



Revised decision made under section 55G of the *Freedom of Information Act 1982*

Revised decision and reason for decision of Leia (Position Number 62210022),
Information Law Section, Legal Services and Audit Branch, Department of Veterans'
Affairs

Applicant: Verity Pane
Date of primary decision: 23 November 2018
FOI reference number: FOI 25080
Revised decision date: 31 May 2019
Revised decision reference number: ICR MR18/00923

Dear Verity Pane,

1. The purpose of this letter is to issue you a revised decision in accordance with section 55G of the *Freedom of Information Act 1982 (FOI Act)*. This decision relates to your application for Information Commissioner Review of FOI 25080 (MR18/00923 refers).
2. I have made a decision to vary the original decision I made on 23 November 2018 to apply charges in the amount of \$48.68 to process your FOI request.
3. I have decided that the charges are to be waived and have made a decision to release the document relevant to your request in part. The document that I have chosen to grant access in part is set out in **Schedule 1**, together with applicable exemption provisions. Because I have decided to grant access in part, I have provided access to an edited copy of the document, modified by deletions in accordance with section 22(2) of the FOI Act.

Authority to make this decision

4. I, Leia (Position Number 62210022), Assistant Director, Information Law Section am an officer authorised by the Secretary of the Department of Veterans' Affairs (**Department**) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Summary

5. On 27 September 2018, you made a request for the Department to create a document from data in the possession of the Department. Your request sought access to:

"...Under s 17 of the FOI Act, I seek that you compile a position report from your agency's Human Resource Management Information System (HRMIS/HRMS), for the whole of the Legal Services & Assurance Branch of DVA, as of today (or any date up to decision issue - your choice)..."

6. On 15 October 2018, you advised:

"...I modify my scope, in so far as that if the Legal Services & Assurance part of DVA is referred to by something than the Legal Services & Assuranve Branch (such as Division, Group, etc). that reference will be taken to refer to that part of the organisation, regardless of its actual description..."

7. On 25 October 2018, the Department provided you with a Charges Notice, advising of a preliminary assessment of charges for processing your request in the amount of \$48.68. You were also advised that a deposit of \$20.00 was required before any further action could be taken on your request.

8. On 25 October 2018, you sent an email disputing the charge. You specifically noted:

"...While the charges levy is still on the high side, it is tolerable.

However, the issue now is the levy charge is too low to justify it's collection, especially given DVA only accept cheques ...

The bank fee to create a CBA bank cheque to pay the deposit is practically the same as the deposit amount, let alone the costs the CBA charges to send the cheque to DVA, which put the total costs of handling well above the deposit amount (effectively making the real cost much higher to the applicant).

This pushes the not intolerable total charges levy of \$48.85 into the uneconomical to levy and collect category, which the Information Commissioner has ruled is when such charges should be waived in order to comply with the aims and objects of the FOI Act to provide access at the lowest cost possible...

However, you have skipped ahead and imposed a charges levy notice without giving any preliminary notice, so as to make it required that either a tokenistic charge that costs almost as much to arrange as it is to pay is required, or force the stopping of the s 15(5)(b) processing deadline to intentionally cause interference with a reasonable right to access...

The FOI Guidelines explain that the decision to impose a charge is discretionary. A charge should be accurate, should fairly reflect the work involved in providing access to documents on request and must not be used to unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act.

As per the reasoning of the Information Commissioner in 'ND' and Department of Human Services (Freedom of Information) [2017] AICmr 119 (20 November 2017), the charges notice should be withdrawn (especially since DVA have already foreshadowed they have no real intention of providing access, again highlighting that the sole intent is to cause further delay). The levied amount falls within the range previously identified by the Information Commissioner as uneconomical to levy..."

9. On 23 November 2018, the Department issued you with a decision that advised the charges remained payable (**Charges Decision**).
10. On 23 November 2018, you applied for external review of the Department's decision to apply charges to your FOI request (MR18/00860 refers). In your application you noted:

I apply for IC Review of DVA FOI 25080 Charges Decision ... [link removed]

This decision follows on from charges notice ... [link removed]

The charges were contested here ... [link removed]

This should be quick and easy and given the limited scope of the matter, dealt with quickly by the OAIC.

