



Divisional guide for processing FOI requests

This guide explains the activities divisions are responsible for, and the expected timeframes, in relation to FOI requests.

Preliminary stage		
Action		Expected timeframe
1.1	Hold a scoping meeting This meeting is attended by the decision-maker (if possible), divisional staff and a member of the FOI team. It is to discuss the FOI process including clarification of the request if needed, assessment of charges, departmental approaches to handling FOI requests, redaction of staff names and timelines.	Within 2 working days of receiving the request
1.2	Identification of documents within scope <i>Searches need to be undertaken of paper files, electronic documents, emails, unfiled documents, archived files etc.</i>	For more simple requests, within 2 working days of the scoping meeting
1.3	For simple requests, provide documents to the FOI team For more complex requests, provide advice on the number of files, documents and stakeholders (third parties) to the FOI team. Create a record of the searches and the time spent. This is to enable the FOI team to prepare an estimate of charges notice to return to the decision-maker for signature.	For more complex requests, within 4 working days of the scoping meeting
1.4	Decision-maker signs the estimate of charges notice. Includes notice of third party consultation (where appropriate).	To be returned to the FOI team on the same day or the following day
<i>The FOI team will then send the charges notice to the applicant. It is possible that further negotiation of scope could occur during this time. The FOI processing clock stops until the applicant pays the required deposit or charges are waived by the decision-maker.</i>		

Processing stage		
<i>This stage commences upon advice from the FOI team that deposit/payment has been received and the processing of the request is to continue. The FOI clock restarts.</i>		
Action		Expected timeframe
2.1	Decision maker to consider alerting the relevant adviser that the FOI is being processed and that a brief may or may not be submitted formally for information. This is to ensure that the MO, as a stakeholder and in the spirit of 'no surprises', is aware of the nature and scope of the request.	As soon as possible after receiving advice that payment has been made by the applicant
2.2	Decision maker/ line area provides advice to the FOI team regarding content of the documents, specifically about any harm and/or damage that could result from their release. Documents should also be provided to the FOI team, if not already provided at 1.3. FOI team to identify relevant exemption provisions if applicable. This is to enable the FOI team to prepare a proposed statement of reasons, and prepare the documents for consideration by the decision maker which includes making appropriate redactions.	Within 5 working days of receiving advice that payment has been made
<i>During this time the FOI team sends any consultation letters to affected third parties seeking comment on the release of the documents. The statutory period is extended by an additional 30 days if consultation is to occur.</i>		

Release stage		
<i>This stage commences upon FOIC advice that the decision-record has been sent to the decision-maker for consideration and finalisation</i>		
Action		Expected timeframe
3.1	Decision maker considers the relevant documents and draft statement of reasons, and advises the FOI team of any changes or concerns.	Within 1 day of receiving the proposed decision-record
3.2	Decision maker signs the draft statement of reasons, advice for release of documents, advice for publication of documents. These are then provided to the FOI team.	Within 1 day of receiving the decision package.
3.3	Decision maker to brief relevant adviser if they decide appropriate to do so.	On the day the decision is signed or not less than 2 full business days before the release date.
3.4	FOI team emails any documents that are to be released to the applicant, to the relevant adviser and DLO in MOs with portfolio responsibility and to the Media team.	Not less than 2 full business days before the release date.
3.5	Decision and documents are released to the applicant.	The day the decision is due.
<i>Documents are published on the disclosure log in accordance with the signed advice for release, and within 10 days of being sent to the applicant.</i>		



Australian Government

Department of Infrastructure and Regional Development

FOI

Guide for processing FOI requests

This guide explains the activities that the AMO and GPR are responsible for, and the expected timeframes, in relation to FOI requests.

Preliminary stage		
Action		Expected timeframe
1.1	Hold a scoping meeting This meeting is attended by the decision-maker (if possible), appropriate AMO staff and the FOI Coordinator (FOIC). It is to discuss the FOI process including clarification of the request if needed, assessment of charges, departmental approaches to handling FOI requests, redaction of staff names and timelines.	Within 2 working days of receiving the request
1.2	Identification of documents within scope <i>Searches need to be undertaken of paper files, electronic documents, emails, unfiled documents, archived files etc.</i>	For more simple requests, within 2 working days of the scoping meeting
1.3	For simple requests, provide documents to the FOIC For more complex requests, provide advice on the number of files, documents and stakeholders to the FOIC This is to enable the FOIC to prepare an estimate of charges notice to return to the decision-maker for signature.	For more complex requests, within 4 working days of the scoping meeting
1.4	Decision-maker signs the estimate of charges notice or waives charges	To be returned to the FOIC on the same day or the following day
<i>The FOIC will then send the charges notice to the applicant. It is possible that further negotiation of scope could occur during this time. The FOI processing clock stops until the applicant pays the required deposit or charges are waived by the decision-maker.</i>		

Processing stage		
<i>This stage commences upon advice from the FOIC that deposit/payment has been received and the processing of the request is to continue. The FOI clock restarts.</i>		
Action		Expected timeframe
2.2	Provide advice to the FOIC regarding content of the documents, specifically about any harm and/or damage that could result from their release. Documents should also be provided, if not already provided at 1.3 This is to enable the FOIC to prepare a proposed statement of reasons, and prepare the documents for consideration by the decision maker which includes making appropriate redactions.	Within 5 working days of receiving advice that payment has been made
<i>During this time the FOIC sends any consultation letters to affected third parties seeking comment on the release of the documents. The statutory period is extended by an additional 30 days if consultation is to occur.</i>		

Release stage		
<i>This stage commences upon FOIC advice that the decision-record has been sent to the decision-maker for consideration and finalisation</i>		
Action		Expected timeframe
3.1	Decision-maker signs statement of reasons. This is provided to the FOIC	Within 1 day of receiving the proposed decision-record
3.2	FOIC organises statement of reasons and documents to be released to the applicant.	Due date
<i>If charges are outstanding documents will be held until final payment is made</i>		

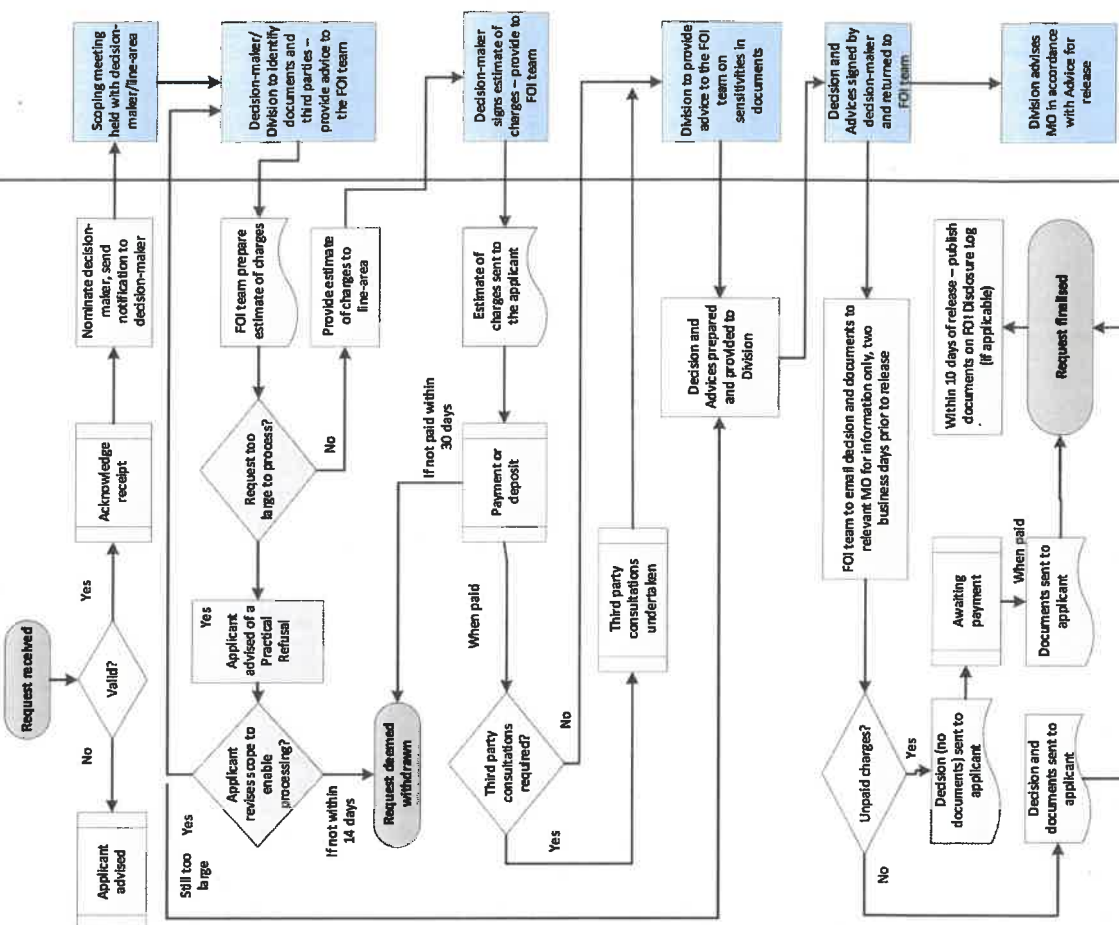


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FOI Process Flowchart

Governance

Division





Australian Government

**Department of Infrastructure, Transport,
Cities and Regional Development**

FOI

Charges notice made under the Freedom of Information Act 1982

Decision date: [month/year]

FOI reference number: XX-XX

Documents: [scope]

Applicant: [applicant]

Decision

1. I have made a decision to impose charges in the amount of [price].
2. I have made a decision to impose charges in relation to your request at a rate reduced by [percentage], [price].
3. I am an officer authorised by the Secretary of the Department of Infrastructure, Regional Development and Cities (the department) to make decisions about charges applying to requests for access to documents in the possession of the department in accordance with subsection 23(1) of the Freedom of Information Act 1982 (the FOI Act).

Background

4. On [date] you made a request for access to the following documents in the possession of the department:

[scope]

Your request for waiver of charges

5. In your request, you submitted that the department should consider reducing or not imposing a charge, on the basis that [the giving of access to the documents is in the public interest]/[payment of the charges would cause you financial hardship]. You have provided sufficient evidence that [the giving of access to the documents is in the public interest]/[payment of the charges would cause you financial hardship], as such I have decided to [waive all charges associated with your request/reduce charges associated with your request by [price]].
6. In your request, you submitted that the department should consider reducing or not imposing a charge, on the basis that [the giving of access to the documents is in the public interest]/[payment of the charges would cause you financial hardship]. However, you did not [identify how the general public interest or a substantial section of the public would benefit from disclosure]/[provide evidence of how payment of the charges would cause you financial hardship].

hardship]. There is no presumption that the public interest is satisfied by reason only that the applicant is a [journalist]/[member of parliament/the senate]. I have, therefore, decided to deny your request for waiver of charges.

