

Our ref: FOI-2022-50003

19 April 2022

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Emailed to: [foi+request-8455-1bfe66e7@righttoknow.org.au](mailto:foi+request-8455-1bfe66e7@righttoknow.org.au)

Dear Anonymous

I refer to your email dated 17 February 2022 in which you requested access to certain documents under the *Freedom of Information Act 1982* (the **FOI Act**). Your request was framed in the following way:

- a) any and all contract notices prepared pursuant to procurement arrangements for the “computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman”, including contract notifications prepared for publication on the AusTender website; and
- b) any and all tender notices prepared pursuant to procurement arrangements for the “computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman”, including tender notifications prepared for publication on the AusTender website; and
- c) any and all approaches to market pursuant to procurement arrangements for the “computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman”; and
- d) any purchase orders associated with the contract notice for the “computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman”; and
- e) any invoices issued by the supplier in relation to the “computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman”; and
- f) any and all “request documentation”, as that term is defined in the Commonwealth Procurement Rules, associated with the “computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman”.

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of the Ombudsman’s Office under s 23 of the FOI Act.

## **Decision**

Our Office identified 95 documents relevant to your request. I have exempted all 95 documents in full from disclosure. My reasons for this decision are set out at **Attachment A** to this letter.

A schedule setting out the relevant documents is at **Attachment B**.

Our Office identified the documents by searching the Ombudsman's electronic record keeping systems.

## **Review rights**

### ***Internal review***

Under s 54 of the FOI Act, you may apply in writing to our Office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

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

### ***Review by the Australian Information Commissioner***

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

- online at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>
- via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
- by overland mail to GPO Box 5218 SYDNEY NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

## **Complaints to the Information Commissioner**

You may complain to the Information Commissioner about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way in which your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

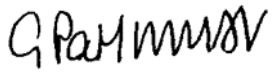
You may lodge your complaint in one of the following ways

- online at:  
[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- by email to [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

**Contacts**

If you require clarification of any of the matters discussed in this letter you should contact me using the contact information set out at the foot of the first page of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Parkhurst', written in a cursive style.

Gregory Parkhurst  
Senior Legal Officer

## **ATTACHMENT A – Reasons for decision**

### **Material taken into account**

In making my decision I had regard to the following:

- the terms of your request
- the content of the documents to which you sought access
- consultation responses from third parties approached in accordance with the FOI Act
- relevant provisions of the FOI Act
- the Australian Information Commissioner's Guidelines on FOI, available at [www.oaic.gov.au](http://www.oaic.gov.au) (the Guidelines).

### **Findings of fact and reasons for decision**

Where the schedule of documents at **Attachment B** indicates that an exemption has been applied to a document, or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document, or part of that document, are set out below.

#### **Exemption – information obtained in confidence: s 45**

Section 45 exempts a document if its disclosure would found an action by a person for breach of confidence.

To found an action for breach of confidence a person must be able to:

1. specifically identify the information in question
2. show that the information has the necessary quality of confidentiality (and is not, for example, common or public knowledge)
3. show that the information was communicated in a mutual understanding that the receiver was to keep the information confidential
4. show that there is actual or threatened misuse of that information.

I am satisfied that that disclosure of the documents which fall within the scope of your request would found an action for breach of confidence.

#### ***Identified with specificity***

The documents falling within the scope of your request contain details about certain computer software, including, among other things, its technical capabilities, functions and features. The documents contain informational and graphical depiction of the relevant software and very detailed explanations about the way that the software works, as well as its specific outputs. The documents contain project methodologies and pricing. I am satisfied that it would be very easy for a competitor organisation to use this information in tenders or to duplicate the operation of the software functions if they were to obtain this information.

#### ***Confidential in nature***

The information contained within the documents is known only to the provider and its clients. It is not otherwise publicly available. The provider and the Commonwealth Ombudsman remain under contractual obligations of confidentiality in relation to the requested documents.