The charges notice applied a charge of \$48.85, which was reduced to \$48.68 (-\$0.17) on charges decision issue.

Only one activity takes at least one hour (and that is in the decision making section), all other activities being charged at 0.25 hours or less. The Information Commissioner has previously ruled that agencies should not issue charges for individual activities below an hour, simply to pad an estimate (especially where common sense dictates that activities below 30 minutes should be rounded down to 0), and this would be especially the case where the agency uses senior staff (Director level Executive Level 2, Assistant Director level Executive Level 1, and Team Leader level APS6 staff) salaries to charge for these 'fractional' activities.

The activity in question involves providing a position report from DVA's HRIMS that takes no more than a couple of minutes, with the activity overwhelming comprised of assessment and decision making activity alone (and given DVA's past excessive exemption claims, mostly all in bad faith, it is inevitable that most, if not, all of the i report sought will be

denied access to by DVA anyway, making this unethical delaying tactic by DVA even more in bad faith).

Especially given the number of senior DVA executive staff and Departmental lawyers involved in the construction of these charges notices and decisions already (at the Executive and SES levels), even on the most conservative approach, it is fair to say that the cost of calculating and collecting these charge well exceeds the cost to the agency of processing the request, being far greater than the \$48.68 sought, so it is undeniable that the waiver of the charge must occur. It is certainly the case that DVA has wasted at least a few hours on the charges assessment and decision, which given they are currently charging a minimum of \$60+ hour for processing, means that the cost of seeking these charges is at least triple that of the charge itself, if not many orders of magnitude more.

I draw the OAIC's attention to the following decisions;

*M' and Department of Agriculture, Fisheries and Forestry [2013] AICmr 24 (13 March 2013)
Para 26 I accept that it is not necessary that senior staff be directly involved in searching databases, retrieving information and editing spreadsheets*

para 24: as the Guidelines explain: ... the time of other officers whom the decision maker consults in the course of making a decision would not ordinarily fall within [the charge for decision making], as the authorised decision maker is expected to have the necessary skill and understanding to decide access issues.

Rita Lahoud and Department of Education and Training [2016] AICmr 5 (22 January 2016)

Para 18 - Section 29(4) of the FOI Act provides a discretion to reduce or not impose a charge. In deciding whether to exercise the discretion, I may consider any relevant matter, however s 29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public, and whether the charge would cause financial hardship. The general discretion to reduce or not impose a charge is not limited to financial hardship or public interest grounds.

para 32 - I agree with the Department's submissions that 'the history of the matter including the OAIC review, the period of time that has passed since the initial request and the consequent inconvenience and delay that have been caused to the applicant' justify a reduction in the charge.

para 38 - In my view, given the object of the FOI Act of providing prompt access at the lowest reasonable cost to applicants, an agency should be particularly careful to justify the discretion to impose a charge

Para 39 - The charges regime provided for by the FOI Act is not intended to create barriers to obtaining access to government information. In this case, the applicant has already waited

'ND' and Department of Human Services (Freedom of information) [2017] AICmr 119 (20 November 2017)

Finally, yet again, the decision notices are invalid, as they do not meet the requirements of s 26(1)(b) and FOI Guideline 3.181, as they do not include the required information to identify the decision maker (without further research), which as per the OAIC ICON circular of 8 June 2018 (which was circulated to agencies including DVA), states "where the decision relates to a document of an agency, the decision notice needs to include the name and designation of the person making the decision, including the decision maker's first name, surname and title, to clearly explain their authority to make the decision".

This required information is not merely incidental to an FOI decision but integral - it is provided so the receiver knows who to contact about the decision, and to determine whether the person who issued it is in fact authorised to do so (such as by independently checking the agency's FOI delegations/authorisations list). It is simply not enough to assert that the agency knows who issued the decision, or is confident they are authorised to do so - it is not a question for the agency alone to determine.

No privacy in a public servant's name carrying out official duties - If the document refers to a private individual (which is not a public servant carrying out their official duties, as that falls into official, not private information), other than myself, it may be excluded from scope altogether.

