



Internal review decision made under the *Freedom of Information Act 1982*

Internal review decision and reasons for decision of John (Position Number 62230915), Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

Applicant: Verity Pane (Right To Know)

Date of primary decision: 11 October 2018

FOI reference number: FOI 24429

Internal review decision date: 12 November 2018

Internal review reference number: IR 25048

Sent by email: foi+request-4796-ea6cef49@righttoknow

Dear Verity Pane,

Freedom of Information Internal Review Request: FOI 25048

1. The purpose of this letter is to give you a decision about your request for internal review under the *Freedom of Information Act 1982* (FOI Act).
2. I have made a decision to affirm the original decision made by Position Number 62212962, Information Law Section, Legal Services and Assurance Branch that the documents contain exempt material and have applied an additional exemption as noted below to that material.

Authority to make this decision

3. I, John (Position Number 62230915), Information Law Officer in the Information Law Section, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to review decisions about access to documents in the possession of the Department in accordance with section 54C of the *Freedom of Information Act 1982* (the FOI Act).

Summary

4. On 11 September 2018 you made a request for access to the following documents in the possession of the Department:

“...all Departmental emails and any other records in TRIM or on the Information Law and/or Legal Services G drive that relate to scoping study calculations for DVA FOI 23544 and DVA FOI 23863 and DVA FOI 21147, including communications about collecting and sampling records related to DVA FOI 23544 and DVA FOI 23863 and DVA FOI 21147...”

5. As no extensions of time were applied to process your request, a decision on your request was due by 11 October 2018.
6. On 11 October 2018, you were provided with a decision relating to access to documents within the scope of your request. That decision provided you with the partial release of three (3) documents relevant to your request, with redactions to remove exempt material in accordance with section 47E(d) of the FOI Act. Access to the fourth document was refused in full in accordance with sections 47E(d), 47F and 47G of the FOI Act. Redactions to the exempt material was applied under section 22 of the FOI Act.
7. On 12 October 2018, you requested an internal review of the primary decision on the grounds that the Statement of Reasons was non-compliant with the FOI Act. You did not raise any contentions about the exemptions that were applied to those documents.
8. As no extensions of time have been applied to process this internal review, a decision on your request was due by 12 November 2018.

Decision

9. I have made a decision to affirm the original decision made by Position Number 62212962, Information Law Section, Legal Services and Assurance Branch that the documents contain exempt material and have applied an additional exemption as noted below to that material.
10. The three (3) documents subject to FOI 24429 are re-released to you as a courtesy, comprising black and red redactions.

Material taken into account

11. 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 documents follow.

12. I have taken the following material into account in making my decision:

- the terms of your primary request;
- the terms of your request for an internal review;
- the types of documents that are within scope and in the possession of the Department;
- the content of the documents 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. I also considered 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 Public interest conditional exemptions – certain operations of the agency
 - Section 47F Public interest conditional exemptions – personal privacy
 - Section 47G Public interest conditional exemptions – business; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

Reasons for Decision

13. Your request for an internal review focuses on two matters:

- a) the Department does not identify the name of the Decision Maker; and
- b) the Department has not used approved redaction techniques.

14. In accordance with section 53A of the FOI Act, applicants are able to seek an internal review on the basis of eight (8) types of primary decisions made by agencies. The FOI Act does not provide a mechanism for applicants to seek an internal review based on your above contentions. As noted above, you did not raise any contentions about the exemptions that were applied to the documents.

15. The redactions applied to the documents in the primary decision were applied to the correct material. There were no alterations made to the original documents. A temporary lapse in the standard application of black and red resulted in those redactions being made under the colours white and red. This did not alter the fact that the redactions were correctly applied. The addition of a FOI reference and page number was inserted to the redacted version of documents assist with readability and did not alter the original content of the documents. As noted above, as a courtesy I have re-issued the documents to you with the standard black and red redactions being applied and have removed the accessible information. There is no legislated method under the FOI Act in which redactions are to be applied.

16. Noting the above considerations are not a basis for an internal review, I have decided to re-consider the exemptions applied to the documents and my reasons follow.

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

17. I have found material in documents one to four to contain information that if released, could have a substantial adverse effect on the management of personnel by the Department and on the proper and efficient conduct of the Department.
18. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:
- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
 - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
 - (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
 - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
19. Where the document contains information exempt under section 47E(c) and (d), an edited copy has been prepared (pursuant to section 22 of the FOI Act) with these details redacted.
20. Because of the way the Department constructs the email addresses of individual officers, I have decided to redact the surnames of Departmental staff and contact numbers to give effect to this conditional exemption.
21. The Department's role is to provide support and information to veterans and their dependents, Australian Defence Force personnel and other categories of people. The services and support which the Department provides include pensions and compensation, health care, rehabilitation and counselling services, amongst other things. It is important that the Department is able to continue to provide these services and to carry out the other legislative functions and administrative and operational processes required of them. Certain processes and specific channels of communication have been implemented which enable clients and other relevant stakeholders to contact the Department in a way that ensures all Departmental resources are managed as efficiently as possible.
22. Release of the surnames and direct contact details of those staff in the circumstances would adversely affect the Department as the established lines of communication could then be bypassed. It is reasonable to expect that this would disrupt and adversely affect the operations of the Department.

