



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of Julie (Position Number 62212962), Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

Applicant: Julie via Right to Know
Decision date: 12 November 2018
FOI reference number: FOI 25115
By email: foi+request-4873-e090aaf0@righttoknow.org.au

Dear Julie

Freedom of Information Request: FOI 25115

1. I have made a decision to release forty three (43) documents relevant to your request in part.

Summary

2. I, Julie (Position Number 62212962), Legal Officer, Information Law Section, am an officer authorised by the Secretary of the Department of Veterans' Affairs (**Department**) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982 (FOI Act)*.
3. On 11 October 2018, you made a request for access to documents in the possession of the Department. Your request sought access to:

"...Under FOI I seek copy of all documents (including emails, sms messages, file notes and any other 'document' type the FOI Act recognises) between the DVA officers in the Information Law area of the Legal Services & Assurance Branch and any other area of the DVA (including the Information Law area) and any external party that refers to, or contains mention of (the number is the search key, not the whole text):

*^DVA FOI 24057,
^DVA FOI 24563
^DVA FOI 24297
^DVA FOI 24465*

The scope period is 17 August 2018 to 11 October 2018 inclusive. Duplicate and identical documents are to be excluded, so only one version is copied.

Where documents consist of the same chain of identical emails, only the most recent chain is to be copied (again, to exclude unnecessary duplicates)....”

4. As no extensions of time have been applied to process your request, a decision on your request is due by 12 November 2018.
5. I have decided not to impose a charge in relation to this request, in accordance with regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*.
6. The Department has undertaken a reasonable search of its records and has identified forty three (43) documents relevant to your request, as set out above. The documents relevant to your request are listed at **Schedule 1**.

Decision

7. I have made a decision to grant you part access to forty three (43) documents.
8. Details of these documents are detailed in **Schedule 1**, together with applicable exemption provisions under the FOI Act. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by redactions in accordance with section 22(2) of the FOI Act.
9. Parts of documents or full pages that contain information outside of the date range you provided, duplicates of email chains and/or information irrelevant to the scope of your request have been redacted or removed from the document, where possible, for your convenience, in accordance with section 22 of the FOI Act

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 part access to the documents follow.
11. I have taken the following material into account in making my decision:
 - the terms of your request dated 12 October 2018;
 - the types of documents that are in the possession of the Department;

- 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 provision[s] of the FOI Act relevant to my decision:
 - Section 11B Public interest exemption – factors
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 42 Documents subject to legal professional privilege
 - Section 47C Public interest conditional exemptions--deliberative processes
 - Section 47E Public interest conditional exemptions--certain operations of agencies
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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** to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act.

Documents subject to legal professional privilege (section 42)

14. Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege. The FOI Guidelines provide that, at common law, determining whether a communication is privileged requires a consideration of:

- (a) whether there is a legal adviser-client relationship;
- (b) whether the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation;
- (c) whether the advice given is independent; and
- (d) whether the advice given is confidential.

Legal adviser-client relationship

15. Due to the complex nature of one of your requests and the time required to undertake the work involved in finalising that matter (FOI 24563), the Department engaged an independent external legal

advisor. I am satisfied that the external legal advisor was employed by the Department as its legal adviser to provide legal assistance in relation to your request and that a lawyer-client relationship was established.

Dominant purpose

16. The correspondence between the Department and the external legal advisor were made for the dominant purpose of obtaining or giving legal advice in connection with your FOI request. They comprise of emails with the Department discussing your FOI request.

Confidentiality

17. The document to which the exemption has been applied contain correspondence made in the content of the legal adviser-client relationship. They were made on the understanding that the usual and well-established relationship of confidence between a solicitor and a client governed the communication.

