



22 July 2019

Mr Oscar Thompson

Via email only: foi+request-5404-54357a47@righttoknow.org.au

Dear Mr Thompson

Freedom of Information Request 19-14

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982 (FOI Act)*.

Background to Decision

On 5 May 2019, the Australian Sports Anti-Doping Authority (**ASADA**) received your request for access to copies of the following documents under the FOI Act:

- *All briefing documents prepared for Senate Estimates hearings held in 2019 to date*

An acknowledgment of your request was sent to you via email on 6 May 2019. That correspondence informed you that a decision was due on Tuesday 4 June 2019.

On 22 May 2019, ASADA informed you that the agency had identified some documents which contained information concerning the business, commercial or financial affairs of an organisation, or a person's business or professional affairs. Before making a decision on the release of those documents ASADA is required to consult with the person or organisation concerned (under section 27 of the FOI Act). For this reason the period for processing your request was extended by thirty (30) days with the decision due on Friday 5 July 2019.

Due to the recent unexpected absence of the FOI Officer responsible for this matter, and competing priorities, ASADA then sought your agreement to an extension of time to 11 July 2019. ASADA did not receive a response from you.

On 16 July 2019 the OIAC granted an extension of time pursuant to s 15AC of the FOI Act to **Friday 19 July 2019**.

Authority and Materials Considered

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

In reaching my decision I have taken into consideration:

- the relevant provisions of the FOI Act;

- relevant guidelines issued by the Office of the Australian Information Commissioner (**OAIC**); and
- relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

Summary of Decision

I have identified forty-six (46) briefing papers and attachments as being within the scope of your request. These documents form the Brief for Senate Additional Estimates—February 2019. The documents are outlined at **Annexure A**.

I have granted full access (subject to the redaction of irrelevant material in accordance with section 22 of the FOI Act) to forty (40) of the documents. In relation to the remaining six (6) documents, I have granted access in part to four (4) of these documents and have exempted two (2) of these documents in full.

I note that the material released under this FOI request is comprised of documents prepared for the February 2019 Senate Additional Estimates. As such this represents ASADA's position at this point in time, which in some circumstances, has been overridden by other actions and events.

Reasons for Decision

Deletion of irrelevant or exempt material

Section 22 of the FOI Act provides that the agency can delete exempt or irrelevant material from documents and provide access to edited copies, where it is reasonably practicable to prepare an edited copy, having regard to the nature and extent of the modification required, and the resources available to modify the document.

You have been granted access to documents which contain names of ASADA staff members and their contact numbers which I consider would be reasonably regarded as irrelevant to your request. I have therefore deleted this material from the documents.

Partial access

You have been granted partial access to four (4) documents (Documents 9, 10, 12 and 15). I am of the view that these documents contain material which is appropriate to exempt under sections 47E(d), 47D, 47F and 47G of the FOI Act.

A copy of the exemption provisions relied on in reaching this decision are at **Annexure B**.

Conditional exemptions subject to the Public Interest Test

As required by section 11A(5) of the FOI Act, where a document is assessed as conditionally exempt, access to the document must be granted, unless, on balance, access to the document would be contrary to the public interest.

Section 11B(3) of the FOI Act outlines the factors favouring access to the document in the public interest. These include whether access to the document would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and

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

Section 11B(4) of the FOI Act outlines a number of irrelevant factors which must not be taken into account in deciding whether on balance release of the documents would be contrary to the public interest. These are:

- access to the document could result in embarrassment to the Commonwealth Government or cause a loss of confidence in the Commonwealth Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- that the author of the document was (or is) of high seniority in the agency to which the request was made; and
- access to the document could result in confusion or unnecessary debate.

There is no statutory provision outlining those factors which may weigh against release of a conditionally exempt document. Accordingly case law precedents and the IC Guidelines are cited where relevant.

Section 47E(d) –Public interest conditional exemption—certain operations of agencies—(substantial adverse effect on proper and efficient conduct)

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act 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 have applied the exemption pursuant to section 47E(d) of the FOI Act to Document 9, within the scope of your request on the basis that the material redacted in this document outlines a technical capability utilised by ASADA when undertaking its functions under the *Australian Sports Anti-Doping Act 2006* (Cth) (**ASADA Act**). Release of the material in question would allow persons to modify their behaviour and responses so as to evade detection. As such it would have a substantial adverse effect on the proper and efficient conduct of ASADA's operations (being its investigations) and would prevent ASADA from effectively and efficiently undertaking its legislative functions.