Preliminary assessment of the amount of the charge

7. In accordance with subparagraph 29(1)(b) of the FOI Act, the department has undertaken a preliminary assessment of the amount of the charge you are liable to pay in relation to your FOI request. Accordingly, you are liable to pay [price].
8. In accordance with paragraph 29(1)(b) of the FOI Act, the department has undertaken a preliminary assessment of the amount of the charge you are liable to pay in relation to your FOI request. Accordingly, you are liable to pay [price], however, I have decided to reduce this amount by [percentage] in accordance with subsection 29(4) of the FOI Act.
9. This preliminary assessment consists of the following elements:

Number of relevant documents: [XXX] documents

Number of relevant pages: [XXX] pages

Processing charges

Task	Time (hours)	Cost @ \$15/hr
Search and retrieval	[XXX]	[XXX]

Task	Time (hours)	Cost @ \$20/hr
Preparation of documents for release	[XXX]	[XXX]
Preparation of decision	[XXX]	[XXX]
Consultation with third parties	[XXX]	[XXX]
Decision making subtotal (before deduction of 5 free hours)	[XXX]	[XXX]
Decision making subtotal (after deduction of 5 free hours)	[XXX]	[XXX]

Estimated total	
Estimated total	[XXX]

10. In accordance with Regulation 10(1), the charges will be reassessed upon finalisation of the request. If it becomes apparent that the department has over-estimated the preliminary charges and you have paid the full amount, a refund will be provided, or, if a deposit has been paid, an appropriately reduced balance will be sought from you, prior to providing you with documents relevant to your request.

Deposit

11. As the charge is less than \$25.00, the Freedom of Information (Charges) Regulations 1982 provide that no deposit is payable and you are required to pay the charge in full.
12. As the charge is more than \$25.00, you will need to pay a deposit of \$20 before further action can be taken on your request. This amount is set in Regulation 12(2)(a) of the Freedom of Information (Charges) Regulations 1982.
13. As the charge is more than \$100.00, you will need to pay a deposit of [price] (which is 25% of the total charges applying to your request) before further action can be taken on your request. This amount is set in Regulation 12(2)(b) of the Freedom of Information (Charges) Regulations 1982.
14. The deposit is not refundable except in some limited circumstances (for example, if the department fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

What you must do now

15. In accordance with paragraph 29(1)(f) of the FOI Act, you must, within the period of 30 days from the date of this notice, notify the department, in writing:
 - (i) of your agreement or pay the charge; or
 - (ii) of your contention that the charge has been wrongly assessed, or should be reduced or not imposed, or both (and provide reasons); or
 - (iii) that you withdraw your request for access to the documents concerned.
16. Payment can be made by credit card or cheque. To make payment by credit card, please complete and forward the enclosed credit card payment authority form to the following address or the facsimile number on the credit card payment authority form.

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594
Canberra ACT 2601

Fax: (02) 6275 1347

Email: <FOI@infrastructure.gov.au>
17. Under section 31 of the FOI Act, the time limit for processing your request is suspended from the day that you receive this notice. It will resume on either the day you pay the charge (in full or the required deposit) or the day the department makes a decision not to impose a charge.
18. If you fail to give the department such notice within 30 days from the date of this notice, your request for access to the document will be taken to have been withdrawn.

If you disagree with the department's decision to impose a charge or the preliminary assessment of charges

19. You may contend that the charge has been wrongly assessed, or should be reduced or not imposed.

20. In deciding whether to reduce or not to impose a charge, the decision-maker must consider any relevant reasons, including whether the payment of the charge, or part of it, would cause you financial hardship, and whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public. In doing so, it is necessary that you provide evidence of financial hardship, or specify how the public would benefit from disclosure.

Third party Consultation

21. While processing your request, the department has identified that your request includes documents containing the business information of a person or organisation. In accordance with Section 27 of the FOI Act, the department is required to consult with those persons or organisations before making a decision on the release of documents.
22. The processing time limit for your request has been extended by 30 days in accordance with Section 15(6) of the FOI Act.

Contacts

23. If you wish to discuss this decision, please contact the department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.

[decision-maker]

[Executive Director/Chief Operating Officer]

[Division]

[month][year]



Australian Government

Department of Infrastructure, Transport,
Cities and Regional Development

FOI

Charges notice made under the Freedom of Information Act 1982

Decision to impose a charge of [decision-maker], [Executive Director/Chief Operating Officer], [division]

Applicant: [applicant]
 Decision date: [month] [year]
 FOI reference number: XX-XX
 Documents: [scope]

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Summary

1. I have made a decision not to waive charges associated with the processing of your request and that you are liable to pay charges in the amount of \$xx.xx.

Authority to make this decision

2. I, [decision-maker], [Executive Director/Chief Operating Officer], [division], am an officer authorised by the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development (the department) to make decisions about charges applying to requests for access to documents in the possession of the Department in accordance with section 23(1) of the Freedom of Information Act 1982 (the FOI Act).

Background

3. On [date] you made a request for access to documents in the possession of the department. Your request sought access to:

Scope – copy and paste – do not paraphrase

4. On [date], the department provided you with a preliminary estimate of charges of \$xx.xx for the processing of your request.

Your request for waiver of charges

5. On [date], you requested a review of the decision to impose a charge as you considered the charge to have been wrongly assessed and should not be imposed on the basis of general public interest.

Decision

6. I have made a decision not to waive charges associated with the processing of your request and that you are liable to pay a charge in the amount of \$xx.xx.

Reasons for decision

7. In your request, you submitted that the department should consider reducing or not imposing a charge, on the basis that [the giving of access to the documents is in the public interest]/[payment of the charges would cause you financial hardship]. However, you did not [identify how the general public interest or a substantial section of the public would benefit from disclosure]/[provide evidence of how payment of the charges would cause you financial hardship]. There is no presumption that the public interest is satisfied by reason only that the applicant is a [journalist]/[member of parliament/the senate]. I have, therefore, decided to deny your request for waiver of charges.
8. [You also submitted that the charges have been wrongly assessed and should not be imposed. The charges have been reviewed and they have been found to be accurately assessed based on the work undertaken and in accordance with the Freedom of Information (Charges) Regulations 1982 (charges regulations).]
9. The Guidelines issued by the Australian Information Commissioner (the guidelines) state that:

An agency or minister has a discretion to impose or not impose a charge, or impose a charge that is lower than the applicable charge under reg 3 of the Charges Regulations. In exercising that discretion the agency or minister should take account of the 'lowest reasonable cost' objective, stated in the objects clause of the FOI Act (s 3(4)):

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.¹

...[C]harges should fairly reflect the work involved in providing access to documents on request. Implicit in the lowest reasonable cost objective is a prerequisite for sound record keeping so that an agency's documents can be readily identified and found when an FOI request is received.²

10. I consider that the charges have been calculated fairly and at the lowest reasonable cost. The department's sound record keeping system has allowed documents to be readily identified. Taking into account the significant hours and work required to process your request, it is likely that the actual costs of processing your request have already exceeded the estimate. To this end, I do not consider that the charges fairly reflect the actual amount of work involved in processing your request; however, the department must only apply charges consistent with the Freedom of Information (Charges) Regulations 1982 and not for the actual cost and use of departmental resources.
11. Taking the above into consideration I am satisfied that the charges have been calculated appropriately and are reasonable in all of the circumstances. As such, I have made the decision not to waive the charges.

Your liability to pay a charge

12. In accordance with section 29(1) of the FOI Act, I have decided that you are liable to pay a charge in relation to your request.
13. As the charge is less than \$25.00, the Freedom of Information (Charges) Regulations 1982 provide that no deposit is payable and you are required to pay the charge in full.
13. As the charge is more than \$25.00, you will need to pay a deposit of \$20 before further action can be taken on your request. This amount is set in Regulation 12(2)(a) of the Freedom of Information (Charges) Regulations 1982.
13. As the charge is more than \$100.00, you will need to pay a deposit of [price] (which is 25% of the total charges applying to your request) before further action can be taken on your request. This amount is set in Regulation 12(2)(b) of the Freedom of Information (Charges) Regulations 1982.
14. The deposit is not refundable except in some limited circumstances (for example, if the department fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

If you disagree with the department's decision to impose a charge

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s93 of the Freedom of Information Act 1982* (2010), [4.2].

² *Guidelines*, [4.3].

15. You may contend that the charge has been wrongly assessed, or should be reduced or not imposed. Please refer to paragraphs [x to x (internal review and IC review paras)] for the process on how you can do this.

Your rights of review

20. If you disagree with the department's decision to impose charges in relation to your FOI request, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal review

21. You can ask the department to review its decision in relation to the imposition of charges. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the department extends the application time. You should contact the department if you wish to seek an extension.
22. The department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level.
23. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601
Fax: (02) 6275 1347
Email: <FOI@infrastructure.gov.au>

Information Commissioner Review

22. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
12. You can ask the OAIC to review the department's decision to impose a charge. You do not need to seek an internal review from the department before seeking a review from the OAIC. However, going through the department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
13. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
14. You must apply in writing and you can lodge your application 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

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

Contacts

26. If you wish to discuss this decision, please contact the department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.

[decision-maker]

[Executive Director/Chief Operating Officer]

[Division]

[month][year]



Australian Government

**Department of Infrastructure, Transport,
Cities and Regional Development**

Internal review decision made under the Freedom of Information Act 1982

Internal review decision and reasons for decision of [Dep Sec decision-maker], Deputy
Secretary, Department of Infrastructure, Transport, Cities and Regional Development

Applicant: [applicant]
Agency: Department of Infrastructure, Transport, Cities and Regional
 Development
Date of original decision: [date]
Internal review decision date: [date]
FOI reference number: XX-XX
Documents: [scope]

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[reminder: check page numbers and paragraph numbers before finalising]

[reminder: complete schedule of documents]

[reminder: delete non-applicable provisions in schedule 2]



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Summary

1. I have made a decision to affirm the original decision made by [decision-maker, position, division], not to release any documents subject to your request.
1. I have made a decision to vary the original decision made by [decision-maker, position, division], not to release any documents subject to your request.
1. I have made a decision to affirm the original decision made by [decision-maker, position, division], to release documents subject to your request in part.
1. I have made a decision to vary the original decision made by [decision-maker, position, division], to release documents subject to your request in part.