No waiver

18. Section 42(2) of the FOI Act provides that a document is not exempt because of subsection (1) if the person entitled to claim privilege in relation to the production of the document in legal proceedings waives that claim.
19. A person who would otherwise be entitled to the benefit of privilege may waive that privilege, either expressly or by implication. Privilege is waived if the conduct of the person seeking to rely on the privilege is inconsistent with the maintenance of the privilege. This will depend on the circumstances of the case, including whether the disclosure was for any advantage.
20. There is no evidence to indicate that the substance of the communications in these documents has been disclosed more broadly, or used in any way that would be inconsistent with maintaining the confidentiality of the communications. I am also unwilling to waive privilege for the purpose of releasing documents under the FOI Act.
21. Accordingly, I am satisfied that legal professional privilege exists over the documents I have identified at **Schedule 1**, and that they are exempt under section 42 of the FOI Act. As section 42 is not a conditional exemption I am not required to consider public interest.

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

22. 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, 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.

23. The FOI Guidelines explain:

... the deliberative processes involved in the functions of an agency are its thinking processes—the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

24. Further, while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact, it may potentially come within the deliberative document exemption.
25. Parts of the identified documents form part of a deliberative process. The exempt information contain opinion, advice and/or recommendations put forward by Departmental staff or external legal advisors relating to the FOI process and the exchange of opinions and reflections on a particular proposed decision or course of action. The Department's FOI process is critical to ensuring the Department promotes the objects of the FOI Act.
26. Further, some of the exempt information is subject to ongoing FOI requests that have not yet been finalised. I am satisfied the premature disclosure of these documents could reasonably be expected to adversely affect the Department's FOI functions. If documents subject to the Department's FOI decisions and processes are made available through other processes such as an FOI request about an FOI matter, particularly prior to a matter having been finalised, applicants would bypass the FOI processes and options as prescribed and provided for under the FOI Act.
27. Further, it is important for an effective FOI process and ultimately, effective decision making, that staff within the Department are able to communicate freely and openly about concerns, options or other considerations in either responding to, managing or finalising FOI requests. The ultimate decision will sit within the Information Law Section, but information provided to and from other staff assist in that decision making process; whether a decision ultimately substantiates those consultations or not. Releasing this type of information is likely to have an adverse impact on the Department, where the Department, particularly the Information Law Section, rely on other areas of the Department to freely and promptly assist in complying with the FOI Act.
28. 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.

Application of the public interest test:

29. 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.
30. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
 - (a) disclosure would promote the objects of the FOI Act.
31. I also considered the following factors which do not favour disclosure:
 - (a) disclosure 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 an agency, a Minister or the Government of the Commonwealth; and
 - (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
32. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
33. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

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

34. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure 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; and

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

35. I have decided that the parts of documents which are listed as exempt in accordance with this provision in **Schedule 1** contain information that if released, could have a substantial adverse effect on the management of personnel by the Department (section 47E(c)) and the proper and efficient conduct of the operations of the Department (section 47E(d)). Where the document contains information exempt under section 47E of the FOI Act, an edited copy has been prepared pursuant to section 22 of the FOI Act with these details redacted.
36. Because of the way the Department constructs the email addresses of individual officers, I have decided to redact the surnames of non-Senior Executive departmental staff within direct email addresses and email signature blocks to give effect to this conditional exemption. I have also decided to redact the direct contact details of those staff.
37. Certain processes and specific channels of communication have been implemented by the Department which enable clients and other relevant stakeholders to contact the Department in a way that ensures all Departmental resources are managed as efficiently as possible, and staff wellbeing and safety ensured. A large portion of staff have the ability to utilise a generic point of contact through centralised email addresses and contact details. In some instances, staff will provide their first name and position number where appropriate when dealing directly with clients and other stakeholders.
38. The Department's role is to provide support and information to veterans and their dependents, Australian Defence Force personnel and other categories of people. The services and support which the Department provides include pensions and compensation, health care, rehabilitation and counselling services, amongst other things. It is important that the Department is able to continue to provide these services and to carry out the other legislative functions and administrative and operational processes required of them. Certain processes and specific channels of communication have been implemented which enable clients and other relevant stakeholders to contact the Department in a way that ensures all Departmental resources are managed as efficiently as possible.
39. Release of the surnames and direct contact details of those staff in the circumstances would adversely affect the Department as the established lines of communication could then be bypassed. It is reasonable to expect that this would disrupt and adversely affect the operations of the Department.
40. Furthermore, the release of staffs' personal details could have a substantial adverse effect on the management or assessment of personnel as well as an adverse effect on the proper and efficient conduct of the operations of the agency including the inability of the Department to retain staff or effectively manage the wellbeing and safety of our staff. Relevantly, some staff have been targeted, insulted or harassed based on the release of their name and/or direct contact details, both internally as well as online via public internet sites. This presents unnecessary challenges in managing the

welfare of our staff and directly affects the ongoing management and retention of personnel by the Department. Consequently it would not be in the public interest to release staff surnames and direct contact details in these circumstances.

