



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

Decision and reason for decision of Jasmine (Position Number 62329540)  
Information Access Unit, Client Access Rehabilitation Branch, Department of Veterans' Affairs

---

**Applicant:** Julie

**Decision date:** 1 July 2022

**FOI reference number:** LEX 47881

**Sent by email:** foi+request-8405-58ceb783@righttoknow.org.au

---

Dear Julie,

### **Freedom of Information Request: LEX 47881**

#### **Decision**

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has identified one (1) document bundle relevant to your request.
2. I have made a decision to grant access in part to the document.
3. The documents that I have chosen to grant access in part is 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, Jasmine (Position Number 62329540), Information Access Officer, Information Access Unit, 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 11 February 2022 you made a request for access to the documents in the possession of the Department. Your request sought access to:

*'My new FOI request is for copy of all Executive Management Board minutes of 2021'*

6. As an extension of time was applied to process your request in accordance with section 15AB of the FOI Act, a decision on your request was due by 28 March 2022.
7. In accordance with section 15AC of the FOI Act, the principal officer of the Department is taken to have made a decision personally refusing to give access to the documents on the last day of the initial decision period. Even where a decision has not been issued within the prescribed timeframe, the Department retains an obligation to process and finalise the FOI request. I would like to apologise for the delay in issuing this decision to you and any inconvenience it may have caused.
8. As a decision on your request was not made within the timeframe as prescribed in section 15(5)(b) of the FOI Act, Regulation 7(2) of the *Freedom of Information (Charges) Regulations 2019* prescribed that no charge is payable.

## Material taken into account

9. 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.
10. I have taken the following material into account in making my decision.
- 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;
  - the availability of information relevant to your request, insofar as it determines the practicality and ease in which the Department can create a document under section 17 of the FOI Act;

- 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 33 Documents affecting national security, defence or international relations
  - Section 47C Public interest conditional exemptions--deliberative processes
  - Section 47D Public interest conditional exemptions--financial or property interests of the Commonwealth
  - 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**);

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

### **Reasons for decision**

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

#### ***Documents affecting national security, defence or international relations (section 33)***

13. Section 33 of the FOI Act provides that a document is an exempt document if its disclosure:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

14. The documents within the scope of your request contain information relating to Australian Defence Force personnel who are currently stationed. The release of this information could reasonably be expected to cause damage to the defence of the Commonwealth and as such, I have decided this information is exempt under section 33.

15. As section 33 of the FOI Act is not a conditional exemption, I am not required to consider a public interest test.

***Public interest conditional exemptions--deliberative processes (section 47C)***

16. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

17. The documents within the scope of your request contain information which outlines the departments' deliberative processes as well as the review of recommendations of the departments' processes. I consider that the release of this information would be a release of deliberative matter.

18. 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).

***Public interest conditional exemptions—financial or property interests of the Commonwealth (section 47D)***

19. Section 47D of the FOI Act provides that a document is conditionally exempt if its disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

20. The material in scope for this FOI request relates to the Department's financial position and contains financial and budget information. I consider that disclosure of the financial information would have a substantial adverse effect on the financial interests of the Department.
21. 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).

***Public interest conditional exemptions--certain operations of agencies (sections 47E(c) and 47E(d))***

22. The documents within the scope of your application contain the names of staff of the Department. I have decided that s 47E(c) and 47E(d) applies to this material, as identified in **Schedule 1**.
23. 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.  
  
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.
24. 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.
25. 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.
26. 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.
28. 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.
29. 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.
30. 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.
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.

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

32. 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).

33. 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.

34. 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.

35. 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.

36. The documents outlined in **Schedule 1** contain the names of staff of the Department.

37. 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.
38. 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.
39. 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).

***Public interest conditional exemptions—business (section 47G)***

40. 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.
41. The documents within the scope of your request contain information which identifies third parties who have, or who continue to assist in the departments' ability to provide support

services. The release of this information is likely to adversely affect that third party in respect of its business affairs.

42. 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 – sections 47C, 47D, 47E, 47F and 47G***

43. 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.

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

- (a) disclosure would promote the objects of the FOI Act, including:
  - (i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
  - (iv) reveal the reason for a government decision and any background or contextual information that informed the decision; and
- (b) disclosure would inform debate on a matter of public importance;
- (k) disclosure could contribute to innovation and the facilitation of research.

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

- (a) 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; or
- (j) disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency;

- (k) disclosure could reasonably be expected to harm the interests of an individual or group of individuals;
- (m) disclosure could reasonably be expected to prejudice the management function of an agency; and
- (n) disclosure could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.

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

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

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

48. 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.

49. As explained above, some of the documents subject to your request contain exempt/irrelevant 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**

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.

### **Deemed refusal**

53. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**). In accordance with section 54E(b) of the FOI Act, internal review is not available as the Department did not finalise your FOI request within the prescribed statutory timeframe.

### **OAIC review**

54. 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)

55. 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**

56. 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 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,

**Jasmine (Position Number 62329540)**

Information Access Officer  
Information Access Unit  
Client Rehabilitation Access Branch  
Department of Veterans' Affairs

1 July 2022



## Schedule of documents

---

**Applicant:** Julie  
**Decision date:** 1 July 2022  
**FOI reference number:** LEX 47881

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	Various	Bundle of 2021 EMB Minutes	1-110	Partial Access	s 33 s 47C s 47D s 47E s 47F s 47G



## Schedule of relevant provisions in the FOI Act

---

### 3 Objects—general

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

### 11 Right of access

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

### 11A Access to documents on request

#### *Scope*

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

*Mandatory access—general rule*

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

*Exemptions and conditional exemptions*

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

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

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

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

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

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

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

**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).

## **33 Documents affecting national security, defence or international relations**

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

## Public interest conditional exemptions

### 47C Public interest conditional exemptions—deliberative processes

#### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

#### *Exceptions*

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
  - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### 47D Public interest conditional exemptions—financial or property interests of the Commonwealth or Norfolk Island

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth, of Norfolk Island or of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### 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).