



Australian Government

Department of Social Services

Our ref: FOI LEX 45243

Decision date: 26 August 2022

Applicant: JH

By email: [foi+request-9191-1a722856@righttoknow.org.au](mailto:foi+request-9191-1a722856@righttoknow.org.au)

Dear JH,

## Freedom of Information Request: LEX 45243

1. I refer to your correspondence received by the Department of Social Services (**the Department**) on 27 July 2022, in which you requested access to '*the Incoming Government Briefs (IGBs) provided from the Department to its respective Ministers since 21 May 2022*' under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).
2. The Department has identified three (3) documents relevant to your request (**the documents**). These three documents are the IGBs prepared by the Department after the federal election in May 2022, to address the change of Government. The IGBs were prepared for the:
  - Minister for Social Services
  - Minister for the National Disability Insurance Scheme and Minister for Government Services; and
  - Minister for Housing and Homelessness.
3. I have made a decision to grant you **part access** to the documents.
4. The documents to which I am granting you part access, are listed in **Appendix 1**, together with the relevant exemption provisions. I have provided access to an edited copy of the documents in accordance with section 22 of the FOI Act.

## Authority to make decision

5. I 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 subsection 23(1) of the FOI Act.

## Background

6. On 27 July 2022, you made the following request:



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*"I request the incoming government briefs provided from the Department to its respective Ministers since 21 May 2022."*

7. The Department sought confirmation on 4 August 2022 that you wished to continue with your request, given that redacted versions of the Briefs were available on the Department's Disclosure Log.
8. On 5 August 2022, you confirmed that you wished to proceed with your request.
9. On 10 August 2022, the Department formally acknowledged your request.
10. I have decided not to impose a charge in relation to this request, in accordance with Regulation 8 of *the Freedom of Information (Charges) Regulations 2019*.

## **Decision**

11. We have identified three (3) documents that fall within the scope of your request.
12. I am satisfied that all documents relevant to your request have been identified.
13. I have made a decision to grant you part access to the documents subject to sections 47B, 47C, 47D, 47E, 47F and 47G of the FOI Act. My reasons for this decision follow.

## **Material taken into account**

14. When making my decision I considered the following:
  - the terms of your original request;
  - the types of information and documents that are in the Department's possession;
  - consultation with relevant business areas on the documents falling within scope of your request;
  - courtesy consultation responses from the NDIA and Services Australia;
  - third party consultation response; and
  - the content of the documents that fall within the scope of your request.
15. I also particularly considered the following provisions of the FOI Act:



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- sections 11 and 11A which give the Australian community a legally enforceable right to access information held by the Government of the Commonwealth;
- section 3 which outlines the objects underpinning that right of access;
- section 11B to assess whether release of a conditionally exempt document was contrary to the public interest;
- sections 47B, 47C, 47D, 47E, 47F and 47G of the FOI Act as they are relevant to the document;
- section 22 which requires the release of exempt documents in an edited form in certain circumstances, including the removal of information that would reasonably be regarded as exempt or irrelevant.

16. I have also considered the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

17. Full extracts of the FOI Act provisions I have relied upon are in **Appendix 2**.

### Reasons for decision

18. I have decided to **grant part access** to the documents within the scope of your request in accordance with the following provisions of the FOI Act.

#### **Public interest conditional exemption—deliberative processes (section 47C)**

19. Section 47C of the FOI Act provides for the conditional exemption of documents in circumstances where disclosure would disclose a deliberative matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

20. Deliberative matter does not include purely factual material, however, where material was gathered as a basis for intended deliberations, this may be considered deliberative matter (see FOI Guidelines [6.67]).

21. Paragraph [6.59] of the FOI Guidelines provides that:

*'Deliberative process' generally refers to the process of weighing up or*



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*evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.*

22. I note that the deliberative processes conditional exemption does not require an assessment of whether harm would result from disclosure.
23. The documents subject to your request are the three (3) IGBs prepared by the Department in response to the recent change of Government as a result of the June 2022 federal election.
24. IGBs are an important part of the Government's briefing process when a change in Government occurs. The purpose of an IGB is to provide incoming Ministers with an overview of a Department's portfolio and to highlight key challenges and matters for immediate attention. I consider that this briefing process is deliberative in nature.
25. These three (3) IGB's were prepared by various staff members of the Department and signed off by the Department's Secretary, Ray Griggs. They provide extensive and detailed summaries relating to the functions, expenditure and activities of the Department and other Commonwealth Agencies, including Services Australia and the NDIS. This includes advice on Government activities that are currently the subject of deliberation by the Department, or by another Commonwealth or State agency.
26. Due to the very nature of a briefing document, the IGBs contain both factual and deliberative material.
27. Having reviewed the material contained within the documents and the advice of relevant Department internal business areas who assisted with the drafting of the IGBs and the courtesy consultation responses from Services Australia and the NDIS, I consider that they were prepared as part of a deliberative process and that they contain deliberative material, namely the Department's advice, opinions and recommendations to its incoming Ministers.
28. I also note that the Information Commissioner and AAT decisions of *Crowe and Department of the Treasury* [2013] AICmr 69 (29 August 2013), *Dan Conifer and Department of the Prime Minister and Cabinet (No. 2) (Freedom of information)* [2017] AICmr 117 (15 November 2017) and *Dreyfus and Secretary, Attorney-General's Department* [2015] AATA 962 all support the



