



4 July 2018

Sun Shine

By email: <mailto:foi+request-4558-4c206b87@righttoknow.org.au>

Dear Sun Shine,

Your Freedom of Information Request

I refer to your request of 4 May 2018 under the *Freedom of Information Act 1982* (the FOI Act) expressed in the following terms:

I seek access under the Freedom of Information Act 1982 to information regarding the recently signed Memorandum of Understanding (MOU) between the University of Melbourne and the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The MOU is an agreement that involves ARPANSA funding for a project at the university, transfer and transport of radioactive waste from the university to ARPANSA, and indefinite storage of drums of the aforementioned radioactive waste at ARPANSA's building in Yallambie. I request that a copy of the MOU document, including any attachments, be made available.

I am an officer authorised under section 23 of the For FOI Act to make decisions with respect to applications for access to documents under the FOI Act and this letter sets out my decision on your request.

Decision

I have identified one document relevant to your request and have decided the document is an exempt document.

In reaching this decision I have taken into account the views of the University of Melbourne and the reasons for their objections to release of any part of the document.

My reasons for making this decision are set out in Attachment A to this letter. At Attachment B is a schedule setting out each identified document and detailing my decision in relation to each document.

I have enclosed extracts of the provisions of the FOI Act relevant to your request and my decision at Attachment C to this letter.

Review Rights

You are entitled to seek review of this decision. Your rights in this regard are set out at Attachment D to this letter.

You may also complain to the Commonwealth Ombudsman about the way your request has been handled and Attachment D also sets out your rights of complaint and how to exercise them.

Publication of information in accessed documents.

ARPANSA must publish information that has been released in response to each freedom of information access request, subject to certain exceptions, in what is known as a “disclosure log”.

The disclosure log requirement does not apply to personal information about any person if it would be unreasonable to publish the information or to information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable. ARPANSA is not required to consult you on any decision to publish information that is released to you and the decision to publish information is not subject to internal review by ARPANSA or the Australian Information Commissioner. Any person can however, make a complaint to the Australian Information Commissioner about how an agency handles an FOI request.

I advise you that the document that will not be placed on the ARPANSA disclosure log.

ARPANSA’s disclosure log can be found at <http://www.arpansa.gov.au/AboutUs/disclosure.cfm>.

Contacts

If you require clarification of any of the matters set out in this letter please contact Martin Reynolds on 03 9433 2349 or foi@arpansa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Reynolds', with a horizontal line underneath.

Martin Reynolds
General Counsel



ATTACHMENT A – REASONS FOR DECISION – SUN SHINE – University of Melbourne MOU

Material taken into account

In making my decision, I had regard to the following:

- The terms of your request;
- The content of the document to which you sought access;
- Advice from ARPANSA officers with responsibility for matters relating to the document to which you sought access;
- Advice from the University of Melbourne who were invited to make submissions in relation to any objections they may have to the release of the document;
- The relevant provisions of the FOI Act;
- ARPANSA's guidance material on the FOI Act, and
- Guidelines on FOI, available on the Office of the Australian Information Commissioner website.

Findings of fact and reasons for decision

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

Section 22 deletion of exempt matter or irrelevant material

Section 22 of the Act allows for the deletion of information which is either exempt or which is irrelevant to the scope of the request, however, I have found that it would not be practicable to delete the exempt or irrelevant material as what would remain would be meaningless and unintelligible without relevant context.

Exemptions

The schedule of documents identifies the relevant sections of the Act under which exemptions have asserted in respect of the document. My reasons for finding particular exemptions are set out below.

University of Melbourne Objections

The University's submissions can be relevantly summarised as suggesting that the document is:

1. exempt pursuant to section 45 of the FOI Act in that the document contains material that was obtained in confidence;
2. conditionally exempt pursuant to section 47B in that release of the document would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; and
3. conditionally exempt pursuant to section 47G in that release of the document would, or could reasonably be expected to, cause damage to their business affairs.

The University also suggested that the personal privacy conditional exemption described in section 47F would be applicable to the names and titles of University staff, but, in the event, I have not found it necessary to decide this point.

The University requested that I consider whether and statutory secrecy provisions would be applicable to the document, but I do not believe that the document is subject to any relevant specific secrecy provision.

Section 45 - Documents containing material obtained in confidence

Relevantly, section 45(1) provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Guidelines issued by the Australian Information Commissioner describe a breach of confidence as the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence.

