



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

Decision and reason for decision of Brett (Position Number 62258141),  
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:** 11 May 2022

**FOI reference number (Primary):** LEX 48565

**Internal review decision date:** 11 July 2022

**Internal review reference number:** LEX 50192

**Sent by email:** [foi+request-8591-33a7d0d0@righttoknow.org.au](mailto:foi+request-8591-33a7d0d0@righttoknow.org.au)

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Dear Ms Pane,

### **Freedom of Information Internal Review Request: LEX 50192**

#### **Decision**

1. The purpose of this letter is to give you a decision about your request for internal review for the decision made in LEX 48565 under the *Freedom of Information Act 1982* (Cth) (**FOI Act**)
2. I have made the decision to affirm the original decision made by Joanna (Position Number 62329542), Information Access Officer, Information Access Unit, Client Access Rehabilitation Branch. That decision was to refuse access to the document within the scope of your request.

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

3. I, Brett (Position Number 62258141), 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

### Original Decision

4. On 11 March 2022 you made a request for access to a documents in the possession of the Department. Your request sought access to:

*...I desire copy of a document listing all entries allocated to the below Cost Centres, for the period 1 July 2020 to 11 March 2022:*

*9A0200*

*9A0201*

*9A0301*

*9A0401*

*9A0102*

*9A0101*

*9A0001*

*2A0401*

*8B0101*

*2D0601 ...*

5. On 18 March 2022, the Department acknowledged your request via email.
6. The departmental cost centres identified in your request, relate to the department's Royal Commission Reviews & Inquires Branch and the current Royal Commission into Defence and Veteran Suicide (**the Royal Commission**).
7. As an extension of time was applied to process your request in accordance with 15AB of the FOI Act, a decision on your request was due by 11 May 2022.
8. On 11 May 2022, the Department made a decision to refuse access within the scope of your request, under the following provisions of the FOI Act:
- Section 47 Documents disclosing trade secrets or commercially valuable information
  - Section 47E Public interest conditional exemptions--certain operations of agencies
  - Section 47F Public interest conditional exemptions--personal privacy

## Internal Review

9. After receiving the Department's decision on 11 May 2022, you contacted the Department on 9 June 2022 requesting an internal review of the handling of this FOI request. Your internal review request was made in the following terms:

*...Under section 54 of the FOI Act, I am writing for an internal review of Department of Veterans' Affairs's FOI access refusal decision LEX 48565 of 11 May 2022...*

10. As your application was made within the 30 day of the original decision being made, the internal review request is valid.
11. As no extension of time has been applied to process this internal review, a decision on your internal review application is due 11 July 2022.

### **Material taken into account**

12. 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 document follows
13. I have taken the following material into account in making my decision.
- the terms of your original request made on 11 March 2022 and the original decision made on this request on 11 May 2022;
  - the records of the searches carried out in processing your original request;
  - the terms of your internal review request made on 9 June 2022;
  - the types of information and documents that are in the Department's possession;
  - the content of the document that fall within the scope of your request;
  - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I have 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 17 Requests involving use of computers etc. (e.g. request for the department to create a document)
  - Section 47 Documents disclosing trade secrets or commercially valuable information
  - Section 47E Public interest conditional exemptions--certain operations of agencies
  - Section 47F Public interest conditional exemptions--personal privacy;
  - Section 54C Internal review – decision on internal review; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);
  - the status of the Royal Commission into Defence and Veteran Suicide.

14. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 1**.

### **Reasons for decision**

15. I have decided to affirm the original decision made on 11 May 2022 to refuse access to the document within the scope of your request, subject to the following provisions in the FOI Act.

### **Creation of a document in response to your FOI request (section 17)**

16. After consultation with the Legal Services, Audit & Royal Commission Taskforce it was determined that information relevant to your request was not entirely held by the Department in a discrete document form.

17. In order to provide you access to all relevant information regarding your request, it was requested the Legal Services, Audit & Royal Commission Taskforce extract the data listed in the Department's wider database to create a document.

18. This document is comprised of detailed costings information of third-party service providers and contractors engaged by the department to assist with the department's role in the Royal Commission. The document includes detailed commercial costing information about the services undertaken by those providers along with details of staff names and salary information.

