



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

Decision and reason for decision of Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Ministerial, International & Stakeholder Relations Branch, Department of Veterans' Affairs

Applicant:	Ms. Verity Pane
Date of primary decision:	11 May 2022
LEX reference number:	LEX 48565 & LEX 50192IR
Revised decision date:	30 August 2023
Revised decision reference number:	MR22/01169

Dear Ms. Pane,

Freedom of Information Request: LEX 48565 & LEX 50192IR

1. The purpose of this correspondence is to advise you of a revised decision the Department of Veterans' Affairs (**Department**) has made under section 55G of the *Freedom of Information Act 1982* (**FOI Act**) in relation to LEX 48565 and LEX 50192IR.

Revised Decision

2. I have made a decision to vary the original decision made by Joanna (Position Number 62329542), Information Access Officer, Information Access Unit, Ministerial, International & Stakeholder Relations Branch. That decision was to refuse access in full to one (1) document.
3. I have made a decision to grant access in part to an edited copy of the document, modified by deletions in accordance with section 22(2) of the FOI Act and applicable exemption provisions, as set out in **Schedule 1**.

Authority to make decision

4. I, Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Ministerial, International & Stakeholder Relations 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

5. On 11 March 2022, you made a request for access to the following:

'...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...'*

6. On 18 March 2022, the Department acknowledged your request via email.
7. As an extension of time was applied to process your request in accordance with section 15AA of the FOI Act, a decision on your request was due by 11 May 2022.
8. On 11 May 2022, the primary decision maker made a decision to refuse access in full to one (1) document located to be in scope of your request under the following provisions:
- 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
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. On 11 July 2022, the internal review decision maker affirmed the primary decision to refuse access to the document in full under the following provisions of the FOI Act:

- 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

11. On 1 May 2023, the Office of the Australian Information Commissioner (**OAIC**) sent the Department a notice under section 54Z of the FOI Act advising that the OAIC had commenced a review of the Department's decision. It is understood that in seeking the review, you stated:

'...I also want ic review of this other decision too...'

12. On 25 July 2023, the OAIC granted the Department an extension for our response to this review.

13. On 4 August 2023, the Department advised the OAIC of its intention to issue you with a revised decision in accordance with section 55G of the FOI Act by 31 August 2023.

Material taken into account

14. 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.

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

- the terms of your request on 11 March 2022 and the primary decision on 11 May 2022;

- the terms of your internal review request on 9 June 2022 and the internal review decision on 11 July 2022;
- the terms of your request for external review through the OAIC;
- the types of documents that are in the possession of the Department;
- the content of the document that falls within the scope of your request;
- Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
 - Section 11B Public interest exemption – factors
 - Section 15 Request for Access
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 47E Public interest conditional exemptions--certain operations of agencies
 - Section 47G Public interest conditional exemptions--business
 - Section 47F Public interest conditional exemptions--personal privacy
 - Section 55G Procedure in IC review--revocation or variation of access refusal decision
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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

Reasons for decision

17. I have decided to grant access in part to the document, subject to the following exemptions in accordance with the FOI Act.

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

18. 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.

19. The FOI Guidelines at paragraph 6.101 provide:

'...For the grounds in ss 47E(a)-(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released...'

20. Further, the FOI Guidelines provide at paragraphs 5.16 – 5.17 that I must assess the likelihood of the predicted damage occurring after disclosure. However, there need not be certainty that the damage would occur.

21. The document within the scope of your request contains cost centre information which, if combined with other information, could reveal potentially sensitive information relating to the internal operations of the Department, such as the structure of the Royal Commission Taskforce and activities by each area under it. The document also contains information about salaries and contractor arrangements which, combined with other information, could have a substantial adverse effect on the management of personnel by the Department, and the operations of the agency. I have therefore decided that section 47E(c) applies to this material.

22. 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) of the FOI Act. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act, discussed further below.

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

23. 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).

24. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Cth) (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.

25. 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.

26. 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.

27. The document in scope of your request contains the names and staff numbers of non-Senior Executive Services level staff, and the names of contractors and other third party individuals, which is the 'personal information' described above, relating to these individuals.

28. I find that disclosure of third parties' personal information could unreasonably affect personal privacy as a reasonable person would not expect such information to be put in the public domain. Release of personal information within the document would not add any substance to the information being provided under this request, or inform debate on a matter of public importance in any meaningful way, and as such there would be no public purpose achieved through the release of the personal information. Further, it is likely the individuals concerned would not wish for the information to be disclosed without their consent.

29. 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. I consider that disclosure of personal information of an individual staff member 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 individual staff members, who may rely on those Departmental policies and procedures for assurance of their personal privacy.
30. Accordingly, I have decided that the parts of the document which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption under section 47F of the FOI Act. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act, discussed further below.