To found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

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

Specifically identified

The document itself contains a confidentiality clause which specifically identifies the material to be considered confidential between the parties including all material contained within the document. I am satisfied that confidential information has been sufficiently identified.

Quality of confidentiality

The FOI Guidelines provide that for information to have the quality of confidentiality it must be secret or only known to a limited group. Information that is common knowledge or in the public domain will not have the quality of confidentiality. Whilst the existence of the document is not itself confidential, it is not common knowledge or in the public domain and is limited to ARPANSA staff and a small number of Melbourne University' staff. However, it is not necessary to decide whether this equates to a quality of confidentiality since it is a matter of fact that the information contained within the document is only known to an extremely limited number of people. Therefore, I am satisfied that the document exhibits a quality of confidentiality.

Mutual understanding of confidence

Essentially, this requires the agency to have understood and accepted an obligation of confidence. The FOI Guidelines state that the most obvious example satisfying this condition is a contractual obligation of confidence. As referred to above, the document contains just such an obligation mutually agreed by the parties to the document. Both parties have subsequently acted to maintain the confidentiality of the document; indeed, the University in its submission has explicitly asserted its continuing treatment of the document as confidentiality and its belief that ARPANSA should continue to honour its obligation of confidence.

Unauthorised disclosure or threatened disclosure

In my view the prospect of confidential information being released under FOI would constitute an unauthorised threatened disclosure. It is true that where a law requires the publication of certain information such disclosure cannot be regarded as unauthorised and, therefore, no action for breach of confidence could arise, the FOI Act is not such an Act. The FOI Act does not require disclosure of an exempt document (see section 11A(4)).

To find otherwise would mean that disclosure of a document under FOI could never give rise to a breach of confidence and, therefore, section 45 would be stripped of meaning and have no work to do. This would violate a tenet of statutory interpretation that Parliament is presumed to have intended that all provisions of an enactment to have substantive application.

It may be different if a contractual obligation of confidence expressly provides that disclosure of the specified confidential information will not be a breach of contract if such disclosure is authorised by a law, but it is unnecessary to decide this point as such is not the case with the requested document.

Detriment

Whilst it is uncertain whether it must be established that unauthorised disclosure will, cause damage to the person who provided the confidential information for an action for breach of confidence to lie, I intend to take this into account before deciding whether section 45 has any application to the document.

In this regard, I have considered the submission of the University as to the detriment it sees that it will suffer should the document be disclosed.

Essentially, I understand, the University's arguments to be that:

1. The University has multiple projects both underway and planned as part of an extensive capital works program. These projects involve complex stakeholder negotiations with multiple parties. They rely on strong relationships being built and maintained, and the terms of agreements being effectively negotiated and that disclosure of the document will seriously undermine the University's ability to enter into such agreements on terms as advantageous as would be the case if the document was not disclosed.
2. The University's relationship with other parties involved in the project which is the subject matter of the document would be damaged since those parties are also expecting mutual obligations of confidence and disclosure of the document could damage the prospects of successfully completing the project.
3. Release of any confidential agreement would undermine the reputation of the University as a trusted business partner, and undermine confidence in the University's ability to negotiate and keep confidential the details of such agreements. Further, it may result in such parties refusing to work with the University in future and/or unnecessarily complicate negotiations relating to current or planned projects.

I find these arguments persuasive and I am satisfied that disclosure of the document would cause damage the University's legitimate interests.

For the reasons outlines above, I find that the document is exempt under section 45 of the FOI Act in that its disclosure would found an action by a person for breach of confidence and I decline to release the document.

Section 47B - Commonwealth State relations etc

Relevantly, section 47B conditionally exempts a document where disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State or would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an

authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth.

The FOI Guidelines state that a decision maker may consider that disclosure would, or could reasonably be expected to damage the working relations of the Commonwealth and one or more States. 'Working relations' are said to encompass all interactions of the Commonwealth and the States, from formal Commonwealth-State consultation processes such as the Council of Australian Governments through to any working arrangements between agencies undertaken as part of their day to day functions.

It is clear that the subject matter of the requested document involves working arrangements between agencies undertaken as part of their day to day functions and, as I have already found that the document consists of information conveyed in confidence, in my view, it automatically follows that section 47B is engaged in that disclosure of the document would divulge information or matter communicated in confidence by or on behalf of an authority of a State, to an authority of the Commonwealth.

