



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

Decision and reason for decision of Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Client Access and Rehabilitation Branch, Department of Veterans' Affairs

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**Applicant:** Ms Verity Pane

**Date of primary decision:** 24 January 2022

**LEX reference number:** LEX 47338

**Revised decision date:** 11 April 2023

**OAIC Revised decision reference number:** MR22/00503

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Dear Ms Pane,

### Freedom of Information Request: LEX 47338

1. The purpose of this correspondence is to advise you of a revised decision the Department of Veterans' Affairs (**Department**) has made under section 55G of the *Freedom of Information Act 1982* (**FOI Act**) in relation to LEX 47338.

### Revised Decision

2. I have made a decision to vary the original decision made by Legal Officer, Position Number 62255248, Information Law Section, on 24 January 2022. That decision was to grant full access to two (2) documents and part access to two (2) documents within the scope of your initial request.
3. I note that my decision does not vary the partial access refusal of the contractor numbers under Document 1 'Contractors – s 17 Table' which are redacted under section 47 of the FOI Act (documents disclosing trade secrets or commercially valuable information). This is discussed further below under paragraphs 20 to 22.
4. I have located seven (7) additional documents in scope of your request, and have made a decision to grant full access to two (2) documents and partial access to nine (9) documents.

5. The documents that I have chosen to grant access to in part 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 FOI Act.

### **Authority to make decision**

6. I, Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Client Access Rehabilitation Branch, 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**

7. On 23 December 2021, you made a request for access to documents in the possession of the Department. Your request was made in the following terms:

*'...I've heard DVA has a DVA Royal Commission Legal Team of about 25 people working in DVA's General Counsel Division.*

*There is interest in the community as to what the purpose of this DVA Royal Commission Legal Team is, what it does, what law firms have seconded their staff to it, and how much this is all costing the taxpayer.*

*I seek copy of the following documents (it is likely to be easier for DVA to do as a table rather than provide copy of the source documents as it will mean a lot less work for DVA in redaction/consideration):*

*\* the cost of all contractors employed within the DVA Royal Commission Legal Team, broken down by law firm/personnel agency seconded from (with number of contractors from that law firm/personnel agency) - cost may be at fortnightly, monthly, or yearly basis as suits DVA*

*\* the cost of all APS staff employed within the DVA Royal Commission Legal Team, broken down by classification - cost may be at fortnightly, monthly, or yearly basis as suits DVA*

*\* copy of any position/duty statement for the positions within the DVA Royal Commission Legal Team*

*\* any other document directly relevant to what the purpose of this DVA Royal Commission Legal Team is, what it does, what law firms have seconded their staff to it, and how much this is all costing the taxpayer, that DVA reasonably believes gives such context...'*

8. As no extensions of time were applied to process your request, a decision on your request was due by 24 January 2022.
9. No charges were imposed in relation to LEX 47338, in accordance with regulation 8 of the *Freedom of Information (Charges) Regulations 1982*.
10. The Department undertook a reasonable search of its records and identified four (4) documents relevant to your request, as set out above. The documents are listed at **Schedule 1**.
11. On 24 January 2022, the Department made a decision to grant full access to two (2) documents and part access to two (2) documents within the scope of your initial request.
12. On 29 January 2022, you requested an internal review of the primary decision (LEX 47814) in the following terms:

*'...I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'Royal Commission Legal Team Cost and Breakdown'.*

*There are three issues with this decision - the first is with the contractor s 17 document, the second is with APS s 17 document, and the third is in documents in scope not included.*

*The redaction of contractor numbers makes no sense on the basis claimed unless only one contractor from that firm is involved. If more than one contractor from the same firm is involved, then the actual rate of an individual contractor cannot be revealed by providing head count, because each contractor will have their own different rates. The intention is how many contractors and from where - very basic information.*

*The APS s 17 document redacted position numbers - there is no legitimate basis to do so.*

*This FOI was for fairly basic information - what was the composition of this new task force working solely on management of the Royal Commission by DVA, what*

*external companies were involved, and how much was this reputational management task force all costing the tax payer. I allowed for s 17 tables where that achieved this objective and reduced the amount of consideration needed, not to undermine that scope of the FOI.*

*So the third issue is that it is clear documents in scope should have been provided given the lack of coverage by the s 17 tables of the FOI scope - there must be a brief to the Secretary or equivalent on the creation or need for this new DVA Royal Commission Legal Team of about 25 people working in DVA's General Counsel Division that would cover all this so that document should have been provided as it was in scope and necessary given what your s 17 tables did not address. That is to be provided. A s 17 position tree listing for the new DVA Royal Commission Legal Team should have also been provided.*

*A full history of my FOI request and all correspondence is available on the Internet at this address:*

*[https://www.righttoknow.org.au/request/royal\\_commission\\_legal\\_team\\_cost...](https://www.righttoknow.org.au/request/royal_commission_legal_team_cost...)*

13. On 28 February 2022, the Department made its internal review decision (LEX 47814) to affirm the primary decision.
14. On 24 February 2023, the Office of the Australian Information Commissioner (**OAIC**) sent the Department a notice under section 54Z of the FOI Act advising the Department that the OAIC had commenced a review of the Department's decision. It is understood that in seeking the review, you stated:

*'... IC review of IR decision LEX 47814 is applied for*

*Decision is available at*

*<https://www.righttoknow.org.au/request/8225/response/24375/attach/3/Statement%20of%20Reasons%20Internal%20Review%20LEX%2047814.pdf...>*

15. On 31 March 2023, the Department advised the OAIC of its intention to issue you with a revised decision in accordance with section 55G of the FOI Act. The OAIC agreed this was an acceptable approach on 3 April 2023.