Authority to make this decision

2. I, [dep sec decision-maker], Deputy Secretary, am an officer authorised by the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development (the 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* (the FOI Act).

Background

3. On [date] you made a request for access to documents in the possession of the department. Your request sought access to:

[scope]
4. On [date] the department provided you with an estimate of a charge in the amount of [amount].
5. On [date] you requested a [reduction/waiver] of charges associated with your request on [the basis that the release of the documents is in the public interest/grounds of financial hardship].
6. On [date] the department denied your request for a [reduction/waiver] of charges and affirmed the decision to impose a charge.
6. On [date] the department agreed to a [waiver/reduction of charges] associated with your request [and provided you with a revised estimate of charges in the amount of [amount]].
7. On [date] you agreed to pay the charge and paid [charges in full/a deposit of [amount]].
8. On [date] you were provided with a decision relating to access to documents within scope of your request. The documents relevant to your request were [provided to you in part/exempt in full], in accordance with section [provision/s] of the FOI Act.
9. On [date] you requested an internal review of the decision to [grant access in part/exempt documents in full].

Documents subject to this request



10. The department has undertaken a search of its records and has identified all documents that fall within the scope of your request. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Decision

11. I have made a decision to affirm the original decision made by [decision-maker, position, division], not to release any documents subject to your request.
11. I have made a decision to vary the original decision made by [decision-maker, position, division], not to release any documents subject to your request.
11. I have made a decision to affirm the original decision made by [decision-maker, position, division], to release documents subject to your request in part.
11. I have made a decision to vary the original decision made by [decision-maker, position, division], to release documents subject to your request in part.
12. In accordance with section 22(2), I have decided to provide access to an edited copy, modified by deletions, to documents [list documents – this includes ALL documents with deletions, irrelevant matter or other].
7. In accordance with section 24A, I have made a decision that documents subject to your request do not exist or cannot be found.

Reasons for decision

8. In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to [refuse/grant partial] access to documents follow.
11. I have taken the following material into account in making my decision:
- the content of the document[s] that fall[s] within the scope of your request;
 - [details of any relevant correspondence entered into by applicant and agency];
 - 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.
 - the following provision[s] of the FOI Act relevant to my decision:
 - [remove irrelevant provisions]
 - section 11B public interest exemption – factors
 - section 22 access to edited copies with exempt or irrelevant material deleted
 - section 33 national security, defence or international relations
 - section 34 Cabinet documents
 - section 37 law enforcement and protection of public safety
 - section 38 secrecy provision of enactment
 - section 42 legal professional privilege
 - section 45 material obtained in confidence
 - section 46 contempt of Parliament or court
 - section 47 trade secrets or commercially valuable information



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section 47B	Commonwealth-State relations
section 47C	deliberative processes
section 47D	financial or property interests of the Commonwealth
section 47E	certain operations of agencies
section 47F	personal privacy
section 47G	business (other than documents to which s47 applies)
section 47H	research
section 47J	the economy

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines); [and]
- the views of [X department];
- the views of [a third party]/[third parties] consulted by the department under section [26A] [26AA] [27] [27A]; and
- [insert further items as appropriate].

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

Statement of reasons

13. I have decided to refuse access to document[s] within the scope of your request in accordance with the following exemption[s] in the FOI Act:
13. I have decided to grant partial access to document[s] within the scope of your request; subject to the following exemption[s] in accordance with the FOI Act:

Documents affecting national security, defence or international relations (section 33)

19. A document is an exempt document if disclosure of the document under this Act:
- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth ; or
 - (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation 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.
20. The Australian Information Commissioner Guidelines explain that:
'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.¹

Documents affecting national security

21. The Guidelines explain in relation to s 33(a)(i) that:
The term 'security of the Commonwealth' broadly refers to:

¹ Guidelines [5.25].



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- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5)).

22. A decision maker must be satisfied that damage to the security of the Commonwealth would be caused by disclosure of the information under consideration.

23. [Explain how exemption applies...eg. Document[s] [1, 2, 3] contain information about [.....]. This information is not public knowledge and there is a reasonable expectation that if this information were more broadly known it could [eg. be used to circumvent [...] processes].....]

Documents affecting international relations

23. The Guidelines explain in relation to s 33(a)(iii) that:

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them...

The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship.²

25. [Explain how exemption applies...eg. Document[s] [1, 2, 3] contain information about [.....]. This information is not public knowledge and there is a reasonable expectation that if this information were more broadly known it could harm the Australian Government's relationship with [X – international government/country] in so far as.....]

Information communicated in confidence

26. The Guidelines explain that:

Section 33(b) exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities, or by an international organisation. One example is the confidential exchange of police information or information received from a foreign defence force agency.³

The test is whether the information is communicated in confidence between the communicator and the agency to which the communication is made – it is not a matter of determining whether the information is of itself confidential in nature. Information is communicated in confidence by or

² Guidelines [5.30]-[5.31]

³ Guidelines [5.35]



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on behalf of another government or authority, if it was communicated and received under an express or implied understanding that the communication would be kept confidential.⁴

The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access.⁵

30. Document[s] [1, 2, 3] [was/were] received with a mutual understanding between the department and the communicator that the document[s] [was/were] communicated in confidence. While classification dissemination markers on communications are not exemptions in themselves, it is my view that these markers clearly identify the expectation and understanding that this information was communicated in confidence. The documents in issue are clearly marked [x-in-confidence], and through its regular dealings with [international government/authority] the department considers there is an expectation and [express/implied] understanding that the department would treat such communications with the utmost confidence.
31. Taking the above into consideration I am satisfied that the documents are exempt in [full/part] in accordance with subsections 33(a)(i), 33(a)(ii), 33(a)(iii) and 33(b) of the FOI Act.

Cabinet documents (section 34)

13. The Cabinet exemption in section 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined. This exemption is not subject to the public interest test.
16. Section 34 of the FOI Act explains that:
- (1) *A document is an exempt document if:*
 - (a) *both of the following are satisfied:*
 - (i) *it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
 - (ii) *it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
 - (b) *it is an official record of the Cabinet; or*
 - (c) *it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
 - (d) *it is a draft of a document to which paragraph (a), (b) or (c) applies.*
 - (2) *A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.*
 - (3) *A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

⁴ Guidelines [5.36]

⁵ Guidelines [5.37]



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19. Document[s] [1,2,3] [is/are] [a] document[s] which [was/were] [submitted to the Cabinet for its consideration/proposed by the [Minister] to be submitted to the Cabinet for its consideration] and [was/were] brought into existence for the dominant purpose of submission for consideration by the Cabinet. As such, I am satisfied the document[s] [is/are] exempt in full in accordance with section 34(1)(a) of the FOI Act.
20. Document[s] [1, 2, 3] [is/are] an official record of the Cabinet. As such, I am satisfied the document[s] [is/are] exempt in full in accordance with section 34(1)(b) of the FOI Act.
19. Document[s] [1, 2, 3] [was/were] brought into the existence for the dominant purpose of briefing the [Deputy Prime Minister/Minister] on a Cabinet submission. Taking this into consideration I am satisfied the document[s] [is/are] [partially exempt/exempt in full] in accordance with section 34(1)(c) of the FOI Act.
20. Document[s] [1, 2, 3] [is/are] [draft] Cabinet submissions created for the dominant purpose of briefing Cabinet. I am satisfied the documents are exempt in full in accordance with section 34(1)(d) of the FOI Act.
21. Document[s] [1, 2, 3] [is/are] [an] attachment[s] to a Cabinet briefing which was submitted to Cabinet [by the Deputy Prime Minister]. [It/they] contains extracts of and discuss the contents of the Cabinet submission and was used by the [Deputy Prime Minister] to brief the Cabinet. Therefore, I am satisfied that the document is exempt in full in accordance with section 34(2) of the FOI Act.
16. Document[s] [1, 2, 3] contain information which, if disclosed, would reveal a Cabinet deliberation or decision, including the timings of Cabinet's consideration. The document in question provides insight to Cabinet processes, deliberation and discussion. Taking this into consideration I am satisfied the document is [partially exempt/exempt in full] in accordance with section 34(3) of the FOI Act.
17. During the processing of your request, the department sought advice from Department of the Prime Minister and Cabinet (PM&C) on the release of the document. PM&C confirmed material contained within the document would, if disclosed, reveal Cabinet deliberations or decision, including the timing of Cabinet's consideration.
18. I am satisfied there has been no official disclosure of the Cabinet deliberations with the meaning of sections 34(3) or 34(6) of the FOI Act.
19. Taking the above into consideration, I am satisfied that content contained within the document is exempt in accordance with section 34(3) of the FOI Act.

Documents affecting law enforcement and protection of public safety (section 37)

14. This exemption applies to documents which, if released, would or could reasonably be expected to affect law enforcement or public safety in any of the following ways:
 - prejudice the conduct of an investigation of a breach, or possible breach, of the law
 - prejudice the conduct of an investigation of a failure, or possible failure, to comply with a taxation law
 - prejudice the enforcement, or the proper administration, of the law in a particular instance



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- reveal the existence or identity of a confidential informant, or the absence of a confidential source of information, in relation to the enforcement or administration of the law
- endanger the life or physical safety of any person
- prejudice the fair trial of a person, or the impartial adjudication of a particular case
- disclose lawful methods or procedures for investigating, preventing, detecting or dealing with breaches of the law where disclosure of those methods would be reasonably likely to reduce their effectiveness
- prejudice the maintenance or enforcement of lawful methods for the protection of public safety (see s 37(1), (2)).

12. [\[explain how exemption applies\]](#)

Documents to which secrecy provisions of enactments apply (section 38)

15. A document is exempt if its disclosure is prohibited under a provision of another Act (s 38(1)(a)) and either:
- that provision is specified in Schedule 3 to the FOI Act (s 38(1)(b)(i)), or
 - s 38 expressly applies to the document or information contained in the document, by that provision, or by another provision of that or any other enactment (s 38(1)(b)(ii)).

12. [\[explain how exemption applies\]](#)

Documents subject to legal professional privilege (section 42)

1. Section 42 of the FOI Act relevantly provides:
 - (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.*
2. Legal professional privilege (LPP) protects confidential communications between a lawyer and a client from compulsory production.
3. The Australian Information Commissioner Guidelines explain that, at common law, determining whether a communication is privileged requires a consideration of the following:
 - whether there is a legal adviser-client relationship
 - whether the communication was for the purpose of giving or receiving legal advice or for use in connection with actual or anticipated litigation legal advice or for use in connection with actual or anticipated litigation
 - whether the advice given is independent
 - whether the advice given is confidential.⁶
4. For LPP to apply to a communication there must be a true lawyer-client relationship between the legal adviser and the agency. It is well established that an independent legal adviser-client

⁶ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (2010), [5.118].