Section 47E(d) is a conditional exemption and is subject to the public interest test.

Section 47E(d) –Application of the public interest test

In considering the possible release of the conditionally exempt material:

I have identified the following factors as being in favour of releasing the documents:

- Disclosure would promote the objects of the FOI Act;
- Disclosure would inform debate on matters of public importance; and
- Disclosure would promote effective oversight of public expenditure.

I have identified the following factors as weighing against the release of the documents:

- Disclosure could reasonably affect and jeopardise the procedures or methods for the conduct of investigations by ASADA; and

- Disclosure would prejudice the agency's ability to perform its statutory functions, and prejudice its effectiveness in administering Australia's National Anti-Doping scheme.

On balance I have placed greater weight on the factors weighing against release. Based on the factors above, the public interest in ASADA being able to undertake its investigative functions under the ASADA Act to support an effective and efficient anti-doping program outweighs the public interest in the release of this material.

Section 47D— Public interest conditional exemption—financial or property interest of the Commonwealth

Section 47D of the FOI Act allows a document or information contained therein to be conditionally exempt where its disclosure would have a substantial adverse effect on the financial or property interest of the Commonwealth or an agency. According to the OAIC's FOI Guidelines, this adverse effect could also be indirect such as on an agency's competitive tendering process (at paragraph 6.92 of the Guidelines).

I have applied the exemption pursuant to section 47D of the FOI Act to the material redacted in Document 15, within the scope of your request, on the basis that the material redacted in this document includes financial information that that would prejudice any tendering process relating to future tenancy arrangements. Release of the redacted material would have a substantial adverse effect on any future Commonwealth procurement process.

Section 47D is a conditional exemption and is subject to the public interest test.

Section 47D —Application of the public interest test

In considering the possible release of the conditionally exempt material:

I have identified the following factors as being in favour of releasing the documents:

- Disclosure would promote the objects of the FOI Act;
- Disclosure would inform debate on matters of public importance; and
- Disclosure would promote effective oversight of public expenditure.

I have identified the following factors as weighing against the release of the documents:

- Disclosure of the information would compromise the competitive tendering process and affect the agency's ability to obtain best value for money in future tenders.
- Disclosure of the information would adversely affect the agency's ability to undertake its business operation in an ethical manner as required by policies and regulations with respect to Commonwealth procurement practices.

On balance I have placed greater weight on the factors weighing against release. Based on the factors above, the public interest in ensuring that future Commonwealth procurement processes are not prejudiced as a result of the release of commercial in confidence information outweighs the public interest in the release of this material.

As such I have applied this exemption to the material redacted in this document on the basis that release of the material in question relates to a financial or property interest of ASADA, the disclosure of which would have a substantial adverse effect on the commercial operations of the agency.

Section 47F— Public interest conditional exemption—personal information

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). In determining whether the disclosure of the document is an unreasonable disclosure of personal information, the decision maker must have regard to the following matters:

- The extent to which the information is well known;
- Whether the person to whom the information relates is known to be (or to have been associated with matters dealt with in the document);
- The availability of the information from publicly accessible sources; and
- Any other matter that the decision maker considers relevant.

I have applied the exemption pursuant to section 47F of the FOI Act to the material redacted in Document 12, within the scope of your request, on the basis that the material redacted in this document includes the name of a person and particulars relating to the person's Freedom of Information applications. I consider this to be personal information that is not well known, which is not available from publically accessible sources, and which would amount to an unreasonable breach of the person's privacy.

Section 47F is a conditional exemption and as such is subject to the proper application of the public interest test.

Section 47F—Application of the public interest test

In relation to this request, in considering the possible release of the conditionally exempt material:

I have identified the following factors as being in favour of releasing the document:

- Disclosure would promote the objects of the FOI Act;
- Disclosure would inform debate on matters of public importance.

Where the documents are exempted on the basis of section 47F, personal privacy, Heerey J considered that

"...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... disclosure would be unreasonable.”¹

Accordingly I have identified the following factors as weighing against the release of the documents:

- Disclosure would be unreasonable and could breach the privacy of the individual; and
- It is not in the public interest to make known the individual named in the brief.