41. Additionally, as noted above, the documents contain sensitive information about the Department's operations, including where this forms assistive material for FOI officers to consider when making decisions under the FOI Act regarding which (if any) exemptions are applicable. Disclosure of this information could reasonably be expected to diminish the type of information and assistive material provided by business areas to assist Information Law Section in making well-informed decisions and subsequently, the quality of the decisions made in accordance with the FOI Act.
42. As noted above, it is important for an effective FOI process and ultimately, effective decision making, that staff within the Department are able to communicate freely and openly about concerns, options or other considerations in either responding to, managing or finalising FOI requests, including where their full name and contact details may or may not be released under the FOI Act. The ultimate decision will sit within the Information Law Section, but information provided to and from other staff assist in that decision making process; whether a decision ultimately substantiates those consultations or not. Releasing this type of information is likely to have an adverse impact on the Department, where the Department, particularly the Information Law Section, rely on other areas of the Department to freely and promptly assist in complying with the FOI Act.
43. 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.

Application of the public interest test:

44. 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.
45. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
 - (a) disclosure would promote the objects of the FOI Act, including enhance the scrutiny of government decision making.
46. I also considered the following factors which do not favour disclosure:
 - (a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth;

- (b) 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;
- (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- (d) disclosure could reasonably be expected to harm the interests of an individual or group of individuals;
- (e) disclosure could reasonably be expected to prejudice the management function of an agency.

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

48. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Access to documents

49. The documents released to you in accordance with the FOI Act are enclosed.

Information Publication Scheme

50. In accordance with section 11C(1)(a) of the FOI Act, the document issued to you will not be made available in the disclosure log as it relates to your personal information insofar as it relates to your FOI requests, and it would be unreasonable to publish this information.

Your rights of review

51. 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 as it may provide a more rapid resolution of your concerns.

Internal review

52. 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.

53. You can make your application for internal review in one of the following ways:

Post: Legal Services & Assurance Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

OAIC review

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

55. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

56. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

Post: Legal Services & Assurance Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.access@dva.gov.au

Yours sincerely,

Julie (Position Number 62212962)

Legal Officer

Information Law Section | Legal Services & Assurance Branch

Legal Assurance and Governance Division

12 November 2018



Schedule of documents

Applicant: Julie via Right to Know

Decision date: 12 November 2018

FOI reference number: FOI 25115

Document reference number	Date of document	Document description	Page numbers	Decision	Exemption provision and/or irrelevant material removed
1	No date	FOI 25047: File notes	1-3	Release in part	s 22 s 47E(c) s 47E(d)
2	22/08/2018	FOI 25047: Internal correspondence	4-5	Release in part	s 22 s 47E(c) s 47E(d)
3	22/08/2018	FOI 25047: FOI Acknowledgement	6	Release in part	s 47E(c) s 47E(d)
4	30/08/2018	FOI 25047: Internal correspondence	7-37	Exempt in full	s 22 s 47C s 47E(d)
5	17/09/2018	FOI 25047: Decision covering email enclosing decision letter Documents subject to that request have since been provided to you in FOI 24563. As such, they have not been included here.	38-50	Release in full	s 22
6	18/09/2018	FOI 24563: Email from you	50-51	Release in full	s 22
7	19/09/2018	FOI 24563: Acknowledgement of internal review	52-54	Release in full	s 22
8	No date	FOI 24563: File notes	55-57	Release in part	s 22 s 42 s 47C s 47E(c) s 47E(d)