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relationship can exist between a lawyer employed by the government and a government agency.⁷ Whether such a relationship exists in a particular case is a question of fact.⁸

5. Section 55Q(1) of the *Judiciary Act 1903* provides that:

AGS lawyers

- (1) An AGS lawyer acting in that capacity is entitled:
- (a) to do everything necessary or convenient for that purpose; and
 - (b) to practise as a barrister, solicitor, or barrister and solicitor in any court and in any State or Territory; and
 - (c) to all the rights and privileges of so practising;

whether or not he or she is so entitled apart from this subsection.

6. Section 55K of the *Judiciary Act 1903* also provides that one of the functions of AGS lawyers is to provide legal and related services to the Commonwealth. AGS lawyers are also required to adhere to the same duties and obligations to their clients as solicitors in private practice, including maintaining a client's LPP.⁹
7. The AGS solicitor, [name], who provided the advice on the ongoing matter which is subject to this FOI request is legally qualified, was employed by the AGS as a lawyer and was acting in that capacity, at the time she provided the advice. I am satisfied that the AGS and the department had a legal adviser-client relationship and that the advice provided by the AGS to the department was independent.
12. [expand how exemption applies]
14. I confirm that there is a legal adviser-client relationship in relation to this matter, the communications were for the purpose of giving or receiving legal advice or for use in connection with actual or anticipated litigation legal advice or for use in connection with actual or anticipated litigation, the advice given is independent and the advice given is confidential.
15. Accordingly, I have decided that [parts of] the document/s meet the criteria for exemption and are exempt in [full/part] in accordance with section 42(1) of the FOI Act.

Documents containing material obtained in confidence (section 45)

26. Section 45(1) provides that:
- a document is an exempt document if its disclosure would found an action by a person... for breach of confidence. In other words, the exemption is available where the person who provided the confidential information would be able to bring an action under the general law for a breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure.¹⁰

⁷ Guidelines [5.120].

⁸ Guidelines [5.120].

⁹ See, *Australian Gulf War Veterans Association and Repatriation Medical Authority* [2014] AICmr 19 (20 February 2014), paragraph 18.

¹⁰ Guidelines, [5.139].



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27. To found an action for breach of confidence (which means s45 would apply), the following five criteria must be satisfied in relation to the information:
- it must be specifically identified
 - it must have the necessary quality of confidentiality
 - it must have been communicated and received on the basis of a mutual understanding of confidence
 - I must have been disclosed or threatened to be disclosed, without authority
 - Unauthorised disclosure of the information has or will cause detriment.¹¹
28. [Expand on how exemption applies]
29. Further, I confirm that the information is specifically identified. That is, information relating to [what documents relate to] which has been communicated between [X and X]. I also confirm that the information has the necessary quality of confidentiality and it was communicated and received on the on the basis of a mutual understanding of confidence. During third party consultation an affected third party noted their objections to the release of the document/s on the basis that the information was provided to the department with the understanding that it would be treated in confidence and that unauthorised disclosure of the information will cause detriment. The information contained within these documents is not public knowledge and is only known by [X] and a limited number of individuals within the department.
30. Accordingly, I have decided that [parts of] the document/s meet the criteria for exemption and are exempt in [full/part] in accordance with section 45 of the FOI Act.

Documents disclosure of which would be contempt of Parliament or contempt of court (section 46)

18. Section 46 provides that a document is exempt if public disclosure of the document would, apart from the FOI Act and any immunity of the Crown:
- (a) be in contempt of court
 - (b) be contrary to an order or direction by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath
 - (c) infringe the privileges of the Parliament of the Commonwealth or a State, or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or Norfolk Island.
12. [explain how exemption applies]

Documents disclosing trade secrets or commercially valuable information (section 47)

20. A document is an exempt document if disclosure under the FOI Act would disclose either trade secrets or any other information having a commercial value that would be, or could reasonably be expected to be destroyed or diminished if the information were disclosed.
21. To be exempt under section 47(1)(b) a documents must satisfy two criteria:
- The document must contain information that has a commercial value either to an agency or another person or body, and
 - The commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.¹²¹³

¹¹ Guidelines, [5.143].

¹² Guidelines, [5.188].



22. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the... person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
 - whether the information confers a competitive advantage on the... person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
 - whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information
 - whether the information is still current or out of date (out of date information may no longer have any value)
 - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.¹⁴
23. The second requirement of s 47(1)(b) — that it could reasonably be expected that disclosure of the information would destroy or diminish its value — must be established separately by satisfactory evidence.¹⁵
12. [explain how exemption applies] This information is not publicly known and, if it is known, may affect [X] commercial position by providing other parties who wish to establish similar operations with commercially valuable information that they would otherwise be required to develop themselves.
- 13 I am satisfied the information is known only to [X] and a limited number of staff within the department, the information confers a competitive advantage on [X], there is a reasonable expectation that a genuine 'arm's-length' buyer would be prepared to pay to obtain that information, the information is still current and disclosing the information would reduce the value of a business operation or commercial activity.
13. Accordingly, I have decided that [parts of] the document/s meet the criteria for exemption and are exempt in [full/part] in accordance with section 47 of the FOI Act.

Conditional Exemptions

13. Where a document is assessed as conditionally exempt, the agency or minister must give access to it unless in the circumstances access would, on balance, be contrary to the public interest (s 11A(5)). The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making. The statement of reasons for the decision must include the public interest factors taken into account (s 26(1)(aa)). Further guidance on conditional exemptions and the public interest test is in Part 6.

Commonwealth-State relations (section 47B)

11. Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure of the document:

¹³ See *McKinnon and Department of Immigration and Citizenship* [2012] AICmr 34.

¹⁴ *Guidelines*, [5.189]

¹⁵ *Guidelines*, [5.191]



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- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (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 Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth.

12. [Explain how exemption applies...eg. Document[s] [1, 2, 3] contain information [about [.....]/communicated between the department and [state government/authority]. During the processing of your request the department consulted with [state government/authority] about the release of documents. Based on the comments provided by [state government/authority] and the views of the department I consider that release of the documents would reasonably be expected to cause harm to the relations between the department, and subsequently the Commonwealth, and the State.
13. Further, the documents are marked in-confidence and while a dissemination marker does not exempt a document from release under the FOI Act, it demonstrates the expectation and understanding that communications and documents would be treated in-confidence. As such, I consider there is an [express/implied] understanding between the department and [state government/authority] that communications were made in-confidence. Taking this into consideration it is my view that release of the documents would disclose information which was communicated in confidence between the department and [state government/authority].
13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]



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17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. I also considered the following factors which do not favour disclosure:
- (a) disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State;
 - (b) disclosure 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 Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth;
 - (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
 - (d) disclosure could reasonably be expected to prejudice the management function of an agency.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Deliberative processes (section 47C)

11. In order to determine whether a document is conditionally exempt Guidelines issued by the OAIC explain that:
- For each of the conditional exemptions, the harm threshold that must be reached is specified in the provision. The various harm thresholds vary in both the extent of the harm that disclosure would cause and the extent to which the decision maker must be satisfied that the harm would result. The only exception is the deliberative processes exemption (s 47C), which does not include any requirement of harm: the threshold requirement is that the document includes deliberative matter.

30. The Guidelines issued by the OAIC state that:



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A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, 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.

12. [explain how conditional exemption applies]
13. The document contains opinions and advice and is considered to be deliberative in nature. If this information were released it could reasonably be expected to provide insight into the internal deliberations the department undertakes as part of its [regulatory functions] in relation to [X].
14. Further, the deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth. I can confirm that the deliberative material does relate to the functions of the department, [eg. which is explicit in the discussions about the Secretary's powers and the Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA), which is administered by the department OR specifically it is closely connected with documents submitted to Cabinet for consideration. Release of these documents would reasonably be expected to disclose Cabinet deliberations.].
13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]



17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. 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 would reasonably be expected to impair the confidentiality of Cabinet processes and inhibit the full canvassing of issues in the development of Cabinet material.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Certain operations of agencies (section 47E)

11. Section 47E conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operations.¹⁶
49. 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;
 - ...
 - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (s 47E).¹⁷

¹⁶ Guidelines, [6.86].

¹⁷ Guidelines, [6.87].



13. In order for subsections 47E(a) and (b) to apply the decision-maker must address elements of the conditional exemption, namely that an effect would reasonably be expected following disclosure.¹⁸ Further considerations applying to these exemptions which must be addressed include:
- the expected effect would be, overall, prejudicial to the effectiveness of the procedure or method of the audit, test or examination being conducted.¹⁹
 - the expected effect would be prejudicial to the attainment of the objects of the audit, test or examination being conducted.²⁰
57. In order for section 47E(d) to apply, the predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.²¹
16. If the document were disclosed it would reasonably be expected that parties would circumvent the rigorous assessment processes in relation to [X]. Should parties evade such processes it would cause substantial adverse effect to the assessment process by prejudicing the effectiveness of the existing assessment processes (s47E(a)).
59. An effect of having parties circumvent the assessment process this would also reasonably be expected to prejudice the attainment of the objects of the assessment process that is conducted (s47E(b)).
60. Further, an effect of prejudicing the rigorous assessment process and the attainment of the objects of the assessment process, it is reasonably expected that the department's operations would be substantially adversely effected, insofar as decision-makers may be misled in the assessment process which would eventuate in concerns with the robustness of decisions made for the future management of [X] by the department. Such an effect would result in substantial changes to the department's procedures to avoid jeopardising the effectiveness of methods and procedures used by assessors. Further, disclosure of the documents would reasonably be expected to affect the Department's ability to administer the [eg. statutory regulatory scheme for port operators in the Port of Cape Preston]. (s47E(d)).
13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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:

¹⁸ Guidelines, [6.95], [6.100].

¹⁹ Guidelines, [6.95].

²⁰ Guidelines, [6.100]

²¹ Guidelines, [6.112].



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- (a) disclosure would promote the objects of the FOI Act;
- (b) disclosure would inform debate on a matter of public importance;
- (c) disclosure would promote effective oversight of public expenditure; and
- (d) disclosure would allow a person to access his or her personal information.

16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]

16. [I agree that disclosure would promote the objects of the FOI Act.]

17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]

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

- (a) disclosure would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) disclosure would, or could reasonably be expected to, prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) 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;
- (e) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- (f) disclosure could reasonably be expected to prejudice the management function of an agency.

17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- (d) access to the document could result in confusion or unnecessary debate.

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



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18. 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.