On balance I have placed greater weight on the factors weighing against release of personal information. Based on the factors above, the public interest in preventing an unreasonable breach of the privacy of an individual outweighs any public interest achieved through the release of personal information not in the public domain.

Section 47G— Public interest conditional exemption— business

Section 47G of the FOI Act allows for the conditional exemption of documents where the information would disclose a person’s or organization’s business or professional affairs or undertaking, and access to the document (or information) would on balance, be contrary to the public interest.

I have applied the exemption pursuant to section 47G of the FOI Act to the material redacted in Document 10, within the scope of your request, on the basis that the material redacted in this document relates to financial information provided by a foreign Anti-Doping Organisation (**ADO**).

In accordance with s27 of the FOI Act, ASADA consulted with the relevant international ADO on the information which relates to their organization, commercial or financial affairs or undertaking.

From our consultation with the ADOs, we note that while most of the ADOs did not object to the release of their pricing information, they have indicated that the pricing information is subject to fluctuations in the exchange rate.

However, as part of this consultation process the ADO from Sweden, objected to the release of their pricing information. Given that the information is not well known and is particular to the Swedish ADO I have redacted this information. The intention of applying this exemption is to protect the interest of third parties in its dealing with the government and is not based on the nature of the information itself.

Section 47G is a conditional exemption and as such is subject to the proper application of the public interest test.

Section 47G—Application of the public interest test

In considering the possible release of the conditionally exempt material:

¹ *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429

I have identified the following factors as being in favour of releasing the documents:

- Disclosure would promote the objects of the FOI Act; and
- Disclosure would promote effective oversight of public expenditure.

I have identified the following factors as weighing against the release of the documents:

- Disclosure of the information of the particular ADO in this case, would affect if not deter the ADO in future dealings with the agency by preventing the ADO from confidently providing information relating to their business and professional affairs knowing that it would be made publicly available through the FOI process.
- Disclosure of the information of the particular ADO would affect the international working relations between the agency and the ADO.

On balance I have placed greater weight on the factors weighing against release of the pricing information of the Swedish ADO. Based on the factors above, the public interest in preventing the release of the costing information of the Swedish ADO, on the basis that release of the material in question would have an unreasonable adverse effect on the business operations of the Swedish ADO and would jeopardize future working relationships between ASADA and the ADO, outweighs the public interest in releasing this information.

Access denied in Full

You have been denied access to two (2) documents (Documents 1.17 and 1.18). I am of the view that it is appropriate to exempt these documents under sections 46 of the FOI Act.

Section 46— Documents disclosure of which would be contempt of Parliament or contempt of court

Section 46 is not a conditional exemption and accordingly is not subject to the public interest test.

Documents 1.17 and 1.18 are ASADA's responses to two specific Questions on Notice (QoN). While these documents were prepared by the agency, once they are provided to the Senate Committee secretariat, they become the documents of the Committee who has charge over the documents, including the responsibility to publish the documents on the Parliamentary website. Before ASADA can release documents containing QoN responses through the FOI process, as a requirement from the Committee, the agency must verify that the documents match with those published by the Committee. As ASADA is unable to verify if these documents have been released by the Committee, releasing the documents without the consent of the Committee would constitute contempt of Parliament. As such, I have determined that it would be appropriate to exempt the documents under s46 of the FOI Act.

For your information, you may view all answers to QoN on the following website:

[https://www.aph.gov.au/Parliamentary Business/Senate Estimates/ca.](https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/ca.)

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to ASADA for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. If you wish to make such an application please contact legal@asada.gov.au.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner Review

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

online: <https://forms.business.gov.au/aba/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact the following officer:

Kerry Knowler
Senior Lawyer (A/g)
foi@asada.gov.au

Yours sincerely



Brian McDonald
Deputy CEO Operations

ANNEXURE A

Schedule of Documents for consultation FOI 19-14

Doc#	Pages	Brief number or Description	Release	FOI Act
		FINAL BRIEF 1 – Questions on Notice ASADAs Previous Response – February 2019 (Supplementary Estimates May and October 2018)		
1.1		ASADA Staffing (SQ18-000874)	Yes	
1.2		ASADA device use (SQ18-000877)	Yes	
1.3		ASADA Testing (SQ18-000880)	Yes	
1.4		ASADA and WADA (SQ18-000881)	Yes	
1.5		ASADA and WADA (SQ18-000883)	Yes	
1.6		Guidance on public comment (SQ18-000885)	Yes	
1.7		Guidance on public comment (SQ18-000887)	Yes	
1.8		ASDMAC (SQ18-000889)	Yes	
1.9		ASADA Anti-Doping Rule Violation Panel (SQ18-000890)	Yes	
1.10		Australian Sports Anti-Doping Authority – Travel Expenditure (SQ18-000983)	Yes	
1.11		Anti-Doping Hearings (SQ18-001045)	Yes	