The contract and invoice documents, for example, were created on a confidential basis, as part of confidential business transacted between the Commonwealth Ombudsman and the provider. The Guideline Documents are only provided to customers of the provider (who are under confidentiality provisions in relevant contracts). Access to certain Guideline material is restricted to users with authorised access under secured logins.

The provider maintains the confidentiality of the documents by only providing them to customers under obligations of confidentiality. The documents relate to contracts between the provider and the Commonwealth Ombudsman which contain mutually agreed confidentiality provisions, and terms under Commonwealth procurement arrangements that provide for confidentiality of pricing and commercially sensitive information.

### ***Communicated in confidence***

I am satisfied that the documents which fall within the scope of this request contain information which was communicated between the provider and the Commonwealth Ombudsman in confidence. Evidence of the relevant mutual confidentiality is set out in the express provision in relevant contracts which state that a party cannot provide confidential information to a third party without consent. Confidential Information is defined as being information that is expressly prescribed as being so, or a party knows or ought to know it is confidential. All quotes, emails and Guideline Documents are specifically designated as being commercial in confidence and others are of a nature that a party ought to also understand to be confidential.

### ***Disclosure a misuse***

The provider has advised the Ombudsman that it is aware of attempts by competitor organisations to gain access to, and misuse the provider's commercially valuable information. For this reason, the provider does not consent to disclosure of the documents which fall within the scope of this request. Disclosure would be an unauthorised , breach of the confidentiality obligations of the Ombudsman's contract with the provider. I am satisfied that such a disclosure would, under the circumstances, amount to a misuse.

### ***Detriment***

The documents which fall within the scope of this request have significant commercial value. They include the proprietary intellectual property that the provider has developed over a number of years. They are used as a reference basis for the provider's tender submissions and the provision of services to customers.

The documents include material that forms a significant component of the provider's saleable services and is 'sold' from the provider to its customers for valuable consideration. Among other things, the documents contain graphic step-by-step depictions of the provider's software. I am satisfied that this information could be used by a competitor organisation to the detriment of the provider, to develop a similar product or to draw attention to any weaknesses in the provider's products and services. The commercial value in the documents could reasonably be expected to be diminished if they were disclosed. The provision of software in the particular market is highly competitive. The provider has made considerable investment in tendering for projects with its product. The documents contain confidential project scoping, pricing and the final negotiated position of the Commonwealth Ombudsman and the provider in relation their business engagements. I am satisfied that disclosure of the documents would enable a competitor organisation to understand the confidential contracting methodology and negotiations between the provider and the Commonwealth Ombudsman.

The provider operates in a competitive marketplace of providing software solutions for government and certain industries. The relevant software primarily concerns complaints, misconduct, investigations, citizen support services and FOI. I understand that the provider regularly responds to tenders for multi-million dollar contracts. I am satisfied that if the requested documents were disclosed, there is genuine a risk that competitor organisations could affect the ability of the provider to continue to compete in the market, thereby causing cause significant detriment to the provider.

For the reasons set out in this decision, I am satisfied that the documents which fall within the scope of this request are exempt from disclosure under s 45 of the FOI Act.

#### **Exemption – information that has commercial value: s 47**

Section 47 exempts a document if it would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Information has commercial value if it is valuable for the purposes of carrying on a commercial activity. For example, if it is essential to the profitability of a business's operation, or if a genuine buyer is prepared to pay to obtain that information. Information may have no remaining commercial value if it is out of date or publicly available.

#### ***Commercial value***

The documents falling within the scope of this request form the commercial package that the provider uses to conduct business. In this way, they contain information which is commercially valuable to the provider. They give the provider a competitive advantage over other similar providers, as the information within the documents is generally unknown. I am satisfied that the documents form part of the trade and business that the provider conducts in the sale of its services to customers; that the information contained within the documents is known only to the provider and its customers and is not publicly available, and that if the documents were disclosed to a competitor, their disclosure would likely cause genuine harm to the provider and adversely affect its ability to compete in the relevant software market.

The information contained in the requested documents is only accessible to the Commonwealth Ombudsman and the provider's project-based employees who are under obligations of confidentiality in their employment agreements.

