



## Decision and Statement of reasons issued under the *Freedom of Information Act 1982*

Decision and reason for decision of Jo (Position Number 62210326), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

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**Applicant:** Mr John Smith

**Decision date:** 24 December 2020

**FOI reference number:** FOI 38197

**Sent by email:** [foi+request-6722-67ec0df0@righttoknow.org.au](mailto:foi+request-6722-67ec0df0@righttoknow.org.au)

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Dear Mr Smith,

### **Freedom of Information Request: FOI 38197**

#### **Decision**

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has identified 14 documents relevant to your request.
2. I have made a decision to grant access in part to those 14 documents.
3. The documents that I have chosen to grant access in part to are set out in **Schedule 1**, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

#### **Authority to make decision**

4. I, Jo (Position Number 62210326), Assistant Director, Information Law Section, am an officer authorised by the Secretary of the 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 15 September 2020 you made five (5) requests for access to documents in the possession of the Department. Your requests sought access to:

a) FOI 38197

*...copies of any contracts, MOUs, tenders, or agreements that have existed between your department and the following entities:*

- 'TJ Affiliates'*
- 'Remembrance Foundation'*
- The 'modern soldier' social media page*
- The natural person 'Talissa Papamau'*

*Please also include the most recent email between your department and the above four entities in this FOI request, if such emails exist.*

*If no such documents exist please advise.*

b) FOI 38201

*...the department's guidelines for the awarding of tenders.*

c) FOI 38198

*... any terms of agreement, purchase orders, or contracts between the DVA and the developers of the app 'Swiss8'.*

*- the five most recent emails as at the date of this email, between DVA and the developers of Swiss8.*

*If no such documents exist please advise.*

d) FOI 38202

*...copies of any contracts, correspondence, and/or terms of agreement that relate to the awarding of Commonwealth tender ID CN3574734.*

e) FOI 38200

*...a copy of any contract, correspondence, and terms of agreement held by your department in relation to the Commonwealth tender ID CN3528664.*

6. On 29 September 2020, we advised you that the Department does not hold any internal documents in relation to guidelines for the awarding of tenders (FOI 38201) and a link to the relevant public guidelines was provided to you. Following this correspondence, you confirmed on 30 September 2020 via email that you agreed to withdraw your FOI request (FOI 38201).
  
7. On 8 October 2020, the Department issued you with a request consultation notice under section 24AB of the FOI Act and advised you that:
  - a. Your remaining four (4) FOI requests (38197, 38198, 38200 and 38202) had been combined in accordance with section 24(2) of the FOI Act as the requests related to substantially similar subject matter; and
  
  - b. Based on the terms of your request, and from the initial searches and business area consultations undertaken in relation to your request, the Department was of the view that practical refusal reasons existed because:
    - i. processing your request, as best the Department could understand its terms, would likely result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(a)(i) of the FOI Act); and
  
    - ii. your request did not satisfy section 15(2)(b) of the FOI Act, as it does not provide such information concerning the requested documents as was reasonably necessary to enable a responsible officer of the agency to identify it (section 24AA(1)(b) of the FOI Act).
  
8. Following this consultation notice, on 19 October 2020 you agreed to the removal of correspondence from the scope of your request. The Department responded seeking confirmation of a revised wording of the scope, as follows (with strikethrough applied to the parts of the request that had been removed):

*'...copies of any contracts, MOUs, tenders, or agreements that have existed between your department and the following entities:*

- 'TJ Affiliates'*
- 'Remembrance Foundation'*
- The 'modern soldier' social media page*
- The natural person 'Talissa Papamau'*

~~Please also include the most recent email between your department and the above four entities in this FOI request, if such emails exist.~~

~~copies of any contracts, correspondence, and/or terms of agreement that relate to the awarding of Commonwealth tender ID CN3574734.~~

~~Any terms of agreement, purchase orders, or contracts between the DVA and the developers of the app 'Swiss8'.~~

~~The five most recent emails as at the date of this email, between DVA and the developers of Swiss8.~~