Personal privacy (section 47F)

11. 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).
12. *[Explain how exemption applies...eg. Document[s] [1, 2, 3] contain personal information, including [names, phone numbers, email addresses, residential addresses and other personal particulars] of individual/s. This information is not public knowledge and I see no public purpose in disclosing the personal information. I do not consider it appropriate to disclose personal information where it is not otherwise available. If this information were disclosed there is a reasonable expectation that these details could be subject to misuse, contrary to the wishes of the individual/s.]*
13. Accordingly, I have decided that *[parts of]* the *document/s* 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. *[I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]*
16. *[I agree that disclosure would promote the objects of the FOI Act.]*
17. *[I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]*
16. I also considered the following factors which do not favour disclosure:



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- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- (d) access to the document could result in confusion or unnecessary debate.

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

18. 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.

Business affairs (section 47G)

11. A document is conditionally exempt if it discloses information (business 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, where the disclosure of the information:

- Would, or could reasonably be expected to, unreasonably affect... that organisation or undertaking in respect of its lawful business, commercial or financial affairs (s47G(1)(a)),
or
- Could reasonably be expected to prejudice the future supply of information to the Commonwealth... for the purpose of the administration of a law of the Commonwealth... of matters administered by an agency (s47G(1)(b)).²²

32. *[Explain how exemption applies...eg. Documents 1, 2, 3 etc. contain information [and images] about [X]. This information is not publicly known. If disclosed, this information would reveal the [business/human resources processes of [X], specifically relating [X]. I consider the release of this information could reasonably be expected to harm the business interests of [X] in so far as competitors will gain insight into their/its business processes, removing any competitive advantage [X] may already have and could affect [X] in its future operations. Further, disclosure of information relating to [X] could reasonably be expected to cause harm to [X] reputation, which in effect could cause harm to [X] future operations.*

33. *[During the processing of your request the department consulted with [X – affected third party] on the release of the documents. During this consultation the affected third party indicated it would*

²² Guidelines, [6.157]



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be hesitant to provide information to the department in future, if these documents were to be disclosed. [The department relies upon information provided by stakeholders in order to undertake its regulatory functions, including administration of law and other matters administered by the department]. As such, I consider that if this information were disclosed it could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of administration of a law of the Commonwealth and matters administered by the department.

13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]
17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. I also considered the following factors which do not favour disclosure:
- (a) disclosure 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;
 - (b) disclosure 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.
 - (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 prejudice the competitive commercial activities of an agency;



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- (e) disclosure could reasonably be expected to prejudice the management function of an agency.

17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Irrelevant material

14. Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, section 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions. Where this section applies, section 11A provides that access to the edited copy is required to be given. Accordingly, the documents which are listed as containing irrelevant material, in accordance with this provision in Schedule 1, have been modified by deletions (to remove irrelevant material).
15. In this case I consider irrelevant material to be [names of departmental employees below Senior Executive Service (SES) level and/or information which is outside the scope of your request].

Access to documents

19. The document[s] released to you in accordance with the FOI Act [is][are] enclosed.
19. Following payment of the outstanding charge as set out at paragraph [x], the department will provide the document[s] released to you in accordance with the FOI Act.
19. During the processing of your request the department consulted [a third party] [third parties] potentially affected by the release of the document[s]. [That third party has] [Those third parties have] 30 days from the date of notification of my decision, to seek a review of my decision. Subject to the outcome of any such review, the department will provide you with the document[s] released to you in accordance with the FOI Act.

Your rights of review



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20. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

21. You can ask the department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the department extends the application time. You should contact the department if you wish to seek an extension. The department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601
Fax: (02) 6275 1347
Email: <FOI@infrastructure.gov.au>

Information Commissioner Review

22. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
12. You can ask the OAIC to review the department's decision. You do not need to seek an internal review from the department before seeking a review from the OAIC. However, going through the department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
13. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
14. You must apply in writing and you can lodge your application 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

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

Contacts



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12. If you wish to discuss this decision, please contact the department's FOI coordinator on (02) 6274 6495 or via email at [<foi@infrastructure.gov.au>](mailto:foi@infrastructure.gov.au).

[\[decision-maker\]](#)

Deputy Secretary

Department of Infrastructure, Transport, Cities and Regional Development

[\[month/year\]](#)



Schedule of documents

Applicant: [applicant]

Decision date: [month/year]

FOI reference number: XX-XX

Documents: [scope]

Document reference [no]	Date of document [date]	Author [author]	Recipient [recipient]	Document description [document description]	Original decision [release in part/release if full/exempt in full]	Exemption provision	Internal review decision [varied/affirmed] [release in part/release if full/exempt in full]	Exemption provision



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.



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(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



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- (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;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (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.

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



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- (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).

33 Documents affecting national security, defence or international relations

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



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- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization 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.

34 Cabinet documents

General rules

- (1) A document is an exempt document if:
 - (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
 - (b) it is an official record of the Cabinet; or
 - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
 - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
 - (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

37 Documents affecting enforcement of law and protection of public safety

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to



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- taxation or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
 - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:
- (a) witnesses; or
 - (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
 - (c) any other people who, for any other reason, need or may need, such protection.
- (3) In this section, law means law of the Commonwealth or of a State or Territory.

38 Documents to which secrecy provisions of enactments apply

- (1) Subject to subsection (1A), a document is an exempt document if:
- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.
- (1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.
- (2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.
- (3) This section applies in relation to a document so far as it contains personal information about a person if:
- (a) the person requests access to the document; and
 - (b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the Migration Act 1958 as affected by section 503D of that Act.



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- (4) In this section: enactment includes a Norfolk Island enactment.

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.

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
 - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency, the Commonwealth or Norfolk Island.

46 Documents disclosure of which would be contempt of Parliament or contempt of court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:



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- (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

Public interest conditional exemptions

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

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



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(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 or Norfolk Island

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, of Norfolk Island 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;
- (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:



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- (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



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- (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).

47H Public interest conditional exemptions—research

A document is conditionally exempt if:

- (a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in Schedule 4; and
- (b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

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

47J Public interest conditional exemptions—the economy

- (1) A document is conditionally exempt if its disclosure under this Act would, or could be reasonably expected to, have a substantial adverse effect on Australia's economy by:
 - (a) influencing a decision or action of a person or entity; or
 - (b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

Note: A person includes a body corporate and a body politic (see subsection 2C(1) of the Acts Interpretation Act 1901). Examples of a body politic include the government of the Commonwealth, a State, a Territory or a foreign country.

- (2) For the purposes of subsection (1), a substantial adverse effect on Australia's economy includes a substantial adverse effect on:



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- (a) a particular sector of the economy; or
- (b) the economy of a particular region of Australia.
- (2A) For the purposes of paragraph (2)(b), Norfolk Island is taken to be a region of Australia.
- (3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:
 - (a) currency or exchange rates;
 - (b) interest rates;
 - (c) taxes, including duties of customs or of excise;
 - (d) the regulation or supervision of banking, insurance and other financial institutions;
 - (e) proposals for expenditure;
 - (f) foreign investment in Australia;
 - (g) borrowings by the Commonwealth, Norfolk Island, a State or an authority of the Commonwealth, of Norfolk Island or of a State.

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



Statement of reasons made under the Freedom of Information Act 1982

Decision and reason for decision of [decision-maker], Executive Director, [division]

Applicant: [applicant]
Decision date: [month/year]
FOI reference number: XX-XX
Documents: [scope]

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[reminder: complete schedule of documents]

[reminder: delete non-applicable provisions in schedule 2]

Summary

1. I have made a decision not to release any documents subject to your request.
1. I have made a decision to release documents subject to your request in part.

Authority to make this decision

2. I, [decision-maker], [Executive Director/Chief Operating Officer/Deputy Secretary], [division], am an officer authorised by the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development (the 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 (the FOI Act).

Background

3. On [date] you made a request for access to documents in the possession of the department. Your request sought access to:

[scope]

4. On [date] an officer of the department contacted you to clarify the scope of your request. You later confirmed by email that your request sought access to:

[refined scope]

Charges for providing access

4. On [date] the department provided you with an estimate of a charge in the amount of [price].
5. On [date] you agreed to pay the charge and paid [a deposit of [price] / the amount in full].
4. [if exempt in full] As no documents will be provided to you in relation to your request, I have decided to waive the charges associated with the processing of your request.
4. As you are seeking access to [a] document[s] that contain your own personal information, Regulation 5(1) of the Freedom of Information (Charges) Regulations 1982 provides that no charge is payable.
6. [As a decision has now been made, charges have been reassessed based on the actual cost of processing your request, as required by Regulation 10(1) of the Freedom of Information (Charges) Regulations 1982. The final charge is [price].
[Options below – select and modify the most appropriate]
7. [As the new charge is less than the amount already paid by you, regulation 10(4)(a) provides that a refund of the difference in the amount of [price] shall be made.]
7. [As the new charges is less than the amount already notified to you, but more than the deposit you paid, you are required to pay the difference between the deposit paid and the new calculation. As such, documents released to you in accordance with this decision will be provided upon payment of remaining charges in the amount of [price] [(final charge) – (deposit)], in accordance with section 11A(1)(b) of the FOI Act.]

7. [As the new charge is more than the amount already paid by you, but I have decided not to grant the request for access, regulation 10(2) provides that no further charge is payable.]
7. [As you were not notified of a decision within the statutory time limit (including any extension), Regulation 5(2)-(3) provides the department cannot impose a charge for providing access. Regulation 14 provides that your [payment][deposit] is to be refunded.]

Documents subject to this request

7. The department has undertaken a search of its records and has identified [number of documents] documents that fall within the scope of your request. Documents are listed in the schedule of documents at Schedule 1.
9. During the processing of your request we consulted [x department][a third party] [third parties] potentially affected by the release of the document[s].

Decision

9. I have made a decision to refuse access to the document[s] relevant to your request. The document[s] that I have chosen to refuse access to [are] [is] set out in Schedule 1, together with applicable exemption provision[s].
9. I have made a decision to release the document[s] relevant to your request in part. The document[s] that I have chosen to [grant access to in full] [or] [grant access to in part] [or] [refuse access to] [are] [is] set out in Schedule 1, together with applicable exemption provision[s]. Where I have decided to grant access in part, I have provided access to an edited copy of the document[s], modified by deletions in accordance with section 22(2) of the FOI Act.
9. During the processing of your request we consulted [x department][a third party] [third parties] potentially affected by the release of the document[s]. [That third party has] [Those third parties have] 30 days from the date of notification of my decision, to seek a review of my decision. Subject to the outcome of any such review, the department will provide you with the document[s] released to you in accordance with the FOI Act.