As explained in the Guidelines, personal information can include a person's name, however, for information to constitute personal information it needs to convey or say something about a person, rather than just identify them.

As stated in Colakovski v Australian Telecommunications Corporation (1991) 29 FCR 429 by Heerey J, it is only if 'the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed... [that] disclosure would be unreasonable'.

It has been consistently held by the AAT and the Federal Court that there is a greater public interest in demonstrating transparency and accountability in official records, extending to the identity of those public servants who authored them and made decisions based on them, unless limited special circumstances apply.

This is important in a democratic government as transparency and accountability ward off corruption and ethical abuses.

Recognised in both Federal Court and AAT cases and the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, is 'it is not unreasonable to disclose information about an individual public servant's work related activities in his or her agency, such as the person's name, or the manner in which the person carries out tasks or behaviour in the workplace'.

While disclosure of a public servant's home address and other private personal information, such as date of birth details etc, would be unreasonable, details of work telephone number, email address and place of work, especially if already known, are not.

However, I have no interest in telephone numbers or email addresses or desk locations etc (so they may be redacted with consent), beyond the full name of the author and receiver (if provided) of any document, as that is all that is reasonably necessary for accountability purposes and to check only those persons with the authority/delegation to do things, did them (where applicable).

Empty claims of potential prejudice to operations must be assessed against the significant abilities of agencies to restrict and channel communications that occur outside of approved channels, such as restricting and redirecting communications via email server rules or PABX rules or using SPOC requirements, as well as the likelihood of such a risk (statistically the evidence is such risks are very low and quite uncommon). The situation is such that any potential prejudice likely to occur can be managed adequately with minimal effort by agencies, and indeed agencies have access to both legal and procedural measures to remedy any issues that may arise.

As held by the Full Tribunal in Williams, 'personal affairs' is construed narrowly. Beaumont J, in reasons agreed to by Senior Member McMahon and Member Renouf, held that 'personal affairs' refers to 'matters of private concern to an individual'. His Honour's view was that the phrase does not ordinarily include information about a public servant's activity in their official duties. Something which gives only the 'bare names' of a public servant in official records was not a personal affair, unless it also included details such as their home address, age, marital status, children and salary (which would fall into personal affairs). The Full Federal Court in Dyrenfurth, similarly, agreed that personal affairs' refers to matters of 'private concern', not official information (and the name of a public servant recorded in an official document in the course of carrying out their official duties is clearly official information).

Re Marr and Telstra Corp Ltd [1993] AATA 328 commented that there was little practical difference between the terms 'personal information about' and 'personal affairs of', and that neither extended to the mere mention of officers' names in an agency document. Re

Subramanian and Refugee Review Tribunal [1997] AATA 31 at [42]-[43] said it was significant that the word 'personal' was still part of the personal privacy exemption, which indicated that it applied only to 'information which concerns or affects a person as an individual' and does not include 'information relating to a person's conduct in a work environment'. Three other decisions holding that work-related information was not personal information were Re Cook and Comcare [1996] AATA 95 at [34] (the names of agency officers who were informants about workplace conditions); Re Lalogianni and Australian National University [2001] AATA 347 at [34]-[43] (internal correspondence written by two University academics concerning a complaint against one of them); and Re Einfeld and Human Rights and Equal Opportunity Commission [2009] AATA 414 at [52] (a document seeking ministerial approval for overseas travel by a named statutory officer). As has been stated by the Information Commissioner previously:

Two other suggested limitations on the phrase 'personal information' should also be noted. One is that information is only 'about an individual' (as required by s 4(1) of the FOI Act) if it says something about the individual. The other is that a person's name is not of itself personal information.

Public servants are well aware that because, as part of their official duties, their names are recorded on both internal and external correspondence, and that these records may be retained and indeed released to the world at large, without their explicit consent being required to do so, as disclosures may be required or authorised at law, no existence of confidentiality of such details can be reasonable presumed, and indeed the Public Service Act includes requirements of being accountable and demonstrating transparency in their decision making at work, which includes identifying who they are.

It should be noted that the names of public servants are routinely published to the world at large, through the Australian Public Service Gazette or other publications, such that anyone can spend time identifying even junior employees in agencies, including their current job title and office location, often even their phone numbers (if they are a contact officer at some point).