~~a copy of any contract, correspondence, and terms of agreement held by your department in relation to the Commonwealth tender ID CN3528664...'~~

9. On 21 October 2020, we further advised you that the Department had been unable to identify or locate any terms of agreement, purchase orders or contracts between DVA and the developers of the app 'Swiss8.' As a result the Department asked you to consider withdrawing this part of your request. You responded on 22 October 2020 agreeing to the withdrawal of this part of your request.
10. On 21 October 2020, you were also advised that the Department was required to undertake third party consultations in accordance with section 27 and 27A of the FOI Act. This had the effect of extending the clock by a further 30 days in accordance with section 15(6) of the FOI Act.
11. On 12 November 2020, the Department requested an extension of time under section 15AA of the FOI Act, on the basis that one of the third parties had requested further time to respond to the Department's consultation notice. You agreed to this extension of time on 17 November 2020.
12. The third parties responded advising that they object to the release of certain information contained within the documents on the basis that it is of a commercially valuable and/ or commercially sensitive nature. In particular, the total contract amounts listed; this information would provide their competitors with an unfair advantage and it is not known outside of their company. One third party also objected to the release of the names of subcontractors and solicitors within the documents on the basis that it is personal information.

13. On 30 November 2020, the Department wrote to you regarding two grant applications that had been identified within the documents provided by the business areas. We sought your confirmation that these two grant applications did not fall within the scope of your request. The Department confirmed in this email that the scope of your request had been revised following your email of 19 November, as follows:

*'...copies of any contracts, MOUs, tenders, or agreements that have existed between your department and the following entities:*

*- 'TJ Affiliates'*

*- 'Remembrance Foundation'*

*- The 'modern soldier' social media page*

*- The natural person 'Talissa Papamau'*

*copies of any contracts and/or terms of agreement that relate to the awarding of Commonwealth tender ID CN3574734.*

*a copy of any contract, correspondence, and terms of agreement held by your department in relation to the Commonwealth tender ID CN3528664...'*

14. On 4 December 2020, as no response had been received from you, the Department confirmed that we would proceed on the basis that the two grant applications did not fall within the scope of your request and would therefore not be included in the documents released to you.
15. As extensions of time were applied to process your request in accordance with section 15(6) and 15AA of the FOI Act, a decision on your request is due by 25 December 2020.
16. I have decided not to impose a charge in relation to this request, in accordance with Regulation 8 of the *Freedom of Information (Charges) Regulations 2019*.
17. Thank you for your patience, understanding and cooperation in liaising with us during this FOI process.

### **Material taken into account**

18. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to grant partial access to the documents follows.

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

- the terms of your request and as revised;
- informal and formal consultation with you regarding the terms of your request;
- the types of information and documents that are in the Department's possession;
- the content of the document that fall 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 15 Request for Access
  - Section 22 Access to edited copies with exempt or irrelevant material deleted
  - Section 23 Decisions to be made by authorised persons
  - Section 47 Documents disclosing trade secrets or commercially valuable information
  - Section 47E Public interest conditional exemptions--certain operations of agencies
  - Section 47F Public interest conditional exemptions--personal privacy
  - Section 47G Public interest conditional exemptions--business
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
- the views of third parties consulted by the Department under section 27 and 27A of the FOI Act.

20. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

### **Reasons for decision**

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

***Documents disclosing trade secrets or commercially valuable information (section 47)***

22. Section 47 of the FOI Act provides that a document is an exempt document if its disclosure would disclose:
- (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
23. Some of the documents contain material relating to the commercial affairs of third parties and of the Department. This includes the lapel specifications, contracting rates and labour hire arrangements between the Department and those third parties.
24. After review of this material and consideration of the views of the third parties consulted under section 27 of the FOI Act, I consider this material to be commercially valuable information, and that disclosure would or could reasonably be expected to destroy or diminish its value. The material that I have chosen to redact is known only to a very limited number of people and in a small market place for this type of work. I am satisfied that disclosure of this information would diminish the value of that information to the third party. I also understand that much of this material is classified as commercial in confidence.
25. Also contained within the documents are the travel and accommodation rates contractors can access when travelling on Departmental business. These are based on the rates the Department pays in respect of its staff members and the Department considers these to be commercial in confidence. They are of commercial value to the Department (and to its contractors) as they form part of the financial terms the contract. Further, they are negotiated by the Department with third party suppliers and the Department pays fees for special rates. I consider that disclosing them could reasonably be expected to have a detrimental impact on the Department's ability to secure competitive rates in the future.
25. I have also redacted some information on the basis that it is the intellectual property of a third party. The third party has objected to the disclosure of this information on the basis that it is known only to the third party and is considered to be a trade secret.
26. Accordingly, I have decided that the parts of the documents which are listed as exempt in accordance with this provision in **Schedule 2**, meet the criteria for exemption pursuant to section 47 of the FOI Act.

27. As section 47 of the FOI Act is not a conditional exemption, I am not required to consider a public interest test.

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

28. 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) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (b) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

29. Parts of the documents contain the surnames of non-Senior Executive staff members, other than the names of those non-Senior Executive staff members whose contacts details you already have or where they are already known to you. I have decided to exempt this material in accordance with section 47E of the FOI Act.

30. The Department's role is to provide support and information to veterans and their families, 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. I consider that the release of this material could reasonably be expected to adversely affect the Department as its established lines of communication could be bypassed. It is reasonable to expect that this would disrupt and adversely affect the operations of the Department.

31. I also consider that the release of this information 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 agency including the inability of the Department to retain staff or effectively manage the wellbeing and safety of our staff. Relevantly, some staff have been targeted, insulted or harassed based on disclosure of their details. This presents challenges in managing the welfare of staff and can affect the ongoing management and retention of personnel by the Department. Consequently, in these circumstances, it would not be in the public interest to release this information.

32. Accordingly, I have decided that parts of the documents listed as exempt in accordance with this provision in Schedule 1, meet the criteria for this 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:*

33. Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

34. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

(a) disclosure would promote the objects of the FOI Act.

35. 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, by Norfolk Island or by an agency; and

(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.

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

37. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

***Public interest conditional exemptions--personal privacy (section 47F)***

38. 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).

39. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Privacy Act). Personal information is defined in section 6 of the Privacy Act as:

..information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not;
- (b) whether the information or opinion is recorded in a material form or not.

40. The elements of 'personal information' are:

- (a) it relates only to a natural person (not, for example, a company);
- (b) it says something about the individual;
- (c) it may be in the form of an opinion, it may be true or untrue, and it may form part of a database;
- (d) the individual's identity is known or is reasonably ascertainable using the information in the document.

41. If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:

- (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; and
- (d) any other matter I consider relevant.

42. Certain material within the documents contains personal information, specifically, the surnames, signatures and personal contact details of third parties. The documents also contain the signatures of Department staff. I understand that this information has not been previously disclosed to you, nor is it publically available. Accordingly, I consider that the release of this material would be an unreasonable disclosure of a person's personal information and I have made a decision to redact this personal information to give effect to this conditional exemption.
43. Accordingly, I have decided that the parts of documents which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

*Application of the public interest test:*

44. Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.
45. 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.
46. I also considered the following factors which do not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.
47. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
48. 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)***

49. 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.

50. Parts of the documents contain material relating to the commercial and business affairs of a third party. This includes details relating to the third party's contracted rates with the Department. I consider that the disclosure of this material would or could be reasonably expected to unreasonably affect the commercial and business affairs of that third party. I also consider that the disclosure of this material could reasonably be expected to prejudice the Department's relationship with that third party, specifically the future supply of information between this third party and the Department.
51. I am of the view that the disclosure of such information could reasonably impact the third-party's business and professional affairs and that this commercially sensitive material should be redacted under section 47G of the FOI Act.
52. Accordingly, I have decided that the documents and parts of documents which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

*Application of the public interest test:*

53. Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.
54. 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.

55. I also considered the following factors which do not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency; and
  - (b) 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.
56. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
57. 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.