Reasons for decision

10. In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to [refuse/grant partial] access to the document[s] follow[s].
11. I have taken the following material into account in making my decision:
 - the content of the document[s] that fall[s] within the scope of your request;
 - [details of any relevant correspondence entered into by applicant and agency];
 - 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.
 - the following provision[s] of the FOI Act relevant to my decision:
 - [remove irrelevant provisions]
 - section 11B public interest exemption – factors
 - section 22 access to edited copies with exempt or irrelevant material deleted
 - section 33 national security, defence or international relations

section 34	Cabinet documents
section 37	law enforcement and protection of public safety
section 38	secrecy provision of enactment
section 42	legal professional privilege
section 45	material obtained in confidence
section 46	contempt of Parliament or court
section 47	trade secrets or commercially valuable information
section 47B	Commonwealth-State relations
section 47C	deliberative processes
section 47D	financial or property interests of the Commonwealth
section 47E	certain operations of agencies
section 47F	personal privacy
section 47G	business (other than documents to which s47 applies)
section 47H	research
section 47J	the economy

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines); [and]
- the views of [X department];
- the views of [a third party]/[third parties] consulted by the department under section [26A] [26AA] [27] [27A]; and
- [insert further items as appropriate].

12. A full extract of all FOI Act provisions used to make my decision [can be found at the following link – [link to Austlii or Comlaw FOI Act](#)] or [provided in Schedule 2].

Statement of reasons

13. I have decided to refuse access to document[s] within the scope of your request in accordance with the following exemption[s] in the FOI Act:
13. I have decided to grant partial access to document[s] within the scope of your request, subject to the following exemption[s] in accordance with the FOI Act:

Documents affecting national security, defence or international relations (section 33)

19. A document is an exempt document if disclosure of the document under this Act:
- (a) *would, or could reasonably be expected to, cause damage to:*
 - (i) *the security of the Commonwealth;*
 - (ii) *the defence of the Commonwealth; or*
 - (iii) *the international relations of the Commonwealth ; or*
 - (b) *would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation 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.*
20. The Australian Information Commissioner Guidelines explain that:
‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.¹

¹ Guidelines [5.25].

Documents affecting national security

21. The Guidelines explain in relation to s 33(a)(i) that:
The term 'security of the Commonwealth' broadly refers to:
- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests
 - (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5)).
22. A decision maker must be satisfied that damage to the security of the Commonwealth would be caused by disclosure of the information under consideration.
23. [Explain how exemption applies...eg. Document[s] [1, 2, 3] contain information about [.....]. This information is not public knowledge and there is a reasonable expectation that if this information were more broadly known it could [eg. be used to circumvent [...] processes].....]

Documents affecting international relations

23. The Guidelines explain in relation to s 33(a)(iii) that:
- The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them...
- The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship.²
25. [Explain how exemption applies...eg. Document[s] [1, 2, 3] contain information about [.....]. This information is not public knowledge and there is a reasonable expectation that if this information were more broadly known it could harm the Australian Government's relationship with [X – international government/country] in so far as.....]

Information communicated in confidence

26. The Guidelines explain that:
- Section 33(b) exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities, or by an international organisation. One example is the confidential exchange of police information or information received from a foreign defence force agency.³
- The test is whether the information is communicated in confidence between the communicator and the agency to which the communication is made – it is not a matter of determining whether the information is of itself confidential in nature. Information is communicated in confidence by or

² Guidelines [5.30]-[5.31]

³ Guidelines [5.35]

on behalf of another government or authority, if it was communicated and received under an express or implied understanding that the communication would be kept confidential.⁴

The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access.⁵

30. Document[s] [1, 2, 3] [was/were] received with a mutual understanding between the department and the communicator that the document[s] [was/were] communicated in confidence. While classification dissemination markers on communications are not exemptions in themselves, it is my view that these markers clearly identify the expectation and understanding that this information was communicated in confidence. The documents in issue are clearly marked [x-in-confidence], and through its regular dealings with [international government/authority] the department considers there is an expectation and [express/implied] understanding that the department would treat such communications with the utmost confidence.
31. Taking the above into consideration I am satisfied that the documents are exempt in [full/part] in accordance with subsections 33(a)(i), 33(a)(ii), 33(a)(iii) and 33(b) of the FOI Act.

Cabinet documents (section 34)

13. The Cabinet exemption in section 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined. This exemption is not subject to the public interest test.
16. Section 34 of the FOI Act explains that:
- (1) *A document is an exempt document if:*
 - (a) *both of the following are satisfied:*
 - (i) *it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
 - (ii) *it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
 - (b) *it is an official record of the Cabinet; or*
 - (c) *it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
 - (d) *it is a draft of a document to which paragraph (a), (b) or (c) applies.*
 - (2) *A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.*
 - (3) *A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*
19. Document[s] [1,2,3] [is/are] [a] document[s] which [was/were] [submitted to the Cabinet for its consideration/proposed by the [Minister] to be submitted to the Cabinet for its consideration] and [was/were] brought into existence for the dominant purpose of submission for consideration by the Cabinet. As such, I am satisfied the document[s] [is/are] exempt in full in accordance with section 34(1)(a) of the FOI Act.
20. Document[s] [1, 2, 3] [is/are] an official record of the Cabinet. As such, I am satisfied the document[s] [is/are] exempt in full in accordance with section 34(1)(b) of the FOI Act.

⁴ Guidelines [5.36]

⁵ Guidelines [5.37]

19. Document[s] [1, 2, 3] [was/were] brought into the existence for the dominant purpose of briefing the [Deputy Prime Minister/Minister] on a Cabinet submission. Taking this into consideration I am satisfied the document[s] [is/are] [partially exempt/exempt in full] in accordance with section 34(1)(c) of the FOI Act.
20. Document[s] [1, 2, 3] [is/are] [draft] Cabinet submissions created for the dominant purpose of briefing Cabinet. I am satisfied the documents are exempt in full in accordance with section 34(1)(d) of the FOI Act.
21. Document[s] [1, 2, 3] [is/are] [an] attachment[s] to a Cabinet briefing which was submitted to Cabinet [by the Deputy Prime Minister]. [It/they] contains extracts of and discuss the contents of the Cabinet submission and was used by the [Deputy Prime Minister] to brief the Cabinet. Therefore, I am satisfied that the document is exempt in full in accordance with section 34(2) of the FOI Act.
16. Document[s] [1, 2, 3] contain information which, if disclosed, would reveal a Cabinet deliberation or decision, including the timings of Cabinet's consideration. The document in question provides insight to Cabinet processes, deliberation and discussion. Taking this into consideration I am satisfied the document is [partially exempt/exempt in full] in accordance with section 34(3) of the FOI Act.
17. During the processing of your request, the department sought advice from Department of the Prime Minister and Cabinet (PM&C) on the release of the document. PM&C confirmed material contained within the document would, if disclosed, reveal Cabinet deliberations or decision, including the timing of Cabinet's consideration.
18. I am satisfied there has been no official disclosure of the Cabinet deliberations with the meaning of sections 34(3) or 34(6) of the FOI Act.
19. Taking the above into consideration, I am satisfied that content contained within the document is exempt in accordance with section 34(3) of the FOI Act.

Documents affecting law enforcement and protection of public safety (section 37)

14. This exemption applies to documents which, if released, would or could reasonably be expected to affect law enforcement or public safety in any of the following ways:
- prejudice the conduct of an investigation of a breach, or possible breach, of the law
 - prejudice the conduct of an investigation of a failure, or possible failure, to comply with a taxation law
 - prejudice the enforcement, or the proper administration, of the law in a particular instance
 - reveal the existence or identity of a confidential informant, or the absence of a confidential source of information, in relation to the enforcement or administration of the law
 - endanger the life or physical safety of any person
 - prejudice the fair trial of a person, or the impartial adjudication of a particular case
 - disclose lawful methods or procedures for investigating, preventing, detecting or dealing with breaches of the law where disclosure of those methods would be reasonably likely to reduce their effectiveness
 - prejudice the maintenance or enforcement of lawful methods for the protection of public safety (see s 37(1), (2)).

12. [\[explain how exemption applies\]](#)

Documents to which secrecy provisions of enactments apply (section 38)

15. A document is exempt if its disclosure is prohibited under a provision of another Act (s 38(1)(a)) and either:
- that provision is specified in Schedule 3 to the FOI Act (s 38(1)(b)(i)), or
 - s 38 expressly applies to the document or information contained in the document, by that provision, or by another provision of that or any other enactment (s 38(1)(b)(ii)).

12. [\[explain how exemption applies\]](#)

Documents subject to legal professional privilege (section 42)

1. Section 42 of the FOI Act relevantly provides:
- (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.*
2. Legal professional privilege (LPP) protects confidential communications between a lawyer and a client from compulsory production.
3. The Australian Information Commissioner Guidelines explain that, at common law, determining whether a communication is privileged requires a consideration of the following:
- whether there is a legal adviser-client relationship
 - whether the communication was for the purpose of giving or receiving legal advice or for use in connection with actual or anticipated litigation legal advice or for use in connection with actual or anticipated litigation
 - whether the advice given is independent
 - whether the advice given is confidential.⁶
4. For LPP to apply to a communication there must be a true lawyer-client relationship between the legal adviser and the agency. It is well established that an independent legal adviser-client relationship can exist between a lawyer employed by the government and a government agency.⁷ Whether such a relationship exists in a particular case is a question of fact.⁸
5. [Section 55Q\(1\) of the Judiciary Act 1903](#) provides that:

AGS lawyers

- (1) *An AGS lawyer acting in that capacity is entitled:*
- to do everything necessary or convenient for that purpose; and*
 - to practise as a barrister, solicitor, or barrister and solicitor in any court and in any State or Territory; and*
 - to all the rights and privileges of so practising;*

whether or not he or she is so entitled apart from this subsection.

⁶ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (2010), [5.118].

⁷ *Guidelines* [5.120].

⁸ *Guidelines* [5.120].

6. Section 55K of the *Judiciary Act 1903* also provides that one of the functions of AGS lawyers is to provide legal and related services to the Commonwealth. AGS lawyers are also required to adhere to the same duties and obligations to their clients as solicitors in private practice, including maintaining a client's LPP.⁹
7. The AGS solicitor, [name], who provided the advice on the ongoing matter which is subject to this FOI request is legally qualified, was employed by the AGS as a lawyer and was acting in that capacity, at the time she provided the advice. I am satisfied that the AGS and the department had a legal adviser-client relationship and that the advice provided by the AGS to the department was independent.
12. [expand how exemption applies]
14. I confirm that there is a legal adviser-client relationship in relation to this matter, the communications were for the purpose of giving or receiving legal advice or for use in connection with actual or anticipated litigation legal advice or for use in connection with actual or anticipated litigation, the advice given is independent and the advice given is confidential.
15. Accordingly, I have decided that [parts of] the document/s meet the criteria for exemption and are exempt in [full/part] in accordance with section 42(1) of the FOI Act.