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understanding that parts of IGBs will generally be appropriate for conditional exemption under section 47C of the FOI Act.

29. Accordingly, I have made a decision to redact certain deliberative material contained within the documents under section 47C of the FOI Act. I have also made a decision to redact material that is both factual and deliberative material, where is inextricably intertwined and cannot otherwise be separated (see FOI Guidelines [6.73]).
30. As section 47C is a conditional exemption, its application also requires the consideration of a public interest test, which I have discussed below.
31. Finally, I note that I have primarily relied on section 47C of the FOI Act to redact material contained within the documents. However, where that redacted material is both factual and deliberative in nature, I have also relied on other provisions of the FOI Act (sections 47B, 47D, 47E, 47F and 47G) which I have discussed further below.

#### ***Public interest conditional exemption—Commonwealth-State relations (section 47B(a))***

32. Section 47B(a) of the FOI Act provides for the conditional exemption of documents where disclosure would or could reasonably be expected to cause damage to relations between the Commonwealth and a State.
33. Paragraph 6.23 of the FOI Guidelines provides:

*A decision maker may consider that disclosure would, or could reasonably be expected to damage the working relations of the Commonwealth and one or more States (s 47B(a)). 'Working relations' encompass all interactions of the Commonwealth and the States,<sup>23</sup> from formal Commonwealth-State consultation processes such as the Council of Australian Governments through to any working arrangements between agencies undertaken as part of their day to day functions.*

34. Paragraph 6.34 of the FOI Guidelines further provides that:

*Decision makers may also need to consider future working relationships where disclosure may, for example:*

- impair or prejudice the future flow of information*
- adversely affect Commonwealth-State police operations or*



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*investigations • adversely affect the development of future Commonwealth-State projects.*

35. Parts of the documents contain information relating to current projects and agreements involving the Commonwealth and other State Government entities.
36. Relevant business areas of the Department were consulted on the potential release of this material and provided advice that the disclosure of the material would likely damage current and future relationships between the Department and these State Government entities and that disclosure would likely adversely affect the progression of projects currently under development and review.
37. I further understand that part of the success of these projects is the free flow of information between the Commonwealth and State and I consider that the release of this material at this point in time, may impair the future flow of similar information to the Commonwealth.
38. Accordingly, I have found that this material meets the criteria for exemption under section 47B(a) of the FOI Act and have made the decision to redact this material.
39. As section 47B is a conditional exemption, its application also requires the consideration of a public interest test, which I have discussed below.

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

40. Section 47D of the FOI Act provides a conditional exemption for documents where disclosure would have a substantial adverse effect on the financial and property interests of the Commonwealth or of an agency.
41. Paragraph 6.90 of the FOI Guidelines provides:

*The financial or property interests of the Commonwealth or an agency may relate to assets, expenditure or revenue-generating activities...*
42. For this conditional exemption to apply, the potential effect of disclosure must



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be both substantial and adverse.

43. Parts of the documents contain detailed information about the finances of the Department and, more broadly, the Commonwealth. This includes breakdowns of unprocessed debt's known as the 'Debt Book' and specific breakdowns of inter-agency expenditure. I understand this specific material is not currently publicly available.

44. I note that at various times during the year, Agencies are required to report Commonwealth financial information (e.g. in Agency Annual Report and in response to Senate Estimate enquiries). Outside of these times of publication, it is important that Agencies are able to swiftly brief relevant Ministers on point-in-time financial information. I note that figures relating to unprocessed debts are fluid and can change with time and as a result of further enquiries or the processing of payments owed to the Commonwealth. I consider that the release of such financial material would likely have a substantial adverse effect on the financial interests of the Commonwealth.