#### ***Destroyed or diminished***

The implementation of a software package from the provider can cost anywhere between \$10,000 and \$500,000 and its development may take months or years. This is a significant investment for the provider and the relevant customer. As the documents include detailed depiction of the both the commercial offering and the operation of the provider's product, I am satisfied that their disclosure would enable a competitor organisation to use this information to significantly disadvantage the provider.

I am satisfied that the documents falling within the scope of this request contain commercially valuable information, and that the value of this information could reasonably be expected to be destroyed or diminished if the relevant documents were disclosed.

In making my decision, I have also taken into account the age of the information contained in the requested documents. The content of the documents demonstrates that the Commonwealth Ombudsman has had a business relationship with the provider over a period of more than 10 years, and, significantly, it is a continuous ongoing business relationship. Having regard to the ongoing business relationship between the Ombudsman and the provider, I am satisfied that the information contained in the requested documents continues to have commercial value and that this information remains relevant to the provider's ongoing commercial affairs.

For the reasons set out in this decision, I have refused access to the requested documents under s 47(1)(b) of the FOI Act.

**Conditional exemption - Public interest test – business information: s 47G**

In the alternative, the documents which fall within the scope of this request are conditionally exempt from disclosure under s 47G of the FOI Act.

Under s 47G(1) of the FOI Act a document is conditionally exempt if its disclosure would involve releasing information about the business, commercial or financial affairs of a person/an organisation in circumstances which:

- (a) would, or could reasonably be expected to, adversely affect the relevant person/organisation, in an unreasonable way, with regard to its business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of administration of a law of the Commonwealth or a Territory or the administration of matters administered by an agency.

Section 11A of the FOI Act provides that while an agency must give a person access to a document if it is conditionally exempt, access may be refused if the document's disclosure would, on balance, be contrary to the public interest.

***Information in respect of business affairs (s 47G(1)(a))***

The Australian Information Commissioner's FOI Guidelines explain that the business information exemption is intended to protect the interests of third parties dealing with the Government. The operation of s 47G of the FOI Act depends on the effect of disclosure, rather than the precise nature of the information itself. However, the information must have some relevance to a person in respect of their business or professional affairs, or the business, commercial and financial affairs of an organisation.

I have carefully considered the content of the documents which fall within the scope of this request. All of the documents have been created to support certain business activities performed under a contract to provide services for the Commonwealth Ombudsman. I am satisfied that the relevant documents can be categorised as business information for the purposes of s 47G, as they relate to the business affairs of a provider of computer software products and services in its dealings with the Commonwealth Ombudsman.

### ***Unreasonable adverse effect***

In deciding whether disclosure of a document containing business information would be unreasonable for the purposes of s 47G(1) of the FOI Act, I am required to balance the public interest and the private interests of the relevant business. Relevantly, paragraph 6.187 of the Guidelines provides that a decision maker must balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of s 47G(1)(a) but this does not amount to the public interest test of s 11A(5) which follows later in the decision making process.

Paragraph 6.188 of the FOI Guidelines further explain that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect.

In assessing whether disclosure would have an unreasonable adverse effect on the business affairs of relevant provider, I have taken into account that the information contained in the requested documents is commercially sensitive and relates to confidential contracts for the provision of products and services to the Commonwealth Ombudsman. The relevant information is not publicly available. The relevant information contains, among other things, intellectual property of the provider. The provider has entered into certain contractual arrangements with the Commonwealth Ombudsman under agreement that the contents of the relevant documents would remain known only to the provider and the Commonwealth Ombudsman. Disclosure of the information contained in the requested documents would disclose to the provider's competitors the intellectual property of the provider contained in the relevant documents. The documents contain material which reflects the expertise and knowledge the provider has developed over an extended period of time in undertaking projects for certain government and private sector organisations. Disclosure would enable the provider's competitors to adopt the techniques implemented by the provider in working on other similar projects. Under these circumstances the provider would lose the commercial advantage which it previously developed through the design of the relevant projects with the Commonwealth Ombudsman.