9	18/09/2018	FOI 24563: Internal review request	58-60	Release in part	s 22 s 47E(c) s 47E(d)
10	Various within September 18	FOI 24563: Internal correspondence	61-136	Release in part	s 22 s 42 s 47C s 47E(d)
11	No date	FOI 24563: Copy of FOI Act provisions	137-147	Release in full	
12	No date	FOI 24297: LEX notes	148-149	Release in part	s 22 s 47C s 47E(c) s 47E(d)
13	04/09/2018	FOI 24297: Internal correspondence	150	Release in part	s 22 s 47E(c) s 47E(d)
14	05/09/2018	FOI 24297: Acknowledgement	151	Release in part	s 22 s 47E(c) s 47E(d)
15	05/09/2018	FOI 24297: Internal correspondence	152-156	Release in part	s 22 s 47C s 47E(d)
16	02/09/2018	FOI 24297: Decision covering email enclosing decision letter The 11 documents identified in FOI 24297 have not been reproduced in this FOI. Please see that decision noting access was refused in full to all documents subject to the request.	157-171	Release in full	
17	No date	FOI 24465: File notes	172-176	Release in part	s 22 s 47C s 47E(c) s 47E(d)
18	12/09/2018	FOI 24465: Internal correspondence	177-178	Release in part	s 22 s 47E(c) s 47E(d)
19	26/09/2018	FOI 24465: Internal correspondence	179-183	Exempt in full	s 47C s 47E(d)
20	27/09/2018	FOI 24465: Email from you	184-186	Release in full	s 22
21	03/10/18	FOI 24465: Internal correspondence	187	Exempt in full	s 22 s 47C s 47E(d)

22	03/10/2018	FOI 24465: Email from you	188-189	Release in full	s 22
23	03/10/2018	FOI 24465: Internal correspondence	190-192	Exempt in full	s 22 s 47C s 47E(d)
24	03/10/2018	FOI 24465: Email to you	193-194	Release in full	s 22
25	03/10/2018	FOI 24465: Internal correspondence	195-198	Release in part	s 22 s 47C s 47E(c) s 47E(d)
26	12/10/2018	FOI 24465: Notice of extension request	199-200	Release in full	s 22
27	17/09/2018	FOI 24465: FOI Acknowledgment	201	Release in full	s 22
28	17/09/2018 & 20/09/18	FOI 24465: Internal correspondence	202-206	Exempt in part	s 22 s 47C s 47E(d)
29	27/09/2018	FOI 24465: Request for extension of time	207	Release In full	s 22
30	03/10/2018	FOI 24465: Internal correspondence	208-210	Exempt in part	s 47C s 47E(d)
31	03/10/2018	FOI 24465: Email from you	211-214	Release in full	s 22
32	03/10/18-08/10/18	FOI 24465: Exempt document	215-221	Exempt in part	s 22 s 47C s 47E(d)
33	10/10/2018	FOI 24465: Email from you	222-223	Release in full	s 22
34	No date	FOI 24432: File notes	224-226	Release in part	s 22 s 47C s 47E(c) s 47E(d)
35	11/09/2018	FOI 24432: Internal correspondence	227-229	Release in part	s 22 s 47E(c) s 47E(d)
36	12/09/2018	FOI 24432: Acknowledgement	230-231	Release in full	s 22
37	No date	FOI 24432: Exempt document	232	Exempt in part	s 47C s 47E(d)
38	27/09/2018	FOI 24432: Emails with you about the request for extension of time	233-239	Release in full	s 22
39	03/10/2018	FOI 24432: Email from you	240-241	Release in full	s 22
40	08/10/18-10/10/18	FOI 24432: Internal correspondence	242-247	Exempt in full	s 47C s 47E(d)
41	10/10/2018	FOI 24432: Email from you	248-249	Release in full	s 22

42	17/4/18	FOI 24432: Internal correspondence and documents that were attached to another email within scope	250-266	Exempt in full	s 47C s 47E(d)
43	12/10/18	FOI 24432: Internal correspondence	267-275	Exempt in full	s 47C s 47E(d)



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).

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.

42 Documents subject to legal professional privilege

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
 - (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
 - (b) the information is operational information of an agency.

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).