Documents containing material obtained in confidence (section 45)

26. Section 45(1) provides that:
- a document is an exempt document if its disclosure would found an action by a person... for breach of confidence. In other words, the exemption is available where the person who provided the confidential information would be able to bring an action under the general law for a breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure.¹⁰
27. To found an action for breach of confidence (which means s45 would apply), the following five criteria must be satisfied in relation to the information:
- it must be specifically identified
 - it must have the necessary quality of confidentiality
 - it must have been communicated and received on the basis of a mutual understanding of confidence
 - I must have been disclosed or threatened to be disclosed, without authority
 - Unauthorised disclosure of the information has or will cause detriment.¹¹
28. [Expand on how exemption applies]
29. Further, I confirm that the information is specifically identified. That is, information relating to [what documents relate to] which has been communicated between [X and X]. I also confirm that the information has the necessary quality of confidentiality and it was communicated and received on the on the basis of a mutual understanding of confidence. During third party consultation an affected third party noted their objections to the release of the document/s on the basis that the information was provided to the department with the understanding that it would be treated in confidence and that unauthorised disclosure of the information will cause detriment. The

⁹ See, *Australian Gulf War Veterans Association and Repatriation Medical Authority* [2014] AICmr 19 (20 February 2014), paragraph 18.

¹⁰ *Guidelines*, [5.139].

¹¹ *Guidelines*, [5.143].

information contained within these documents is not public knowledge and is only known by [X] and a limited number of individuals within the department.

30. Accordingly, I have decided that [parts of] the document/s meet the criteria for exemption and are exempt in [full/part] in accordance with section 45 of the FOI Act.

Documents disclosure of which would be contempt of Parliament or contempt of court (section 46)

18. Section 46 provides that a document is exempt if public disclosure of the document would, apart from the FOI Act and any immunity of the Crown:
- (a) be in contempt of court
 - (b) be contrary to an order or direction by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath
 - (c) infringe the privileges of the Parliament of the Commonwealth or a State, or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or Norfolk Island.
12. [explain how exemption applies]

Documents disclosing trade secrets or commercially valuable information (section 47)

20. A document is an exempt document if disclosure under the FOI Act would disclose either trade secrets or any other information having a commercial value that would be, or could reasonably be expected to be destroyed or diminished if the information were disclosed.
21. To be exempt under section 47(1)(b) a documents must satisfy two criteria:
- The document must contain information that has a commercial value either to an agency or another person or body, and
 - The commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.¹²¹³
22. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the... person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
 - whether the information confers a competitive advantage on the... person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
 - whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information
 - whether the information is still current or out of date (out of date information may no longer have any value)
 - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.¹⁴
23. The second requirement of s 47(1)(b) — that it could reasonably be expected that disclosure of the information would destroy or diminish its value — must be established separately by satisfactory evidence.¹⁵

¹² Guidelines, [5.188].

¹³ See *McKinnon and Department of Immigration and Citizenship* [2012] AICmr 34.

¹⁴ Guidelines, [5.189]

¹⁵ Guidelines, [5.191]

12. [explain how exemption applies] This information is not publicly known and, if it is known, may affect [X] commercial position by providing other parties who wish to establish similar operations with commercially valuable information that they would otherwise be required to develop themselves.
13. I am satisfied the information is known only to [X] and a limited number of staff within the department, the information confers a competitive advantage on [X], there is a reasonable expectation that a genuine 'arm's-length' buyer would be prepared to pay to obtain that information, the information is still current and disclosing the information would reduce the value of a business operation or commercial activity.
13. Accordingly, I have decided that [parts of] the document/s meet the criteria for exemption and are exempt in [full/part] in accordance with section 47 of the FOI Act.

Conditional Exemptions

13. Where a document is assessed as conditionally exempt, the agency or minister must give access to it unless in the circumstances access would, on balance, be contrary to the public interest (s 11A(5)). The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

Commonwealth-State relations (section 47B)

11. Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure of the document:
 - (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
 - (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 Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth.
12. [Explain how exemption applies...eg. Document[s] [1, 2, 3] contain information [about [.....]/communicated between the department and [state government/authority]. During the processing of your request the department consulted with [state government/authority] about the release of documents. Based on the comments provided by [state government/authority] and the views of the department I consider that release of the documents would reasonably be expected to cause harm to the relations between the department, and subsequently the Commonwealth, and the State.
13. Further, the documents are marked in-confidence and while a dissemination marker does not exempt a document from release under the FOI Act, it demonstrates the expectation and understanding that communications and documents would be treated in-confidence. As such, I consider there is an [express/implied] understanding between the department and [state government/authority] that communications were made in-confidence. Taking this into consideration it is my view that release of the documents would disclose information which was communicated in confidence between the department and [state government/authority].
13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]
17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. I also considered the following factors which do not favour disclosure:
 - (a) disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State;
 - (b) disclosure 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 Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth;
 - (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
 - (d) disclosure could reasonably be expected to prejudice the management function of an agency.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.

17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Deliberative processes (section 47C)

11. 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.

12. In order to determine whether a document is conditionally exempt Guidelines issued by the OAIC explain that:

For each of the conditional exemptions, the harm threshold that must be reached is specified in the provision. The various harm thresholds vary in both the extent of the harm that disclosure would cause and the extent to which the decision maker must be satisfied that the harm would result. The only exception is the deliberative processes exemption (s 47C), which does not include any requirement of harm: the threshold requirement is that the document includes deliberative matter.

30. The Guidelines issued by the OAIC state that:

A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, 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.

12. [explain how conditional exemption applies]
13. The document contains opinions and advice and is considered to be deliberative in nature If this information were released it could reasonably be expected to provide insight into the internal deliberations the department undertakes as part of its [regulatory functions] in relation to [X].
14. Further, the deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth. I can confirm that the deliberative material does relate to the functions of the department, [eg. which is explicit in the discussions about the Secretary's powers and the Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA), which is administered by the department OR specifically it is closely connected with documents submitted to Cabinet for consideration. Release of these documents would reasonably be expected to disclose Cabinet deliberations.].
13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]
17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. 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 would reasonably be expected to impair the confidentiality of Cabinet processes and inhibit the full canvassing of issues in the development of Cabinet material.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

18. 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.

Certain operations of agencies (section 47E)

11. Section 47E conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operations.¹⁶
49. 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;
 - ...
 - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (s 47E).¹⁷
13. In order for subsections 47E(a) and (b) to apply the decision-maker must address elements of the conditional exemption, namely that an effect would reasonably be expected following disclosure.¹⁸ Further considerations applying to these exemptions which must be addressed include:
- the expected effect would be, overall, prejudicial to the effectiveness of the procedure or method of the audit, test or examination being conducted.¹⁹
 - the expected effect would be prejudicial to the attainment of the objects of the audit, test or examination being conducted.²⁰
57. In order for section 47E(d) to apply, the predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.²¹
16. If the document were disclosed it would reasonably be expected that parties would circumvent the rigorous assessment processes in relation to [X]. Should parties evade such processes it would cause substantial adverse effect to the assessment process by prejudicing the effectiveness of the existing assessment processes (s47E(a)).
59. An effect of having parties circumvent the assessment process this would also reasonably be expected to prejudice the attainment of the objects of the assessment process that is conducted (s47E(b)).
60. Further, an effect of prejudicing the rigorous assessment process and the attainment of the objects of the assessment process, it is reasonably expected that the department's operations would be substantially adversely effected, insofar as decision-makers may be misled in the assessment process which would eventuate in concerns with the robustness of decisions made for the future management of [X] by the department. Such an effect would result in substantial changes to the department's procedures to avoid jeopardising the effectiveness of methods and procedures used by assessors. Further, disclosure of the documents would reasonably be expected to affect the

¹⁶ *Guidelines*, [6.86].

¹⁷ *Guidelines*, [6.87].

¹⁸ *Guidelines*, [6.95], [6.100].

¹⁹ *Guidelines*, [6.95].

²⁰ *Guidelines*, [6.100].

²¹ *Guidelines*, [6.112].

department's ability to administer the [eg. statutory regulatory scheme for port operators in the Port of Cape Preston]. (s47E(d)).

13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]
17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. I also considered the following factors which do not favour disclosure:
- (a) disclosure would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
 - (b) disclosure would, or could reasonably be expected to, prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
 - (c) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
 - (d) 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;
 - (e) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
 - (f) disclosure could reasonably be expected to prejudice the management function of an agency.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Personal privacy (section 47F)

11. 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).
12. *[Explain how exemption applies...eg. Document[s] [1, 2, 3] contain personal information, including [names, phone numbers, email addresses, residential addresses and other personal particulars] of individual/s. This information is not public knowledge and I see no public purpose in disclosing the personal information. I do not consider it appropriate to disclose personal information where it is not otherwise available. If this information were disclosed there is a reasonable expectation that these details could be subject to misuse, contrary to the wishes of the individual/s.]*
13. Accordingly, I have decided that *[parts of]* the *document/s* 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. *[I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]*

16. [I agree that disclosure would promote the objects of the FOI Act.]
17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. I also considered the following factors which do not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
 - (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Business affairs (section 47G)

11. A document is conditionally exempt if it discloses information (business 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, where the disclosure of the information:
- Would, or could reasonably be expected to, unreasonably affect... that organisation or undertaking in respect of its lawful business, commercial or financial affairs (s47G(1)(a)), or
 - Could reasonably be expected to prejudice the future supply of information to the Commonwealth... for the purpose of the administration of a law of the Commonwealth... of matters administered by an agency (s47G(1)(b)).²²
32. [Explain how exemption applies...eg. Documents 1, 2, 3 etc. contain information [and images] about [X]. This information is not publicly known. If disclosed, this information would reveal the [business/human resources processes of [X], specifically relating [X]. I consider the release of this information could reasonably be expected to harm the business interests of [X] in so far as competitors will gain insight into their/its business processes, removing any competitive advantage

²² Guidelines, [6.157]

[X] may already have and could affect [X] in its future operations. Further, disclosure of information relating to [X] could reasonably be expected to cause harm to [X] reputation, which in effect could cause harm to [X] future operations.