I have not identified any public interest grounds which would make it reasonable to disclose the requested documents. There is no evidence, for example, that disclosure of the relevant documents would reveal that the provider's business activities pose a threat to public safety or that the provider would damage the natural environment or that the documents contain evidence of unlawful conduct.

Accordingly, having considered the public and private interests of the provider in relation to the contents of the requested documents, I am satisfied that disclosure of those documents would have an unreasonable adverse effect on the business affairs of the provider.

### ***Disclosure not in the public interest***

In deciding whether or not access should be given to the information contained in the requested documents on the basis of public interest I have taken a number of matters into account. These matters include the public interest factors for and against disclosure as outlined in the Guidelines.

I acknowledge that there is a public interest in ensuring that projects undertaken by the Commonwealth are meaningful, properly administered and a reasonable expenditure of public money. I accept that disclosure of the relevant documents would promote transparency of the work of the government, and accountability in relation to public administration.



However, I give greater weight to the fact that disclosure of the requested documents would deny the provider the protection of the intellectual property and commercially valuable information contained in the relevant documents.

I give greater weight to the fact that under the terms of the provider's engagement with the Commonwealth Ombudsman, the work of the provider was performed on a confidential basis. Release of the requested documents would disclose commercially valuable information to the provider's competitors, which would have a negative effect on the business affairs of the provider in circumstances where the relevant material was intended to remain confidential. In reaching this view, I have taken into account that the provider has applied considerable expertise, developed over a long-standing period to design and implement a tailored product for delivery of the work performed by the Ombudsman. In my view, the unreasonable adverse effect on the provider of disclosure of the relevant documents outweighs the public interest in disclosure of the relevant documents.

I have also taken into account that disclosure of the relevant documents would not allow you access to your own personal information.

Accordingly, I am satisfied that the requested documents are conditionally exempt under subparagraph 47G(1)(a) and, further, that they should not be disclosed.

#### **Section 47G(1)(b) – Prejudice the future supply of information**

In relation to s 47G(1)(b) of the FOI Act, the Guidelines explain that there must be a reasonable likelihood that disclosure would result in a reduction in both the quality and quantity of business information flowing to the government.

Upon examination of the requested documents, I am satisfied that their disclosure could reasonably be expected to prejudice the future supply of information to the government.

In the circumstances of this matter, I have taken into account that the information provided to the Ombudsman could not be obtained compulsorily, nor was it required for the payment of a particular benefit or grant. In reaching my conclusion, I have taken into account that under the terms of its engagement with the Commonwealth Ombudsman, the work of the provider is expected to remain confidential.

In my view, business organisations should have the confidence to engage with government on the understanding that agencies will follow and fulfil their obligations under the terms of their engagement. Further, where business organisations provide services on the basis that they will remain confidential, I am of the view that if such confidential information was disclosed, the willingness of business organisations to provide services based on the application of commercially valuable methodologies or other similar intellectual property, could reasonably be expected to be reduced.

#### ***Disclosure not in the public interest***

There is a strong public interest in the willingness of business organisations to provide services for government. In many circumstances, business organisations outside government are better placed to provide specialist expertise, particularly where the government has adopted a policy position of not participating in certain sectors of the economy. Private sector organisations will be better placed than the government to undertake work in areas where the government has minimal resources or may lack the necessary expertise.

In my view, the public interest in the willingness of independent organisations to provide services to the government is essential to the effective operation of public administration. The inability of the government to effectively perform a range of functions set out under legislation and to administer government programs would be contrary to the public interest. If business organisations were unwilling to provide their services to government, this would result in government uncertainty about the appropriate ways to manage and administer certain functions, resulting in delays and errors to the detriment of the public. Further, it would likely result in additional public expenditure, which is also contrary to the public interest. The willingness of business organisations outside government to contribute to the public good is, in my view, a factor strongly in the public interest.

In reaching my conclusion, I have also taken the view that disclosure of the relevant documents would not allow you access to your own personal information.

