



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

Decision and reasons for decision of Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Client Access and Rehabilitation Branch, Department of Veterans' Affairs

Applicant: Mr Arthur Jordan

Decision date: 24 February 2023

FOI reference number: LEX 55101

Sent by email: foi+request-9689-910c5728@righttoknow.org.au

Dear Mr Jordan,

Freedom of Information Request: LEX 55101

Decision

1. The Department of Veterans' Affairs (**Department**) has undertaken a reasonable search of its records and has identified one (1) document bundle relevant to your request.
2. I have made a decision to grant access in part to one (1) document bundle.
3. The document bundle that I have chosen to grant access in part is set out in **Schedule 1**, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of the document, modified by deletions in accordance with section 22(2) of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

Authority to make decision

4. I, Ramona (Position Number 62336362), Assistant Director, Information Access Unit, Client Access and 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

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

'...I refer you to evidence (on oath) given to the Royal Commission into Defence and Veterans Suicide by Ian Lindgren of the APPVA and I quote:- "She (The Secretary of DVA) placed me on a committee known as the ESORT Multi-Act Working Group, which -- I have actually never met anyone who has heard of it before, but it is actually an interesting venue to attend".

I seek copies of any and all documents (including drafts) that relate to the history of the ESORT Multi-Act Working Group, its inception, members invited to attend and why, who they represent, their roles and responsibilities and all minutes taken and reports prepared for the benefit of any Ministers of DVA.

To be clear, I do NOT consent to business email addresses, names (in full) or business telephone/mobile numbers being redacted. Personal or private details MAY be redacted...'

6. On 13 December 2022, the Department acknowledged your request via email.
7. On 24 January 2023, you were advised that the Department was required to undertake a consultation with third parties in accordance with sections 27 and 27A of the FOI Act. I have taken the third parties' views into consideration in making my decision.
8. As extensions of time were applied to process your request in accordance with sections 15(6) and 15AA of the FOI Act, a decision on your request is due by 24 February 2023.
9. 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*.

Material taken into account

10. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to grant partial access to the documents follows.
11. I have taken the following material into account in making my decision:

- the terms of your request on 11 December 2022;
- the types of information and documents that are in the Department's possession;
- the content of the documents 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 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 47C Public interest conditional exemptions--deliberative processes
 - Section 47E Public interest conditional exemptions--certain operations of agencies
 - Section 47F Public interest conditional exemptions--personal privacy
 - Section 47G Public interest conditional exemptions--business
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
- the views of third parties consulted by the Department under sections 27 and 27A of the FOI Act.

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

Reasons for decision

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

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

14. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinions, advice or recommendations 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.

15. It is evident that parts of the documents in scope of your request contain 'deliberative matter' in the form of advice, opinions and recommendations on a range of topics brought before the ESORT Multi-Act Claims Working Group for consideration and discussion. Some of this information is draft documents that were/are still under deliberation.
16. I consider that disclosure of this information prematurely could inhibit or curtail the ability of the Department to receive and provide candid and comprehensive advice, opinions and recommendations, thereby diminishing the quality and usefulness of the advice provided, and having a detrimental effect on the Department's consideration of the matters raised.
17. Section 47C does not include a requirement to identify any specific harm that will or could result from disclosure of deliberative material. However, for the purposes of determining the public interest factors for and against disclosure (discussed further below), it is useful to acknowledge any such identifiable harm. In this case, I find that harm would likely result from disclosure as the release of information not yet otherwise publicly available would likely undermine the decision-making process of government.
18. The term 'deliberative matter' in subsection 47C(1) excludes operation information or purely factual information (subsection 47C(2)). While the relevant documents may contain factual information that is not entirely deliberative in nature, the information is either an integral part of the deliberative content or it is so intertwined with it that it is impractical to excise it. Any such factual information falls within the exemption under section 47C.
19. I have decided that the parts of documents which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption under section 47C. 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--certain operations of agencies (sections 47E(c) and 47E(d))

20. The documents within the scope of your request contain the names and contact information of staff of the Department. I have decided that subsections 47E(c) and 47E(d) apply to this material, as identified in **Schedule 1**.
21. 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.

22. 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.
23. 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. 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. 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.
24. 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.
25. An adverse effect on the Department's ability to manage staff could reasonably be expected to result from widespread staff concern about disclosure of identifying information about staff members. Staff members may experience concern even when not based on personal experience of harassment.
26. I also note that the Department provides a wide range of services to its clients. To facilitate efficient conduct of its operations, the Department has established channels for communication on specific topics and in relation to specific services. These channels, such as email inboxes and telephone support lines, enable services to be delivered efficiently by directing clients to the most appropriate point of contact. In addition, the Department is able to manage staffing efficiently by providing staff with access to communication points attached to a role rather than to an individual.
27. Disclosure of identifying information about staff members in these documents would disclose contact details for individual staff members, which is not generally available. Once

contact details for individual staff members are disclosed they are likely to become publically known through private correspondence. Making it possible for clients to address correspondence to individual staff members or to seek to contact individuals directly is likely to undermine Departmental arrangements to channel communications based on role rather than individual. Reduced efficiency in communication and delivery of services could reasonably be expected to result.