23. I also consider that your demonstrated pattern of behavior in targeting and insulting Departmental staff by email and online, a further reason to exempt staff surnames and direct contact details. The manner in which you have done, and continue to engage with Departmental staff online could have a substantial adverse effect on the management or assessment of personnel as well as an adverse effect on the proper and efficient conduct of the operations of the Department.
24. 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) of the FOI Act.

Application of the public interest test

25. Section 11A(5) of the FOI Act 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.
26. 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.
27. I also considered the following factors which do not favour disclosure:
 - (a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth;
 - (b) 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;
 - (c) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
 - (d) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
 - (e) disclosure could reasonably be expected to harm the interests of an individual or group of individuals; and
 - (f) disclosure could reasonably be expected to prejudice the management function of an agency.

28. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
29. 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 (section 47F)

30. 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).
31. Document four relates to an unresolved FOI request (FOI 23544). The information contained in this document has not yet been used to create the document as requested in that FOI matter. Parts of document four contain personal information of Departmental staff and the Department's clients including details of their personal affairs and names. This information satisfies the definition of personal information in section 4 of the FOI Act.
32. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I considered the following factors:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates to is known to be (or to have been) associated with the matters dealt with in the documents; and
 - (c) the availability of the information from publicly available sources.
33. Accordingly, I have decided that parts of document 4 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) of the FOI Act.

Application of the public interest test:

34. Section 11A(5) of the FOI Act 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.
35. 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.

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

(a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth;

(b) 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;

(c) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;

(d) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;

(e) disclosure could reasonably be expected to harm the interests of an individual or group of individuals; and

(f) disclosure could reasonably be expected to prejudice the management function of an agency.

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

38. 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 (section 47G)

39. 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 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.

40. Parts of document four contains business information of third parties including certain commercial arrangements between the Department and various organisations. Therefore, this information is within the meaning of section 47G(1) of the FOI Act.
41. I am satisfied the disclosure of the business information could reasonably be expected to have an unreasonable adverse effect on the business interests of the relevant organisations for the following reasons:
- (a) it relates to aspects of a number of organisations' business affairs;
 - (b) the information is not currently available from public sources;
 - (c) disclosure of the business information would be a disclosure of a business' capabilities and methods and could diminish the competitive nature of the business and affect the profitability of their business operations.
42. Accordingly, I have decided that the parts of document four which is 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) of the FOI Act.

Application of the public interest test:

43. Section 11A(5) of the FOI Act 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.
44. 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:
- (b) disclosure would promote the objects of the FOI Act; and
 - (c) disclosure would promote effective oversight of public expenditure.
45. I also considered the following factors which do not favour disclosure:
- (g) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth;

- (h) 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;
- (i) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- (j) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- (k) disclosure could reasonably be expected to harm the interests of an individual or group of individuals;
- (l) disclosure could reasonably be expected to prejudice the management function of an agency; and
- (m) 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.

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

47. 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.

Additional information

48. I note that document four contains information directly relevant to an unresolved FOI request (FOI 23544). That request was subject to a charges decision and subsequent internal review that upheld the application of charges. As such, a decision on those documents has not been made. As such, the document in its current form contains exempt material. I have not provided you with access to this document as applying redactions would render the document meaningless.

49. Information within the documents that have been created after the date of your FOI request (11 September 2018), have also been redacted in accordance with section 22 of the FOI Act. The FOI Act provides for a right to access documents held by the Department at the date of receipt of your request.

50. Parts of documents that contain information after the date of your FOI request, or which is irrelevant to the original document (e.g. the name of the person who printed the original documents so that

redactions could be applied) has been redacted in accordance with section 22 of the FOI Act as this material is irrelevant to the scope of your request.

51. I am also of the view that some of the material released to you in the primary decision would be exempt under the FOI Act. However, as this information has already been released and made public, I have not applied exemptions to that material.

Your rights of review

52. Under section 54L of the FOI Act, if you are dissatisfied with my decision, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: www.oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001

Facsimile: (02) 9284 9666

Email: enquiries@oaic.gov.au

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

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>

Contacts

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

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

Facsimile: (02) 6289 6337

Email: information.law@dva.gov.au

Yours Sincerely,

John (Position Number 62230915)

Information Law Officer

Information Law Section | Legal Services & Assurance Branch

Legal Assurance and Governance Division

12 November 2018



Schedule of documents

Applicant: Verity Pane

Decision date: 12 November 2018

FOI reference number: FOI 25048

Doc ref	Date of document	Document description	Pages	Decision	FOI Act exemption provision
1	Various	FOI 21147 documents	1-9	Release in part	Section 47E(d)
2	Various	FOI 23544 documents	10-47	Release in part	Section 47E(d)
3	Various	FOI 23863 documents	48-83	Release in part	Section 47E(d)
4	No date	FOI 23544 Exempt document	84-153	Exempt in full	Section 47E(d) Section 47F Section 47G



Schedule of relevant provisions in the FOI Act

3 Objects—general

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

11 Right of access

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

11A Access to documents on request

Scope

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

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

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

Mandatory access—general rule

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

Exemptions and conditional exemptions

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

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

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

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

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

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

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

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).

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).