Accordingly, I am satisfied that the documents which fall within the scope of this request are conditionally exempt under subparagraph 47G(1)(b) and, further, that they should not be disclosed.

## Attachment B – Schedule of documents

Schedule of documents for: Applicant D			
Ombudsman's reference: FOI 2022-50003			
Item no.	Description	Date	Decision
1	Ombudsman's internal email (plus attachments 2 pages)	04-Jun-19	Exempt s 45, s 47 or s 47G
2	Email received by Ombudsman (plus 1 page attachment)	23-May-19	Exempt s 45, s 47 or s 47G
3	Ombudsman's internal email (plus attachments 30 pages)	22-Jan-19	Exempt s 45, s 47 or s 47G
4	Ombudsman's internal email	22-Jan-19	Exempt s 45, s 47 or s 47G
5	Email from Ombudsman (plus 1 page attachment)	16-Feb-17	Exempt s 45, s 47 or s 47G
6	Email received by Ombudsman (plus 1 page attachment)	15-Feb-17	Exempt s 45, s 47 or s 47G
7	Section 23 procurement approval	16-Feb-17	Exempt s 45, s 47 or s 47G
8	Licence quotation	17-Feb-22	Exempt s 45, s 47 or s 47G
9	Email received by Ombudsman (plus 2 page attachment)	24-Feb-22	Exempt s 45, s 47 or s 47G
10	Email from Ombudsman to Shared Services (plus attachment 1 page)	21-Feb-22	Exempt s 45, s 47 or s 47G
11	Email received by Ombudsman (plus 2 page attachment)	17-Feb-22	Exempt s 45, s 47 or s 47G
12	Email from Shared Services to Ombudsman (plus attachment 1 page)	16-Jul-21	Exempt s 45, s 47 or s 47G
13	Email received by Ombudsman (plus attachment 1 page)	2-Jul-21	Exempt s 45, s 47 or s 47G

<b>14</b>	Email from Shared Services to Ombudsman (plus attachment 1 page)	27-Apr-21	Exempt s 45, s 47 or s 47G
<b>15</b>	Ombudsman's internal email (plus attachments 5 pages)	23-Apr-21	Exempt s 45, s 47 or s 47G
<b>16</b>	Tax invoice	3-Mar-21	Exempt s 45, s 47 or s 47G
<b>17</b>	Ombudsman's internal Minute	19-Apr-21	Exempt s 45, s 47 or s 47G
<b>18</b>	Section 23 procurement approval	23-Apr-21	Exempt s 45, s 47 or s 47G
<b>19</b>	Email received by Ombudsman (plus 1 page attachment)	30-Mar-21	Exempt s 45, s 47 or s 47G
<b>20</b>	Email received by Ombudsman	16-Jun-20	Exempt s 45, s 47 or s 47G
<b>21</b>	Section 23 procurement approval	18-Feb-22	Exempt s 45, s 47 or s 47G
<b>22</b>	Email received by Ombudsman (plus 2 page attachment)	19-Jun-20	Exempt s 45, s 47 or s 47G
<b>23</b>	Ombudsman's internal email (plus 1 page attachment)	4-Jun-20	Exempt s 45, s 47 or s 47G
<b>24</b>	Ombudsman's internal email	3-Jun-20	Exempt s 45, s 47 or s 47G
<b>25</b>	Ombudsman's internal email	2-Jun-20	Exempt s 45, s 47 or s 47G
<b>26</b>	Email from Ombudsman (plus 10 page attachment)	2-Jun-20	Exempt s 45, s 47 or s 47G
<b>27</b>	Ombudsman's internal email	2-Jun-20	Exempt s 45, s 47 or s 47G