19. This document is listed in **Schedule 1**. This document was created in accordance with section 17 of 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. The document contains detailed costings information of third-party service providers and contractors engaged by the department to assist with the department's role in the Royal Commission. The document includes detailed commercial costing information about the services undertaken by those providers.
22. I consider that this information has a commercial value as disclosure would likely reveal the charge-out rates of the contractors from those companies. It is generally accepted that fees and invoicing information is information which has a commercial value under section 47(1)(b) of the FOI Act.
23. I note that the Royal Commission is still taking place, and therefore the engagement of these third-party service providers is ongoing.
24. In respect of the second limb of section 47(1)(b) of the FOI Act, and whether disclosure could reasonably be expected to destroy or diminish that commercial value, the relevant information as to the rates of the contractors are only known by the department and its contractual providers, and is not otherwise known. Revealing this information publicly would give a competitive advantage to other providers, thereby diminishing the commercial value of this information.
25. Accordingly, I have decided that material contained within the document is exempt in accordance with this provision. As section 47 of the FOI Act is not a conditional exemption, I am not required to consider a public interest test.

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

26. The document comprises of a detailed record of costs relating to the department's role in the Royal Commission. As noted above the Royal Commission is still taking place and the costs associated with the Royal Commission are ongoing.

27. The document also contains the names, salary information and other identifying personal information of staff members of the department, as well as the personal information of third-party service providers. I have decided that section 47E(c) and section 47E(d) of the FOI Act apply to such material.
28. 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.
29. 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.
30. I consider that the release of this material would have a substantial adverse effect on the operations of the department in relation to its role in the Royal Commission. Release of specific costing information at a time where the Royal Commission is still ongoing would likely impact the department's ability to easily and efficiently arrange for staff members to undertake activities in relation to and in attendance at the Royal Commission.
31. In relation to the release of individual staff information, I note that 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.
32. 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.
33. 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.
34. 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.

35. An additional 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. Given that the staff members mentioned in the particular cost centres requested in your application are specifically working on the ongoing Royal Commission, I also consider the heightened concern of harassment in the circumstances.
36. Finally, I 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.
37. Once details of individual staff members undertaking work relating to the Royal Commission are disclosed it may be that individuals seek to contact these specific staff members directly. This would likely 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.
38. Accordingly, for the reasons outlined above I consider that information within the document of your request 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)***

39. 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).
40. 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.

41. 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.

42. 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.

43. The document contains the full names, staff identifiers and payroll information of staff of the department, third party service providers and other third party individuals.

44. In relation to employment and payroll information, the department has obligations of confidentiality in respect of matters of employment. Matters to do with an employee's employment such as their pay or employment arrangements meet the definition of personal information and are confidential.

45. The department also 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. These policies extended to contracted employees. 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.
46. 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. It would also be inconsistent with the department's obligations of confidentiality to its employees. I consider that release of the material would be contrary to the expectations of those individual staff members, who may rely on those departmental policies, procedures and understanding of confidentiality for assurance of their personal privacy.
47. I further consider that the release of third-party personal information contained within the document would be unreasonable. I consider that there is a risk that if this material was disclosed, third party individuals who are identified within the documents, due to their involvement with Royal Commission matters, may be contacted and potentially harassed by members of the public.
48. Accordingly, I have decided that the parts of the document which contain such information in accordance with this provision, 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 47E(c), (d) and 47F***

49. 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.
50. 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.

51. 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) the staff members and contractors named in the document are identified as being involved in the Royal Commission, which could lend itself to a higher possibility of harassment if their involvement in the Royal Commission was publicly known;
- (c) disclosure could be expected to adversely affect the delivery of services by the department in accordance with its functions; and
- (d) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, both in relation to the third-party individuals and staff of the department and other commonwealth agencies.

52. I have placed greater weight on these factors. 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. Such efficiency is particularly important for large projects such as the Royal Commission.

53. Further, I consider that there is little public interest in the disclosure of the personal and employment information of staff members and third parties connected to department's involvement in the Royal Commission, particularly at a time when the Royal Commission is ongoing. Disclosure of that personal 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.

54. 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.

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

### **Your rights of review**

56. 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**).

### **OAIC review**

57. 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)

58. 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**

59. 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,

**Brett (Position Number 62258141)**

Assistant Director

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

11 July 2022



## Schedule of documents

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**Applicant:** Ms Verity Pane

**Decision date:** 11 July 2022

**FOI reference number:** LEX 50192

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	5 May 22	Document within scope of information request	29	Access Refused	s 47, 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.

## **17 Requests involving use of computers etc**

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

## **24 Power to refuse request--diversion of resources etc.**

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

- (a) must undertake a request consultation process (see section 24AB); and
  - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
  - (b) the requests relate to documents, the subject matter of which is substantially the same.

## **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.

## Public interest conditional exemptions

### 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).

#### **54C Internal Review – decision on internal review**

##### *Scope*

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the original decision) is made in accordance with this Part.

##### *Decision*

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

##### *Notice of decision*

- (4) Section 26 extends to a decision made under this section.