Additionally, as put to me by the University it seems reasonably likely that the damage to the University's reputation and ability to effectively manage significant projects would be undermined in the eyes of any current or future Commonwealth partner agencies. Such a loss of trust and faith between the University and the Commonwealth would adversely affect the continued level of trust or co-operation in existing inter-office relationships.

Accordingly, I find that the requested document is conditionally exempt under section 47B.

Section 47E - certain operations of agencies

Relevantly, section 47E 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.

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation and, in order to do this, ARPANSA heavily relies on entering into contractual arrangements with a varied range of partners both domestic and international, including commercial, industry and other regulatory bodies, which invariably include confidentiality obligations. The loss of trust that these partners would experience when they could not rely on ARPANSA to honour such confidentiality obligations would have a substantial adverse affect on ARPANSA's ability to fulfil its very important statutory purpose.

I find that the requested document is conditionally exempt under section 47E of the FOI Act.

Section 47G - business

Relevantly, section 47G conditionally exempts documents where disclosure would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

I understand the University's submission to be that the requested document is exempt under section 47G in that disclosure would allow competitors to access the University's confidential commercial information, and expose the University unreasonably to disadvantage in negotiating the terms of any future agreements. It would also negatively impact existing works in the precinct.

This is because:

- In addition to specific details of the projected costs, contributions and payment schedule agreed between the parties, the document also includes the details of the agreed breakdown of

responsibilities between the University and the parties involved in undertaking this work and this information concerns its business, commercial or financial affairs.

- The document also contains plans of the site which may impact on considerations in managing works on other nearby sites in the precinct.
- Given the subject matter of the agreement, disclosure of the document has the potential to lead to significant disruption to this particular project and to the University's other business.
- The University considers it likely that a negative reaction may result from any disclosure of this document, based on experiences in relation to similar topical subject matter in the past. Any negative reaction to the project as a result of the document being released (for example by members of the media, the general public, or the student population) has the potential to lead to a shut-down of the site. This would result in significant delays to the project and impact on other works both underway within The University of Melbourne precinct and immediately adjacent to the campus. Such delays and complications would result in significant additional cost to the University and potentially its partners, as well as potentially the loss of existing or future partners.
- Given the timing of this request, and the stage that the project is currently at, any of the above impacts would be detrimental to the University's ability to manage this project and any related or interconnected works, including the ability to retain the involvement of key partners.
- Any public reaction impacting on the project would expose the University unreasonably to disadvantage in its other core activities. The University relies heavily on obtaining optimal funding and attracting maximum sponsorship to ensure its services are of the highest possible standard and to attract the highest possible number of prospective students. As an institution with an international profile operating in a highly competitive higher education sector, any impact on the University's reputation would be detrimental to its core business by providing the University's competitors an unfair advantage at the expense of the University and inhibiting the ability of the University to obtain optimal funding in future and compete in the relevant market.
- Disclosure of this information would impact the University's ability to competitively negotiate rates for current and future research consultancy contracts related to other areas of its business, also potentially involving other parties to the document, and would therefore compromise the University's competitive position within the education sector with other potential partners.

There is no doubt that disclosure of the document would disclose information concerning the business, commercial or financial affairs of the University. The University's submission puts a compelling case for finding that disclosure of the document could reasonably be expected to, unreasonably affect the University in respect of its lawful business, commercial or financial affairs.

Accordingly, I find that the document is conditionally exempt under section 47G.

Public interest

Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A). In the circumstances of this case it is convenient to consider the public interest in relation to my findings under sections 47B, 47E and 47G together as I consider that the same considerations arise in each case.

In considering this issue, I have taken into account the following public interest factors in favour of and against disclosure:

Factors in favour of disclosure

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; and
- d. allow a person to access his or her own personal information.

In this case, I have not identified any public interest grounds other than those listed in section 11B of the FOI Act. Accessing personal information is not relevant to this request.

The document does not reveal any information about the Government's operations, in particular the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community or reveal the reason for a government decision or any background or contextual information that informed the decision. Disclosure of the document will not enhance the scrutiny of government decision making, but will contribute to open and transparent government. For these reasons I do not consider that any significant weight should be given to the public interest in promoting the objects of the FOI Act.

While some members of the public may have an interest in the subject matter of the document, it is not apparent that it describes a matter of public importance and, therefore, I do not consider that any significant weight should be given to the public interest in informing debate on a matter of public importance.