<b>28</b>	Ombudsman's internal email	27-Apr-20	Exempt s 45, s 47 or s 47G
<b>29</b>	Ombudsman's internal email	24-Apr-20	Exempt s 45, s 47 or s 47G
<b>30</b>	Ombudsman's internal email (plus attachments 13 pages)	2-Jun-20	Exempt s 45, s 47 or s 47G
<b>31</b>	Ombudsman's internal email	2-Jun-20	Exempt s 45, s 47 or s 47G
<b>32</b>	Ombudsman's internal email	24-Apr-20	Exempt s 45, s 47 or s 47G
<b>33</b>	Ombudsman's internal email	2-Jun-20	Exempt s 45, s 47 or s 47G
<b>34</b>	Tax invoice from provider	4-Oct-18	Exempt s 45, s 47 or s 47G
<b>35</b>	Tax invoice from provider	8-Feb-19	Exempt s 45, s 47 or s 47G
<b>36</b>	Tax invoice from provider	26-Apr-19	Exempt s 45, s 47 or s 47G
<b>37</b>	Tax invoice from provider	28-Nov-18	Exempt s 45, s 47 or s 47G
<b>38</b>	Tax invoice from provider	10-Aug-18	Exempt s 45, s 47 or s 47G
<b>39</b>	Contract for services		Exempt s 45, s 47 or s 47G
<b>40</b>	Tax invoice from provider	17-Aug-18	Exempt s 45, s 47 or s 47G
<b>41</b>	Tax invoice from provider	1-May-19	Exempt s 45, s 47 or s 47G

<b>42</b>	Section 23 procurement approval	4-Jun-19	Exempt s 45, s 47 or s 47G
<b>43</b>	Section 23 procurement approval	18-Jul-19	Exempt s 45, s 47 or s 47G
<b>44</b>	Tax invoice from provider	9-Jun-20	Exempt s 45, s 47 or s 47G
<b>45</b>	Tax invoice from provider	23-Jun-20	Exempt s 45, s 47 or s 47G
<b>46</b>	Tax invoice from provider	23-Jun-20	Exempt s 45, s 47 or s 47G
<b>47</b>	Tax invoice from provider	31-Aug-20	Exempt s 45, s 47 or s 47G
<b>48</b>	Project proposal	29-Nov-19	Exempt s 45, s 47 or s 47G
<b>49</b>	Section 23 procurement approval	24-Feb-20	Exempt s 45, s 47 or s 47G
<b>50</b>	Project proposal	29-Nov-19	Exempt s 45, s 47 or s 47G
<b>51</b>	Section 23 procurement approval	11-Mar-20	Exempt s 45, s 47 or s 47G
<b>52</b>	Tax invoice from provider	31-Mar-20	Exempt s 45, s 47 or s 47G
<b>53</b>	Section 23 procurement approval	18-Mar-20	Exempt s 45, s 47 or s 47G
<b>54</b>	Licence proposal	23-Apr-20	Exempt s 45, s 47 or s 47G
<b>55</b>	Tax invoice from provider	4-Jun-20	Exempt s 45, s 47 or s 47G

<b>56</b>	Section 23 procurement approval	29-Apr-20	Exempt s 45, s 47 or s 47G
<b>57</b>	Tax invoice from provider	31-Mar-21	Exempt s 45, s 47 or s 47G
<b>58</b>	Ombudsman's internal minute	19-Apr-21	Exempt s 45, s 47 or s 47G
<b>59</b>	Section 23 procurement approval	27-Apr-21	Exempt s 45, s 47 or s 47G
<b>60</b>	Section 23 procurement approval	23-Feb-21	Exempt s 45, s 47 or s 47G
<b>61</b>	Tax invoice from provider	2-Aug-19	Exempt s 45, s 47 or s 47G
<b>62</b>	Licence quotation	17-Feb-22	Exempt s 45, s 47 or s 47G
<b>63</b>	Tax invoice from provider	28-Feb-22	Exempt s 45, s 47 or s 47G
<b>64</b>	Tax invoice from provider	11-Sep-18	Exempt s 45, s 47 or s 47G
<b>65</b>	Ombudsman's internal email (plus 1 page attachment)	25-Jun-21	Exempt s 45, s 47 or s 47G
<b>66</b>	Email from provider to Ombudsman (plus attachments 4 pages)	31-Aug-20	Exempt s 45, s 47 or s 47G
<b>67</b>	Email from provider to Ombudsman (plus 1 page attachment)	23-Jun-20	Exempt s 45, s 47 or s 47G
<b>68</b>	Email from provider to Ombudsman (plus attachments 2 pages)	23-Jun-20	Exempt s 45, s 47 or s 47G
<b>69</b>	Ombudsman's internal email (plus attachments 5 pages)	23-Jun-20	Exempt s 45, s 47 or s 47G