45. I have also had regard to the Information Commissioner decision of *Briggs and Department of the Treasury (No.3)* [2012] AICmr 22 (20 August 2012), which I consider to be relevant to the disclosure of the Department's debt book information at this point in time. At paragraphs [14] and [15] of the decision, the Information Commissioner provides:

*[14] As the Treasury advised Mr Briggs in its reasons for decision, the third paragraph of document 13 contains details about 'provisions made in the contingency reserve for a particular Budget measure'. The Treasury also states—and I can accept—that, '[w]hile it is publically known that the Government has allocated a capped amount in the Contingency Reserve to support delivery of the measure, details of the amount placed in reserve are not publically known pending the conclusion of negotiations with key stakeholders'.*

*[15] I agree with the Treasury that the disclosure of this information at this time would have a substantial adverse effect on the financial interest of the Commonwealth.*

46. Accordingly, I have found that this material meets the criteria for exemption under section 47D of the FOI Act and have made the decision to redact this material.

47. As section 47D is a conditional exemption, its application also requires the



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consideration of a public interest test, which I have discussed below.

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

48. Section 47E(d) provides for the conditional exemption of documents in circumstances 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.
49. As discussed above, IGBs are an important process of new Government and enable the efficient and effective briefing of new Ministers. To ensure that incoming Ministers are briefed appropriately, it is important that the Department is able to provide full and proper advice on its relevant functions and activities.
50. Where the IGBs contain intertwined factual and deliberative material, it is often the result of the author providing factual analysis or drawing conclusions as to the reasons why a particular policy or spending activity has or has not proceeded as planned, or why a particular group of the community has or has not used Commonwealth initiatives or services as expected.
51. The IGBs also contain information relating to the functions and activities of other Agencies including Services Australia and the NDIA and matters relating to Commonwealth staffing and appointments which are currently under deliberation or discussion.
52. I consider that the disclosure of this material would inhibit the ability of the Department and other Agencies (including Services Australia and the NDIA) to provide this level of advice or commentary, in amongst factual material which supports those opinions. I consider that this would ultimately have a substantial adverse effect on Agency operations, namely the ability to provide full and proper briefings to its incoming Ministers.
53. Accordingly, I have made a decision to redact parts of the document bundle in accordance with section 47E(d) of the FOI Act. As section 47E(d) is a conditional exemption, its application also requires the consideration of a public interest test, which I have discussed below.



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

54. Section 4 of the FOI Act confirms that *personal information* has the same meaning as is defined in section 6 of the *Privacy Act 1988* (Privacy Act), which is:

*...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.*

55. Section 47F(2) of the FOI Act provides the following factors that an FOI decision maker should take into account when considering the application of this conditional exemption provision:

- (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 matters the decision maker considers relevant.*

56. I have identified material within the documents that discloses the personal information of third parties or could otherwise reasonably identify third party members of the Australian community.

57. I am satisfied that this material meets the definition of personal information for the purposes of both the FOI Act and Privacy Act and that it would be unreasonable to release this material at this time, where it is currently under deliberation and is not otherwise in the public domain. I further note that the Department has obligations to protect the privacy of future, current and past staff.



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58. Accordingly, I have made a decision to redact this material under section 47F of the FOI Act. As section 47F is a conditional exemption, its application also requires the consideration of the public interest test, which I have discussed below.

**Public interest conditional exemptions—business (section 47G(1)(a))**

59. Business information is conditionally exempt and can be redacted under section 47G(1)(a) of the FOI Act:

*(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 ...*

60. Information about the projects of a third-party business and service provider are contained in the document bundle. I consider that this material meets the definition of business information for the purposes of section 47G(1) of the FOI Act.

**Public interest conditional exemptions—business (section 47G(1)(a))**

61. Section 47G(1)(a) of the FOI Act provides for the redaction of business information as follows:

*(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*



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*lawful business, commercial or financial affairs; or ...*

62. The document bundle contains information about the project of a third-party business and service provider. I consider that this material meets the definition of business information for the purposes of section 47G(1) of the FOI Act.

63. Having consulted with this business, I am also satisfied that the release of this material could reasonably be expected to adversely impact that third party's commercial and business affairs. I understand that much of this material is not publicly known and that there is significant concern that disclosure could lead to competitors launching similar project ideas, which would ultimately adversely affect the efficacy of the project.

64. Accordingly, I have made a decision to redact parts of the document bundle in accordance with section 47G(1)(a) of the FOI Act. As section 47G is a conditional exemption, its application also requires the consideration of a public interest test, which I have discussed below.

#### ***Application of the public interest test – sections 47B, 47C, 47D, 47E, 47F and 47G***

65. Where material is identified as conditionally exempt, section 11A(5) provides that an agency must give the person access to the document **unless** (in the circumstances) access to the document would, on balance, be contrary to the public interest.