28. The document bundle also contains some information relating to internal processes or procedures that are not publicly known and relate to, or affect, the operations of the Department. I find that the Department's operations would be affected if this information were disclosed. It is essential that staff can provide full and thorough consideration to opinions, advice and outcomes when engaging in operational functionalities. The ability and willingness of staff to do so would be adversely affected if certain information could be disclosed to the public for comment. Release of the exempt information may also impact on the ability of the Department to conduct its operations if parties cannot be confident that certain internal information will be kept confidential.
29. Accordingly, for the reasons outlined above I consider that certain material, as identified in **Schedule 1**, meets the criteria for conditional exemption under subsections 47E(c) and 47E(d) 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)

30. 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).
31. 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.
32. 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.

33. 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.

34. The document bundle outlined in **Schedule 1** contains the names and contact information of staff of the Department. Contact details of an individual staff member, such as their email address, phone number and signature is personal information about that person. The documents also contain similar personal information of several third parties.

35. The Department has policies and procedures to support staff within its operating environment and to meet its obligations as an employer to provide a safe working environment. Some policies restrict the amount of identifying information generally provided by individual staff members to clients. As outlined above, staff are generally required to identify themselves in correspondence with clients by a given name and position number. This reduces the likelihood that individuals are reasonably identifiable in a different context. For example, it reduces the likelihood that a private social media profile can be linked with an individual who is a staff member of the Department.

36. I consider that disclosure of personal information of individual staff members in the document would be unreasonable because it would be inconsistent with Departmental policies and procedures designed to support a safe and efficient working environment. Additionally, it would be unreasonable because it would be contrary to the expectations of those individual staff members, who may rely on those Departmental policies and procedures for assurance of their personal privacy.

37. As mentioned, parts of the document bundle also contain the names and contact information of third parties, including members of the Working Group. Following

consultation with the third parties, I find that disclosure of their personal information would be unreasonable in the circumstance as the information relates specifically to the individuals, and is generally not well known or publicly available. Further, no public purpose or interest in increasing transparency of government would be achieved through the release of the personal information.

38. Accordingly, I have decided that the parts of documents which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act, discussed below.

Public interest conditional exemptions—business (section 47G)

39. Section 47G(1)(a) of the FOI Act provides that a document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

40. The document bundle contains some business information relating to third parties. I find that disclosure of this information, which is not otherwise publicly known in relation to the Working Group, may affect, if not deter, businesses in future dealings with the Department by preventing them from confidently providing information knowing it could be made publicly available through freedom of information processes. This would result in a loss of trust in the Department and likely prejudice the future supply of such information to, and interactions with, the Department.

41. Accordingly, I have decided that parts of the document bundle listed as exempt in accordance with this provision in the document bundles, 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), discussed below.

Application of the public interest test – sections 47C, 47E(c), (d), 47G and 47F

42. 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.
43. 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 by providing access to government held information; and
 - (b) disclosure would inform debate on matters of public importance.
44. 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) disclosure could be expected to adversely affect the delivery of services by the Department in accordance with its functions;
 - (c) 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;
 - (d) disclosure of the deliberative material would, or could reasonably be expected to, impede the Department's ability to give and receive advice, opinion and recommendations;
 - (e) disclosure of the deliberative material could reasonably be expected to prejudice the Department's ability to obtain confidential information;
 - (f) disclosure of the deliberative material could reasonably be expected to prejudice the Department's ability to obtain similar information in the future; and
 - (g) disclosure of the deliberative material could be detrimental to existing and future business relationships.

45. I have placed greater weight on the factors against disclosure. 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. Further, I consider that there is little public interest in the disclosure of information identifying individuals who are, or have been, staff members in roles more junior than the Senior Executive Service. Disclosure of that 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.
46. I also consider that the disclosure of the deliberative matter contained in parts of document bundle would have an adverse effect on enabling the Department and its working groups to communicate freely and give advice, opinions and recommendations, and have the opportunity to deliberate on such information.
47. 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.
48. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

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

49. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.
50. As explained above, some of the documents subject to your request contain exempt and/or irrelevant information that is out of scope of your request.
51. On this basis, I have prepared the documents for release by removing the exempt and irrelevant material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

Access to documents

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

Information Publication Scheme

53. 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.

54. 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.

Your rights of review

55. If you are dissatisfied with my decision, you may apply for internal review or request the Office of the Australian Information Commissioner (**OAIC**) review my decision. We encourage you to seek internal review as a first step to resolve any concerns you may have.

Internal review

56. Under section 54 of the FOI Act, you may apply in writing to the Department for an Internal Review of my decision. The Internal Review application must be made within 30 days of the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

57. You can make your application for Internal Review in one of the following ways:

Post: Information Access Unit
Department of Veterans' Affairs
GPO Box 9998, Brisbane QLD 4001

Email: Information.Access@dva.gov.au

OAIC review

58. 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
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

59. 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

60. 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

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

24 February 2023



Schedule of documents

Applicant: Mr Arthur Jordan

Decision date: 24 February 2023

FOI reference number: LEX 55101

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	Various	ESORT MACWG Document Bundle	1-624	Part Access	s 22, s 47C, s 47E, s 47G, s 47F



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).

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).

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).