11. On 10 May 2019, the Department received a notice under section 54Z of the FOI Act from the Office of the Australian Information Commissioner (**OAIC**), advising of the IC Review. In response, the Department has elected to issue you with a revised decision.

Decision

12. I have made a decision to vary the original decision I made on 23 November 2018 to apply charges in the amount of \$48.68 to process your FOI request.
13. I have decided that the charges are to be waived and have made a decision to release the document relevant to your request in part. The document that I have chosen to grant access in part is set out in

Schedule 1, together with applicable exemption provisions. Because I have decided to grant access in part, I have provided access to an edited copy of the document, modified by deletions in accordance with section 22(2) of the FOI Act.

Material taken into account

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

- the terms of your request;
- the Charges Notice, dated 25 October 2018;
- your correspondence contesting the Charges Notice, dated 25 October 2018;
- the ease in which the Department can retrieve the data/information you have requested to create a document that does not already exist;
- the content of the document that falls within the scope of your request once the document is created;
- information received by the relevant business area about the work involved in creating the document you have requested;
- 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 section 29 of the FOI Act relevant to my decision; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

15. A full extract of all provisions I used to make my decision are provided in **Schedule 2**.

Reasons for Decision

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

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

17. I have found material in the document 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. In relation to the exemption in section 47E(c) of the FOI Act, the FOI Guidelines confirm for this exemption to apply, the documents must relate to either:
 - a. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or
 - b. the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment of bonus or eligibility for progression.
21. I consider section 47E(c) applies in this instance in respect to the Department’s management of personnel.
22. Because of the way the Department constructs the email addresses of individual officers, I have decided to redact the surnames of Departmental staff to give effect to this conditional exemption.
23. 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.

24. Release of the surnames 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.
25. I also consider that your demonstrated pattern of behaviour in targeting and insulting Departmental staff by email and online, a further reason to exempt staff surnames. The manner in which you have engaged with Departmental staff 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.
26. 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

27. 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.
28. 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.
29. 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.

30. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
31. 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.

Application for Information Commissioner Review — Request to withdraw application

32. In light of my decision to waive the charges applicable to your FOI request and grant access to the document to which access is sought (with redactions made as set out above), I request that you consider withdrawing your application for IC Review of FOI 25080.

Your rights of review

33. If you are dissatisfied with my decision, you may advise the Information Commissioner that you do not wish to withdraw your application for Information Commissioner review.
34. 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

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

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, BRISBANE QLD 4001

Facsimile: (02) 6289 6337

Email: Information.Law@dva.gov.au

Yours sincerely

Leia (Position Number 62210022)

Assistant Director
Information Law Section / Legal Services and Audit Branch
Integrity, Assurance and Communications Division

31 May 2019



Schedule of documents

Applicant: Verity Pane

Decision date: 31 May 2019

FOI reference number: FOI 25080

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	31 May 2018	Human Resource Management Information System (HRMIS / HRMS) report for the Legal Services & Assurance Branch	1	Released in part	s 47E(c) & (d)



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:
 - (c) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (d) 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).

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).

29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
 - (a) that the applicant is liable to pay a charge; and
 - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
 - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
 - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
 - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
 - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
 - (i) of the applicant's agreement to pay the charge; or
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both--that the applicant so contends, giving the applicant's reasons for so contending; or
 - (iii) that the applicant withdraws the request for access to the document concerned; and
 - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
 - (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
 - (b) the end of the period or further period mentioned in that paragraph.
- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.
- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
 - (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
 - (b) the applicant has not received notice of a decision on the amount of charge payable; the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
 - (b) the agency or Minister makes a decision to reject the contention, in whole or in part; the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.

Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the contents of a statement of reasons.

- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
- (a) his or her rights with respect to review of the decision; and
 - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (c) the procedure for the exercise of those rights; including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (10) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) 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.

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).

55G Procedure in IC review--revocation or variation of access refusal decision

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of:
- (a) giving access to a document in accordance with the request; or
 - (b) relieving the IC review applicant from liability to pay a charge; or
 - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
 - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.