66. In order to assess whether release of the conditionally exempt material would be contrary to the public interest, I have considered that disclosure would promote the objects of the FOI Act by providing access to government held information.

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

- (a) disclosure of the deliberative material contained within the documents would likely have a demeaning effect on the value of the advice provided in these and future IGBs;
- (b) disclosure of the deliberative material contained within the documents



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would likely adversely affect or limit the extent that full and frank advice is included in future IGBs;

- (c) disclosure could reasonably be expected to prejudice Commonwealth and state relations;
- (d) disclosure could reasonably be expected to prejudice the success of projects currently underway between the Department and other State and Commonwealth agencies;
- (e) disclosure could reasonably be expected to prejudice the financial or property interests of the Commonwealth;
- (f) disclosure could prejudice a person's right to privacy;
- (g) disclosure could reasonably be expected to adversely affect the proper and efficient conduct of the operations of the Department and other Commonwealth Agencies, namely the full and proper briefing of its incoming ministers; and
- (h) disclosure could be expected to adversely affect the commercial and business affairs of a third-party business and service provider who is currently engaging with the Department.

68. I also note that the public interest factors against disclosure of certain deliberative material contained within IGBs more generally was discussed at paragraph [107] of the decision in *Dreyfus and Secretary, Attorney-General's Department* [2015] AATA 962, where Her Honour, Justice Bennett observed that:

*The combination of factors against release in the public interest include the nature of an IGB to a new Minister in a newly elected incoming Government, the evidence ... explaining the importance of maintaining the confidentiality of not only the content of this IGB but also on the preparation of future IGBs, the need for continuity of frankness, candour and completeness in the advice and commentary contained in IGBs, the extent of deliberative matter contained in such a document and the impact on the preparation of future IGBs if access were granted ... [The] context requires preparation of the document unhindered by apprehension that the IGB, prepared as a confidential brief to an incoming new Attorney-General, will be released. These factors were relevant when the IGB was being prepared and remain relevant today.*

69. I am satisfied that I have not considered any of the listed irrelevant factors for consideration, as set out in section 11B(4) of the FOI Act.



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70. In balancing the public interest factors for and against disclosure, I have placed greater weight on the factors against disclosure and am satisfied that the public interest is to withhold the exempt material.

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

71. As explained above, some of the documents contain material which I have decided to redact under FOI Act exemption provisions.

72. In accordance with section 22 of the FOI Act, I have prepared the documents for release by removing the exempt material.

**Release of documents**

73. The documents with redactions applied in accordance with sections 47B, 47C, 47D, 47E, 47F and 47G of the FOI Act are **enclosed**.

**Disclosure Log Decision**

74. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. Accordingly, details of your request will be published on the Department's FOI Disclosure Log.

75. Please note that the Department does not publish details of FOI applicants, it only publishes details of the FOI request and the documents released in response to the request.

**Your rights of review**

76. Information about your rights to seek a review of this decision are at Attachment A.



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77. Should you have any enquiries concerning this matter please do not hesitate to contact the FOI team by email at [FOI@dss.gov.au](mailto:FOI@dss.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Leah Kennedy'.

Leah Kennedy  
Deputy Chief Counsel  
Legal Services Group

26 August 2022



## Appendix 1

LEX 45243

Document No.	No. of pages	Date	Description	Exemption provision
1	176	May 2022	IGB to Minister for Social Services	Sections 47B, 47C, 47D, 47E, 47F, 47G
2	119	May 2022	IGB to Minister for the National Disability Insurance Scheme and Minister for Government Services	Sections 47B, 47C, 47D, 47E, 47F, 47G
3	63	May 2022	IGB to Minister for Housing and Homelessness	Sections 47B, 47C, 47D, 47E and 47F



## **Appendix 2**

### **Schedule of relevant provisions used in making this decision FOI LEX 45243**

Excerpts from the *Freedom of Information Act 1982* (Cth)

#### **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



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- (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;



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- (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.



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### 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.



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#### 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.

#### 47B Public interest conditional exemptions--Commonwealth-State relations etc.

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

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State;
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or
- (d) would divulge information or matter communicated in confidence by or on behalf of a Norfolk Island authority, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or
- (f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to a Norfolk Island authority or to a person receiving the communication on behalf of a Norfolk Island authority.

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



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

##### *General rule*

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth; or
- (d) the Government of Norfolk Island.

##### *Exceptions*

(2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

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

(3) This section does not apply to any of the following:

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

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

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

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

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

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;



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- (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)