<b>70</b>	Email from provider to Ombudsman (plus attachments 2 pages)	10-Jun-20	Exempt s 45, s 47 or s 47G
<b>71</b>	Email from provider to Ombudsman (plus attachment 2 pages)	9-Dec-21	Exempt s 45, s 47 or s 47G
<b>72</b>	Section 23 procurement approval	3-Jun-21	Exempt s 45, s 47 or s 47G
<b>73</b>	Email from provider to Ombudsman (plus attachments 6 pages)	25-May-21	Exempt s 45, s 47 or s 47G
<b>74</b>	Licensing proposal	22-Nov-18	Exempt s 45, s 47 or s 47G
<b>75</b>	Email from provider to Ombudsman (plus attachments 26 pages)	22-Nov-18	Exempt s 45, s 47 or s 47G
<b>76</b>	Email from provider to Ombudsman	6-Mar-19	Exempt s 45, s 47 or s 47G
<b>77</b>	Licence proposal	6-Mar-19	Exempt s 45, s 47 or s 47G
<b>78</b>	Section 23 procurement approval	22-Nov-19	Exempt s 45, s 47 or s 47G
<b>79</b>	Email from provider to Ombudsman (plus attachment 3 pages)	15-Feb-18	Exempt s 45, s 47 or s 47G
<b>80</b>	Email from provider to Ombudsman (plus attachment 3 pages)	26-Jul-18	Exempt s 45, s 47 or s 47G
<b>81</b>	Section 23 procurement approval	9-Aug-18	Exempt s 45, s 47 or s 47G
<b>82</b>	Section 23 procurement approval	21-Feb-17	Exempt s 45, s 47 or s 47G
<b>83</b>	Email from provider to Ombudsman (plus attachments 4 pages)	6-Dec-16	Exempt s 45, s 47 or s 47G



<b>84</b>	Email from provider to Ombudsman (plus attachments 1 page)	13-Oct-16	Exempt s 45, s 47 or s 47G
<b>85</b>	Section 23 procurement approval	23-Sep-16	Exempt s 45, s 47 or s 47G
<b>86</b>	Email from provider to Ombudsman	19-Sep-16	Exempt s 45, s 47 or s 47G
<b>87</b>	Email from provider to Ombudsman (plus attachments 6 pages)	15-Feb-16	Exempt s 45, s 47 or s 47G
<b>88</b>	Email from provider to Ombudsman (plus attachments 2 pages)	2-May-16	Exempt s 45, s 47 or s 47G
<b>89</b>	Section 23 procurement approval	23-Feb-16	Exempt s 45, s 47 or s 47G
<b>90</b>	Email from provider to Ombudsman (plus 1 page attachment)	29-Jun-11	Exempt s 45, s 47 or s 47G
<b>91</b>	Email from provider to Ombudsman (plus attachment 52 pages)	27-Jul-17	Exempt s 45, s 47 or s 47G
<b>92</b>	IT consultancy services contract 2017/2018		Exempt s 45, s 47 or s 47G
<b>93</b>	Licence and support contract	26-Jun-14	Exempt s 45, s 47 or s 47G
<b>94</b>	Email from Ombudsman to provider	6-May-20	Exempt s 45, s 47 or s 47G
<b>95</b>	Tax invoice from provider	11-Sep-18	Exempt s 45, s 47 or s 47G

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;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (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.

## **45 Documents containing material obtained in confidence**

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
  - (b) an agency, the Commonwealth or Norfolk Island.

#### **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.

#### **47G Public interest conditional exemptions—business**

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

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

(c) a Norfolk Island authority; or

(d) a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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