## **Material taken into account**

16. 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 follows.

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

- the terms of your primary request dated 23 December 2021 and the decision made on 24 January 2022;
- the terms of your request for an internal review on 29 January 2022 and the decision made on 28 February 2022;
- the terms of your request for external review through the OAIC;
- the types of documents that are in the possession of the Department;
- the content of the documents 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 47E Public interest conditional exemptions--certain operations of agencies
  - Section 47F Public interest conditional exemptions--personal privacy
  - Section 47 Documents disclosing trade secrets or commercially valuable information
  - Section 55G Procedure in IC review--revocation or variation of access refusal decision
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);

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

### **Reasons for decision**

19. I have decided to grant access to the documents within the scope of your request, subject to the following exemptions where applicable in accordance with the FOI Act.

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

20. 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.
21. I agree with the internal review Decision Maker's views that the total number of contractors engaged by the Department set out in Document 1 is information which has commercial value for the purposes of section 47 of the FOI Act. By releasing this information, it will be possible to ascertain how much the Department pays its external legal service providers for a specified number of contracted legal staff. This is information which has commercial value to both the Department and the Department's external legal services providers, and I find that disclosure of this information will reveal the fees the Department is prepared to pay for external legal support. Disclosure could therefore diminish the Department's ability to obtain a more competitive price at a future time, or from another external legal provider.
22. As section 47 of the FOI Act is not a conditional exemption, I am not required to consider the public interest test under section 11A(5) of the FOI Act.

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

23. Documents 2 to 5, 7 to 9 and 11 contain the names & contact information of staff of the Department. I have decided that sections 47E(c) and 47E(d) applies to this material, as identified in **Schedule 1**.
24. Section 47E(c) conditionally exempts documents where disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or an agency. Management of personnel by the Department includes, among other things, human resources policies and activities, recruitment, and work health and safety.
25. Section 47E(d) conditionally exempts documents where 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.

26. The Department has policies and procedures to support staff within its operating environment and to meet its obligations as an employer to provide a safe working environment. Some policies restrict the amount of identifying information generally provided by individual staff members to clients. For example, staff are generally required to identify themselves in correspondence with clients by a given name and position number. This is consistent with the approach taken by other Commonwealth agencies with similar functions, including provision of support services and administration of statutory benefits schemes. Implementation of these policies provides staff at more junior levels with confidence that they will not be inappropriately named or contacted in relation to actions taken in the course of their routine work for the Department.
27. Disclosure of identifying information about staff members contained within the documents would be inconsistent with these Departmental policies. Knowledge that identifying information about them may be disclosed in documents accessed under the FOI Act would be likely to undermine the confidence of staff in Departmental policies intended to support their work health and safety. Staff concern about inappropriate contact and the potential for harassment by clients is based on known instances of such things occurring. For example, public identification of individual staff members in an online client forum. An adverse effect on the Department's ability to manage staff could reasonably be expected to result from widespread staff concern about disclosure of identifying information about staff members. Staff members may experience concern even when not based on personal experience of harassment.
28. I also note that the Department provides a wide range of services to its clients. To facilitate efficient conduct of its operations, the Department has established channels for communication on specific topics and in relation to specific services. These channels, such as email inboxes and telephone support lines, enable services to be delivered efficiently by directing clients to the most appropriate point of contact. In addition, the Department is able to manage staffing efficiently by providing staff with access to communication points attached to a role rather than to an individual.
29. Disclosure of identifying information about staff members in these documents would disclose contact details for individual staff members, which is not generally available. Once contact details for individual staff members are disclosed they are likely to become publically known through private correspondence. Making it possible for clients to address correspondence to individual staff members or to seek to contact individuals directly is likely to undermine Departmental arrangements to channel communications based on role rather than individual. Reduced efficiency in communication and delivery of services could reasonably be expected to result.

30. In addition to the above, document 8 is an internal working document used by the team to welcome new starters across the General Counsel Division. Disclosure of this information could potentially harm the effectiveness of the Department's operations. This information is also out of scope of your request and has therefore been redacted under section 22 – this is discussed further under paragraphs 47 to 49 below.
31. Accordingly, for the reasons outlined above I consider that certain material, as identified in **Schedule 1**, meets the criteria for conditional exemption under section 47E(c) and 47E(d) of the FOI Act.
32. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

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

33. 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).
34. 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.
35. 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.
36. 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.