1.12		ASADA (SQ18-001251)	Yes	
1.13		ASADA (SQ18-001252)	Yes	
1.14		ASADA (SQ18-001253)	Yes	
1.15		ASADA (SQ18-001254)	Yes	
1.16		ASADA (SQ18-001255)	Yes	
1.17		Question on Notice Topic: Support for intersex organisation	No	s46
1.18		Question on Notice Topic: Recognition of Sex and Gender	No	s46
2	8	FINAL BRIEF 2 – Finance Matters – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
3	4	FINAL BRIEF 3 – Outcomes for ASADA Additional Funding – February 2019 (updated 19.02.19)	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
4	3	FINAL BRIEF 4 – Media & Communications – February 2019 – updated 18/02/2018	Yes	s22(1)(a)(ii)
4.1	1	FINAL BRIEF 4 – Media Attachment A	Yes	

4.2	1	FINAL BRIEF 4 – Media Attachment B	Yes	
4.3	1	FINAL BRIEF 4 – Media Attachment C	Yes	
5	3	FINAL BRIEF 5 – International Activities – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
6	1	FINAL BRIEF 6a – AAG – February 2019 (updated 18.02.19)	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
6.1	1	FINAL BRIEF 6b – Compliance Brief – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
6.2	1	FINAL BRIEF 6c – JAPAN 2020 OLYMPICS – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
7	4	FINAL BRIEF 7a – ASADA Key Statistics – February 2019 (updated 19.02.19)	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
7.1	7	FINAL BRIEF 7b – Key Trend Statistics – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)

8	1	FINAL BRIEF 8a – ASADA Corporate Plan 2018-2022 – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
8.1	20	FINAL BRIEF 8a – ASADA Corporate Plan 2018-2022 – Attachment A	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
8.2	2	FINAL BRIEF 8b – ASADA Annual Report 2017-2018 – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
8.3	2	FINAL BRIEF 8b – ASADA Annual Report – Attachment A	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
9	2	FINAL BRIEF 9 – Mobile Forensic Capability (Cellebrite) – February 2019	Partial	s47E(d) and s22(1)(a)(ii)
10	2	FINAL BRIEF 10 – Laboratory Documentation Packs – originally #19 – February 2019	Partial	s47G and s22(1)(a)(ii)
11	2	FINAL BRIEF 11 – ASADA File List – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
12	2	FINAL BRIEF 12a – AAT Matters – AAT FOI – February 2019 (updated 19.02.19)	Partial	s47F and s22(1)(a)(ii)

12.1	1	FINAL BRIEF 12b – AAT Matters – AAT ADRVP – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
13	1	FINAL BRIEF 13 – Operation Cobia – Additional Estimates – 13 February 2019 (updated 19.02.19)	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
14	4	FINAL BRIEF 14 – Education Strategy Programs – February 2019 updated 19/02/2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
15	2	FINAL BRIEF 15 – Accommodation – February 2019	Partial	s47D and s22(1)(a)(ii)
16	1	FINAL BRIEF 16 – ASADA ICT Strategy – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
17	2	FINAL BRIEF 17 – Cyber Environment – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
18	2	FINAL BRIEF 18 – ANAO – Enterprise Bargaining Outcomes – February 2019	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)
19	2	FINAL BRIEF 19 – Funding and Staffing Issues – February 2019 (updated 19.02.19)	Yes (save for the deletion of irrelevant material)	s22(1)(a)(ii)



FREEDOM OF INFORMATION ACT 1982 – SECT 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.

FREEDOM OF INFORMATION ACT 1982 - SECT 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](#)).

FREEDOM OF INFORMATION ACT 1982 - SECT 47D

Public interest conditional exemptions—financial or property interests of the Commonwealth

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or 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](#)).

FREEDOM OF INFORMATION ACT 1982 - SECT 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).

FREEDOM OF INFORMATION ACT 1982 - SECT 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 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:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) 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).