While the disclosure of the document would give visibility to one item of ad hoc government expenditure, it would appear unlikely that disclosure would contribute to promoting effective oversight of government expenditure and, so, this public interest holds only nominal weight.

Factors against disclosure

- a. the interest in preserving the efficient and proper functioning of government;
- b. disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- c. the interest in allowing third parties to interact with government without risking loss of commercially sensitive information; and
- d. disclosure could reasonably be expected to harm the interests of a third party going about their lawful business.

It will be useful to weigh the factors described in (a) and (b) together and those described in (c) and (d) together as they affect the public interest in effective government and the protection of private interests when dealing with government respectively.

I consider that there is a strong public interest both in government being able to engage with third parties in the performance of government functions where such engagement will involve the sharing of confidential information and in third parties being able to deal with government without their legitimate interests and lawful business being damaged by the mere fact of that dealing.

In my view, in relation to the document, the factors against disclosure outweigh the factors in favour of disclosure as disclosure of the conditionally exempt material would not promote the objectives of the FOI Act, would add nothing to any ongoing debate of public importance, and would make no contribution to governmental accountability, whereas disclosure would prejudice the proper and efficient functioning of government and damage the interests of innocent third parties merely because they lawfully engaged with government in an enterprise.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release the document. The document is therefore exempt under sections 47B, 47E and 47G.



ATTACHMENT B – SCHEDULE OF RELEVANT DOCUMENTS

Doc No.	Document Title	Pages	Released	Section
1	Memorandum of Understanding	10	Exempt	s45, s47B, s47E, s47G



ATTACHMENT C – RELEVANT FOI ACT PROVISIONS

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.

31B Exempt documents for the purposes of this Part

A document is *exempt* for the purposes of this Part if:

- a. it is an exempt document under Division 2; or
- b. it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note 1: A document is an *exempt document* for the purposes of this Act (see subsection 4(1) if:

- a. it is exempt under this section; or
- b. it is exempt because of section 7 (exemption of certain persons and bodies); or
- c. it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

Note 2: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

45 Documents containing material obtained in confidence

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

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

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

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

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

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

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).



ATTACHMENT D INTERNAL REVIEW OF DECISION BY ARPANSA

You have the right to apply for an internal review of this decision in accordance with Part VI of the *Freedom of Information Act 1982* (FOI Act). If you make an application for review, the CEO of ARPANSA will appoint an officer of ARPANSA to conduct a review and make a completely fresh decision on the merits of the case.

If you wish to exercise this review right, you must apply in writing for a review of the decision within 30 days of receipt of this letter. You do not have to pay any fees or proceeding charges for internal the review. No particular form is required to apply for review although it is desirable to set out in the application the grounds on which you consider that the decision should be changed.

The application for review of the decision should be sent to foi@arpansa.gov.au or:
FOI & Privacy Officer
ARPANSA
619 Lower Plenty Road
YALLAMBIE VIC 3085

If you make an application for internal review and a decision is not made by us within 30 days of receiving the application, the original decision will be deemed to be affirmed in accordance with section 54D of the FOI Act and you will be entitled to make an application to the Information Commissioner in accordance with sections 54L and 54M of the FOI Act. Similarly, if you are dissatisfied with ARPANSA’s decision on internal review, you may also apply for review of this decision to the Information Commissioner.

Review of Decision by the Australian Information Commissioner (AIC)

You do not have to seek an internal review of the decision directly from ARPANSA. You may wish to seek a review of the decision from the AIC. If so, you must apply in writing and you can lodge your application in a number of ways. More information is available on the AIC’s website at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

Complaints to the AIC or the Commonwealth Ombudsman

You may complain to the Commonwealth Ombudsman or the AIC concerning action taken by an agency in the exercise of the powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Ombudsman or the AIC will conduct a completely independent investigation of your complaint.

You may complain to the Ombudsman either orally, in person, on-line or in writing and to the AIC in writing or by completing the on-line form. Relevant addresses are:

Commonwealth Ombudsman GPO Box 442 CANBERRA ACT 2601. Web: www.ombudsman.gov.au	The Australian Information Commissioner GPO Box 2999 OR GPO Box 5218 Canberra ACT 2601 Sydney NSW 2001 Web: https://www.oaic.gov.au/freedom-of-information/foi-complaints
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