37. Documents 2 to 5, 7 to 9 and 11 contain the names and contact information of staff of the Department. Contact details of an individual staff member, such as their email address phone number or signature is personal information about that person.
38. The Department has policies and procedures to support staff within its operating environment and to meet its obligations as an employer to provide a safe working environment. Some policies restrict the amount of identifying information generally provided by individual staff members to clients. As outlined above, staff are generally required to identify themselves in correspondence with clients by a given name and position number. This reduces the likelihood that individuals are reasonably identifiable in a different context. For example, it reduces the likelihood that a private social media profile can be linked with an individual who is a staff member of the Department.
39. I consider that disclosure of personal information of individual staff members in the document would be unreasonable because it would be inconsistent with Departmental policies and procedures designed to support a safe and efficient working environment. Additionally, it would be unreasonable because it would be contrary to the expectations of those individual staff members, who may rely on those Departmental policies and procedures for assurance of their personal privacy.
40. Accordingly, I have decided that the parts of documents 2 to 5, 7 to 9 and 11 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 – sections 47E(c), 47E(d) and 47F***

41. 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.
42. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factor which favours disclosure:

- (a) disclosure would promote the objects of the FOI Act by providing access to government held information.

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

- (a) disclosure could be expected to adversely affect the management of staff of the Department, resulting in a likely reduction in the capability of the Department to efficiently carry out its functions;
- (b) disclosure could be expected to adversely affect the delivery of services by the Department in accordance with its functions; and
- (c) disclosure could reasonably be expected to prejudice the protection of individuals' right to privacy.

44. I have placed greater weight on the factors against disclosure. I consider that disruption of established channels for communication and delivery of services would be likely to follow disclosure of contact information about individual staff members. I consider that impairment of the Department's ability to efficiently deliver services to veterans and their families could reasonably be expected as a result. Further, I consider that there is little public interest in the disclosure of information identifying individuals who are, or have been, staff members in roles more junior than the Senior Executive Service. Disclosure of that information could reasonably be expected to result in interference with the privacy of those individuals by enabling them to be identified in their private lives and associated with actions for which the Department is responsible.

45. 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.

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

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

47. 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.

48. As explained above, documents 2 to 5, 7 to 9 and 11 contain exempt information. Documents 8 and 9 also contain irrelevant information that is out-of-scope of your request.
49. On this basis, I have prepared the documents for release by removing that exempt and/or irrelevant 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**

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

### **Information Publication Scheme**

51. 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.
52. 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**

53. If you are dissatisfied with my decision, you may advise the OAIC that you do not wish to withdraw your application for IC Review.
54. You can contact the OAIC in one of the following ways:

<b>Online:</b>	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>
<b>Post:</b>	Office of the Australian Information Commissioner GPO Box 5218, Sydney NSW 2001
<b>Facsimile:</b>	(02) 9284 9666
<b>Email:</b>	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
<b>In person:</b>	Level 3, 175 Pitt Street, Sydney NSW 2000

55. 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

56. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

**Online:** <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>

**Post:** Information Access Unit  
Department of Veterans' Affairs  
GPO Box 9998, Brisbane QLD 4001

**Phone:** 1800 838 372

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

Yours sincerely,

**Ramona (Position Number 62336362)**

Assistant Director

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

11 April 2023



## Schedule of documents

**Applicant:** Ms Verity Pane

**Decision date:** 11 April 2023

**FOI reference number:** LEX 47338

Doc No.	Date of document	Document description	Pages	Decision	Exemption provision
1	19/01/2022	Royal Commission Legal Team Contractors – s 17 Table	1-1	Part access	s 17; s 47
2	January 2023	DVAO1650 - AP6 Legal Officer Position Description	1-5	Part access	s 47E; s 47F
3	January 2023	DVAO1649 - EL1 Senior Legal Officer Position Description	1-5	Part access	s 47E; s 47F
4	12/01/2022	List of APS Staff within DVA Royal Commission Legal Team	1-1	Part access	s 47E; s 47F
5	January 2023	DVAO1651 – APS 5 Legal Officer Position Description	1-5	Part access	s 47E; s 47F
6	09/09/2021	Staff FAQs current at 09/09/21	1-4	Full access	N/A
7	24/05/2021	EC21-000594 – Secretary's Brief	1-2	Part access	s 47E; s 47F
8	7/07/2021	Draft – Royal Commission Taskforce – Legal – New Starter Pack – For Review	1-32	Part access	s 22; s 47E; s 47F
9	-	GCD Organisational Structure (Position Tree)	1-1	Part access	s 22; s 47E; s 47F
10	-	DVA Protocol RC Comms	1-9	Full access	N/A
11	September 2021	DVAO1377 – EL2 Director (Principal Legal Officer)	1-6	Part access	s 47E; s 47F



## 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).

**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.