***Delete exempt or irrelevant material from documents and provide access to edited copies (section 22)***

58. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.
59. As explained above, some of the documents subject to your request contain exempt information. On this basis, I have prepared the documents for release by removing that exempt material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

**Access to documents**

60. The documents released to you in accordance with the FOI Act are enclosed.

## Information Publication Scheme

61. The Information Publication Scheme requires the Department to publish information released in response to individual requests made under the FOI Act, except in specified circumstances.
62. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI Disclosure Log which can be accessed at <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>. Please note that the Department does not publish details of FOI applicants, it only publishes details of the FOI request and the documents released in response to the request.

## Your rights of review

63. If you are dissatisfied with my decision, you may apply for internal review or request the Office of the Australian Information Commissioner (**OAIC**) review my decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

## Internal review

64. Under section 54 of the FOI Act, you may apply in writing to the Department for an Internal Review of my decision. The Internal Review application must be made within 30 days of the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.
65. You can make your application for Internal Review in one of the following ways:

**Post:** Legal Services and Audit Branch, Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601

**Facsimile:** (02) 6289 6337

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

## OAIC review

66. Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by OAIC 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](http://www.oaic.gov.au)  
**Post:** Director of FOI Dispute Resolution  
Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Phone:** 1300 363 992  
**Email:** [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au)

67. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

## Contact us

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

**Online:** <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>  
**Post:** Information Law, Legal Services and Audit Branch  
Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601  
**Facsimile:** (02) 6289 6337  
**Phone:** 1800 838 372  
**Email:** [Information.Law@dva.gov.au](mailto:Information.Law@dva.gov.au)

Yours sincerely,

**Jo (Position Number 62210326)**

Assistant Director

Information Law Section

Legal Services and Audit Branch

24 December 2020



## Schedule of documents

**Applicant:** John Smith

**Decision date:** 24 December 2020

**FOI reference number:** FOI 38197

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	23.1.2019	Contract between DVA and T & S Signcraft	1-16	Part Access	ss 47, 47E, 47F and 47G
2	14.4.2020	Contract between DVA and TJ & Affiliates	17-35	Part Access	ss 47, 47E, 47F and 47G
3	unknown	Remembrance Foundation – project summary	36-39	Part Access	s 47
4	17.7.2017	Contract between DVA and Remembrance Foundation	40-53	Part Access	ss 47E, 47F and 47G
5	18.12.2017	Contract between DVA and Remembrance Foundation – Paulatim Project	54-69	Part Access	ss 47E and 47F
6	Unknown	Agreement for Goods and Services between DVA and Remembrance Foundation	70-74	Part Access	ss 47E and 47F
7	19.3.2018	Contract between DVA and Remembrance Foundation	75-89	Part Access	ss 47E, 47F and 47G
8	22.10.2019	Contract between DVA and TJ & Affiliates	90-108	Part Access	ss 47E, 47F and 47G
9	13.12.2019	Contract between DVA and TJ & Affiliates	109-126	Part Access	ss 47E and 47F
10	18.12.2017	Contract between DVA and Remembrance Foundation – Paulatim Project	127-142	Part Access	ss 47E, 47F and 47G
11	18.12.2017	Contract between DVA and Remembrance Foundation	143-158	Part Access	ss 47E, 47F and 47G
12	7.8.2017	Veteran Health Outreach Project	159-161	Part Access	ss 47, 47E and 47F
13	14.4.2020	D1385 - Request for approval for commitment of relevant money	162	Part Access	ss 47E, 47F and 47G
14	21.10.2019	Contract between DVA and TJ & Affiliates	163-182	Part Access	ss 47E, 47F and 47G



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

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

### 11 Right of access

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

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.  
Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
  - (a) section 12 (documents otherwise available);
  - (b) section 13 (documents in national institutions);
  - (c) section 15A (personnel records);
  - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

*Mandatory access—general rule*

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

*Exemptions and conditional exemptions*

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

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

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

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

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

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

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

**11B Public interest exemptions — factors**

*Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

*Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

*Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

*Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

**15 Requests for access (as related to the requirements for requests)**

*Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

*Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

**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).

**47 Documents disclosing trade secrets or commercially valuable information**

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

**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).