Public interest conditional exemptions—business (section 47G)

31. Section 47G(1)(b) of the FOI Act provides that a document is conditionally exempt if its disclosure under the 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:

- (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.

32. The FOI Guidelines provide at paragraph 6.198 that:

'...This limb of the conditional exemption comprises two parts:

- A reasonable expectation of a reduction in the quantity or quality of business affairs information to the government*
- The reduction will prejudice the operations of the agency...'*

33. The FOI Guidelines further provide at paragraphs 6.199 – 6.201:

'...There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be sufficient to prejudice the future supply of information.

The agency will usually be best placed to identify, and be concerned about the circumstances where the disclosure of documents might reasonably be expected to prejudice the future supply of information to it...'

34. The term 'prejudice' is not defined in the FOI Act. However, the FOI Guidelines provide the following definition at paragraphs 5.22 – 5.23:

'...The Macquarie Dictionary definition of 'prejudice' requires:

- a. disadvantage resulting from some judgement or action of another*
- b. resulting in injury or detriment*

A prejudicial effect is one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes. The expected outcome does not need to have an impact that is 'substantial and adverse'...

35. The document in scope of your request contains commercially sensitive financial information, such as internal invoice processing numbers which, if disclosed and combined with other information, would reveal underlying transaction details, names of contractors and fees/rates paid, as well as staff and supplier names and unique reference numbers, the nature of work undertaken, and invoice and travel booking numbers.
36. This information is not publicly known and is not publicly available and, if disclosed, could reasonably be expected to prejudice the future supply of such information to the Department and subsequently unreasonably affect the Department adversely in respect of its lawful business affairs.
37. Accordingly, I have decided that parts of the document which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption under section 47G(1)(b) of the FOI Act. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act discussed below.

Application of the public interest test – sections 47E, 47F and 47G

38. Section 11A(5) of the FOI Act provides that an agency must give access to a 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.
39. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favours disclosure:
- a) disclosure would promote the objects of the FOI Act; and
 - b) disclosure would promote effective oversight of public expenditure.
40. I also considered the following factors which do *not* favour disclosure:
- a) disclosure of internal information could reasonably be expected to prejudice the operations of the Department;
 - b) disclosure could reasonably be expected to prejudice the protection of individuals' right to privacy;
 - c) disclosure would, or could reasonably be expected to, unreasonably affect the Department adversely in respect of its lawful business affairs;
 - d) disclosure could reasonably be expected to prejudice the future supply of the information to the Commonwealth for the purpose of the administration of a law of the Commonwealth or the administration of matters administered by the Department;
 - e) disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information; and
 - f) disclosure could reasonably be expected to prejudice the Department's ability to obtain similar information in the future.
41. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
42. I have placed greater weight on the factors against disclosure and, on balance, I consider the public interest factors against disclosure to be more persuasive than the public interest

factors favouring disclosure. I am therefore satisfied that the public interest is to withhold the exempt material.

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

43. 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.
44. As explained above, the document contains exempt information. On this basis, I have prepared the document for release by removing the exempt material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the document and at **Schedule 1**.

Access to documents

45. The document released to you in accordance with the FOI Act is enclosed.

Information Publication Scheme

46. 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.
47. 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.

Application for Information Commissioner Review – request to withdraw application

48. Given the Department has now granted you partial access to the document in scope of your request, we seek your views regarding withdrawing your application for IC Review before the OAIC.
49. We confirm that we will provide the OAIC with a copy of this revised decision in accordance with section 55G(2)(a) of the FOI Act.

Your rights of review

50. If you are dissatisfied with my revised decision, you may advise the OAIC that you do not wish to withdraw your application for IC Review.

51. You can contact the OAIC in one of the following ways:

Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street, Sydney NSW 2000

52. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner:

<http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights>

Contact us

53. 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

Yours sincerely,

Ramona (Position Number 62336362)

Assistant Director

Information Access Unit

Ministerial, International & Stakeholder Relations Branch

Department of Veterans' Affairs

30 August 2023



Schedule of documents

Applicant: Ms Verity Pane
Decision date: 30 August 2023
FOI reference number: LEX 48565 & LEX 50192IR

Doc No.	Date of document	Document description	Pages	Decision	Exemption provision
1.	5 May 2022	Document 1	1-16	Part Access	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).

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).

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).

55G Procedure in IC review--revocation or variation of access refusal decision

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of:
 - (a) giving access to a document in accordance with the request; or
 - (b) relieving the IC review applicant from liability to pay a charge; or
 - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
 - (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
 - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.