerned with the matter. I consider this factor weighs in favour of disclosure being unreasonable.
  - 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*

The persons in question are known to be associated with the matters dealt with in the document. This is clear from the terms of the document. I consider therefore that this matter weighs in favour of disclosure being unreasonable.
  - c. *The availability of the information from publicly accessible sources*

The nature of the information is such that it is unlikely to be available from publicly available sources. While you have made reference to reporting of Mr Bird's case in the media, the level of detail in the conditionally exempt material means that it would be unreasonable to describe it as 'well known'. Indeed, the terms of your request – 'the actual report in question has not been published to date' – make clear that you are seeking to access material that is not publicly accessible. I consider that this matter weighs in favour of disclosure being unreasonable.
  - d. *Any other matters that the agency or minister considers relevant*

The nature of the information is such that I consider release of the documents would cause stress on the third parties identified therein. This factor is specified at subparagraph 6.142(c) of the FOI Guidelines.

I also consider the following relevant factors from paragraph 6.143 of the FOI Guidelines to operate in favour of disclosure being unreasonable:

    - any opposition to disclosure expressed or likely to be held by that person
    - the circumstances of an agency's collection and use of the information
    - the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act

32. Accordingly, I have decided that the documents and parts of 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:*

33. 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.
34. 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) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;
    - (iii) reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;
    - (iv) reveal the reason for a government decision and any background or contextual information that informed the decision; and
    - (v) enhance the scrutiny of government decision making.
  - (b) disclosure would inform debate on a matter of public importance;
35. 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, including where:
    - (i) the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.
  - (b) disclosure could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;
  - (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future. In particular, sensitive information provided to the Department for the purposes of determining claims and providing support is generally provided on the understanding that it will not be disclosed by the Department; and

- (d) disclosure could reasonably be expected to harm the interests of an individual or group of individuals.

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

- 38. Section 47G of the FOI Act provides that 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, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs.
- 39. The information that is considered conditionally exempt under this provision governs the relationship between a mental health practitioner – a person with professional affairs – and a patient who has died by suicide. I consider that the disclosure of the relationship and the circumstances that ended the relationship could be reasonably expected to unreasonably affect the person adversely in respect of his or her lawful professional affairs.
- 40. Accordingly, I have decided that the parts of 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:***

- 41. 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.
- 42. 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) reveal the reason for a government decision and any background or contextual information that informed the decision; and
  - (b) disclosure would inform debate on a matter of public importance.
- 43. I also considered the following factors which do not favour disclosure:
  - (a) disclosure 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; and
  - (b) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy,

44. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
45. 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.

### **Access to documents**

46. The documents released to you in accordance with the FOI Act will be provided as soon as is practicable. They require some compilation and compression to enable their provision via the means you have requested.
47. Document 2.3 is an identical copy of document 1. I will provide only one copy of this duplicate document.

### **Your rights of review**

48. 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**

49. 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.
50. 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:** [foi@dva.gov.au](mailto:foi@dva.gov.au)

### **Information Commissioner Review**

51. 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:
52. You can make your application for Information Commissioner review 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.

53. 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

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

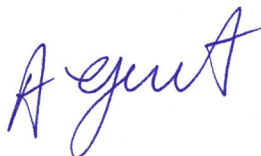
**Telephone:** (02) 6289 6581

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

**Facsimile:** (02) 6289 6337

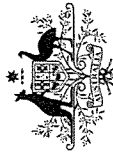
**Email:** [foi@dva.gov.au](mailto:foi@dva.gov.au)

Yours sincerely



Alexander Gent  
Legal Officer  
Information Law  
Legal Services & Assurance

15 January 2018



## Schedule of documents

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Applicant:	Verity Pane
Decision date:	15 January 2017
FOI reference number:	FOI 19928

Doc ref	Document description	Pages	Decision	FOI Act redaction provision
1	Final review report	19	Part access	47F
1.1	Annexure A to final review report	1	Full access	-
1.2	Annexure B1 to final review report	9	Exempt in full	47E, 47F
1.3	Annexure B(2) to final review report	4	Exempt in full	47F
1.31	Annexure B(2) – Attachment A	6	Exempt in full	47F
1.32	Annexure B(2) – Attachment B	26	Exempt in full	47F, 47G, 47F
1.33	Annexure B(2) – Attachment C	2	Exempt in full	47F
1.34	Annexure B(2) – Attachment D	2	Exempt in full	47F
1.35	Annexure B(2) – Attachment E	1	Exempt in full	47F
1.36	Annexure B(2) – Attachment F	1	Exempt in full	47F
1.37	Annexure B(2) – Attachment G	2	Exempt in full	47F
1.4	Annexure C to final review report	7	Exempt in full	47E, 47F, 47G
2	Meeting Brief MB17-000236	2	Part access	22, 47F
2.1	MB17-000236 Attachment A	7	Out of scope	22
2.2	MB17-000236 Attachment B	8	Out of scope	22
2.3	MB17-000236 Attachment C	19	Part access	47F
2.4	MB17-000236 Attachment D	4	Part access	22, 47C
3	FOI 18935 Statement of reasons	6	Exempt in full	47F
4	FOI 19554 Statement of reasons	7	Exempt in full	47F



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

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

### 11 Right of access

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

#### 11A Access to documents on request

##### *Scope*

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

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

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

### *Mandatory access—general rule*

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

### *Exemptions and conditional exemptions*

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

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

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

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

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

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

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

## **22 Access to edited copies with exempt or irrelevant matter deleted**

### *Scope*

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

### *Access to edited copy*

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

- (b) give the applicant access to the edited copy.

*Notice to applicant*

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

**23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

**26 Reasons and other particulars of decisions to be given**

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
  - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
  - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

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

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
  - (i) his or her rights with respect to review of the decision;
  - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
  - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.  
(see section 11A).

## 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).

### 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).