33. [During the processing of your request the department consulted with [X – affected third party] on the release of the documents. During this consultation the affected third party indicated it would be hesitant to provide information to the department in future, if these documents were to be disclosed. [The department relies upon information provided by stakeholders in order to undertake its regulatory functions, including administration of law and other matters administered by the department]. As such, I consider that if this information were disclosed it could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of administration of a law of the Commonwealth and matters administered by the department.
13. Accordingly, I have decided that [parts of] the document/s 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).

Application of the public interest test:

14. Section 11A(5) 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.
15. 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;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.
16. [I agree that disclosure would promote the objects of the FOI Act, may inform debate on a matter of public importance and may promote effective oversight of public expenditure. The documents do not relate to the applicant, as such, disclosure would not allow the applicant access to [his/her] personal information.]
16. [I agree that disclosure would promote the objects of the FOI Act.]
17. [I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.]
16. I also considered the following factors which do not favour disclosure:
- (a) disclosure 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;
 - (b) disclosure 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.
 - (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 prejudice the competitive commercial activities of an agency;
 - (e) disclosure could reasonably be expected to prejudice the management function of an agency.
17. As set out in section 11B(4) of the FOI Act, 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 in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
 - (d) access to the document could result in confusion or unnecessary debate.
17. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
18. 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.

Irrelevant material

14. Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, section 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions. Where this section applies, section 11A provides that access to the edited copy is required to be given. Accordingly, the documents which are listed as containing irrelevant material, in accordance with this provision in Schedule 1, have been modified by deletions (to remove irrelevant material).
15. In this case I consider irrelevant material to be [names of departmental employees below Senior Executive Service (SES) level and/or information which is outside the scope of your request].

Access to documents

19. The document[s] released to you in accordance with the FOI Act [is][are] enclosed.
19. Following payment of the outstanding charge as set out at paragraph [x], the department will provide the document[s] released to you in accordance with the FOI Act.
19. During the processing of your request the department consulted [a third party] [third parties] potentially affected by the release of the document[s]. [That third party has] [Those third parties have] 30 days from the date of notification of my decision, to seek a review of my decision. Subject to the outcome of any such review, the department will provide you with the document[s] released to you in accordance with the FOI Act.

Your rights of review

20. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

21. You can ask the department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the department extends the application time. You should contact the department if you wish to seek an extension. The department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601
Fax: (02) 6275 1347
Email: <FOI@infrastructure.gov.au>

Information Commissioner Review

22. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
12. You can ask the OAIC to review the department's decision. You do not need to seek an internal review from the department before seeking a review from the OAIC. However, going through the department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
13. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
14. You must apply in writing and you can lodge your application 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

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

Contacts

18. If you wish to discuss this decision, please contact the department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.

[decision-maker]
[Executive Director/Chief Operating Officer]
[Division]
[month][year]



Australian Government

Department of Infrastructure, Transport,
Cities and Regional Development

Schedule of documents

Applicant:

[applicant]

Decision date:

[month/year]

FOI reference number:

XX-XX

Documents:

[scope]

Document reference [doc #]	Date of document	Author	Recipient	Document description	Decision	Exemption provision
				[email/letter/brief/etc – Re:....]	[Exempt in full] [Release in part] [Release in full]	[section X]



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;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

- (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.

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).

33 Documents affecting national security, defence or international relations

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

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization 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.

34 Cabinet documents

General rules

- (1) A document is an exempt document if:
- (a) both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
- (b) it is an official record of the Cabinet; or
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
- (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
 - (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

37 Documents affecting enforcement of law and protection of public safety

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
 - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:
 - (a) witnesses; or

- (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
- (c) any other people who, for any other reason, need or may need, such protection.
- (3) In this section, law means law of the Commonwealth or of a State or Territory.

38 Documents to which secrecy provisions of enactments apply

- (1) Subject to subsection (1A), a document is an exempt document if:
 - (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.
- (1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.
- (2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.
- (3) This section applies in relation to a document so far as it contains personal information about a person if:
 - (a) the person requests access to the document; and
 - (b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the Migration Act 1958 as affected by section 503D of that Act.
- (4) In this section: enactment includes a Norfolk Island enactment.

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.

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
 - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency, the Commonwealth or Norfolk Island.

46 Documents disclosure of which would be contempt of Parliament or contempt of court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

Public interest conditional exemptions

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

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 or Norfolk Island

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, of Norfolk Island 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;
- (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).

47H Public interest conditional exemptions—research

A document is conditionally exempt if:

- (a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in Schedule 4; and
- (b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

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

47J Public interest conditional exemptions—the economy

- (1) A document is conditionally exempt if its disclosure under this Act would, or could be reasonably expected to, have a substantial adverse effect on Australia's economy by:
 - (a) influencing a decision or action of a person or entity; or
 - (b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

Note: A person includes a body corporate and a body politic (see subsection 2C(1) of the Acts Interpretation Act 1901). Examples of a body politic include the government of the Commonwealth, a State, a Territory or a foreign country.

- (2) For the purposes of subsection (1), a substantial adverse effect on Australia's economy includes a substantial adverse effect on:
 - (a) a particular sector of the economy; or
 - (b) the economy of a particular region of Australia.
- (2A) For the purposes of paragraph (2)(b), Norfolk Island is taken to be a region of Australia.
- (3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:
 - (a) currency or exchange rates;
 - (b) interest rates;
 - (c) taxes, including duties of customs or of excise;
 - (d) the regulation or supervision of banking, insurance and other financial institutions;
 - (e) proposals for expenditure;
 - (f) foreign investment in Australia;
 - (g) borrowings by the Commonwealth, Norfolk Island, a State or an authority of the Commonwealth, of Norfolk Island or of a State.

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



Schedule of documents

Applicant: [applicant]
Decision date: [month] 2018
FOI reference number: XX-XX
Documents: Scope.

Document reference [doc #]	Date of document	Author	Recipient	Document description	Decision	Exemption provision [section X]
				[email/letter/brief/etc – Re:....]	[Exempt in full] [Release in part] [Release in full]	



Australian Government

Department of Infrastructure, Regional Development and Cities

FOI

Statement of reasons made under the Freedom of Information Act 1982

Decision and reason for decision of [Decision-maker], Executive Director, [division]

Applicant: [Applicant]
Decision date: [month/year]
FOI reference number: [XX-XX](#)
Documents: [\[scope\]](#)

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Summary

1. I have made a decision that documents in scope of your request do not exist.

Authority to make this decision

2. I, [decision-maker], Executive Director, [division], am an officer authorised by the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development (the 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).

Background

3. On [date], you made a request for access to documents in the possession of the department. Your request sought access to:

[Scope - Copy and paste request – do not paraphrase]

Decision

4. My decision under subsection 24A (1) of the FOI Act is made on the basis that all reasonable steps have been taken to find the information requested, and the information sought does not exist.
5. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:
 - the subject matter of the documents;
 - the current and past file management systems and the practice of orderly destruction or removal of documents;
 - the department's record management systems and practices; and
 - the individuals and areas within the department who may be able to assist with the location of the information.
6. Despite the extensive search, the department has been unable to identify any documents relevant to your request. A description of the searches undertaken to locate the documents to which you are seeking access is at schedule 1 to this letter.
7. On that basis, I am refusing your request for access to the information under section 24A of the FOI Act.

Your rights of review

20. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

21. You can ask the department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the department extends the application time. You should contact the department if you wish to seek an extension. The department must make a review decision within 30 days. If it does not do

so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601
Fax: (02) 6275 1347
Email: <FOI@infrastructure.gov.au>

Information Commissioner Review

22. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
12. You can ask the OAIC to review the department's decision. You do not need to seek an internal review from the department before seeking a review from the OAIC. However, going through the department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
13. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
14. You must apply in writing and you can lodge your application 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

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

Relevant provisions

14. I have enclosed copies of the provisions of the FOI Act relevant to your request at [[Schedule 2 to this letter](#)] or [[insert link to Austlii](#)].

Contacts

15. If you wish to discuss this decision, please contact the department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.

[[decision-maker](#)]
[[Executive Director/Chief Operating Officer](#)]

[Division]
[month][year]



Summary of document searches

The department conducted the following searches to identify files and documents that fall within scope of your request ("relevant documents").

1. File search

A search of the department's hard copy file index identified no files with potentially relevant documents.

2. Search of group drives for electronic documents

A search of the department's electronic files did not identify any relevant documents.

3. Department notification of FOI request

An email notification of the FOI request was circulated to relevant areas in the department requesting that they conduct a search of their respective areas to identify whether documents relevant to the request exist. No relevant documents were identified.



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;

- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (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.

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.

(see section 11A).

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

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;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (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.

21 Deferment of access

(1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:

- (a) if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published; or
- (b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the expiration of a reasonable period after its preparation for it to be so presented or made available; or
- (c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or
- (d) if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

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).

33 Documents affecting national security, defence or international relations

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

- (a) would, or could reasonably be expected to, cause damage to:
- (i) the security of the Commonwealth;
- (ii) the defence of the Commonwealth; or
- (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization 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.

34 Cabinet documents

General rules

- (1) A document is an exempt document if:
 - (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
 - (b) it is an official record of the Cabinet; or
 - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
 - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
 - (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

37 Documents affecting enforcement of law and protection of public safety

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
 - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:
 - (a) witnesses; or
 - (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
 - (c) any other people who, for any other reason, need or may need, such protection.

- (3) In this section, law means law of the Commonwealth or of a State or Territory.

38 Documents to which secrecy provisions of enactments apply

- (1) Subject to subsection (1A), a document is an exempt document if:
- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.
- (1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.
- (2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.
- (3) This section applies in relation to a document so far as it contains personal information about a person if:
- (a) the person requests access to the document; and
 - (b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the Migration Act 1958 as affected by section 503D of that Act.
- (4) In this section: enactment includes a Norfolk Island enactment.

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.

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency, the Commonwealth or Norfolk Island.

46 Documents disclosure of which would be contempt of Parliament or contempt of court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or

- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

Public interest conditional exemptions

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

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 or Norfolk Island

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, of Norfolk Island 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;
- (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).

47H Public interest conditional exemptions—research

A document is conditionally exempt if:

- (a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in Schedule 4; and
- (b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

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

47J Public interest conditional exemptions—the economy

- (1) A document is conditionally exempt if its disclosure under this Act would, or could be reasonably expected to, have a substantial adverse effect on Australia's economy by:
 - (a) influencing a decision or action of a person or entity; or
 - (b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

Note: A person includes a body corporate and a body politic (see subsection 2C(1) of the Acts Interpretation Act 1901). Examples of a body politic include the government of the Commonwealth, a State, a Territory or a foreign country.

- (2) For the purposes of subsection (1), a substantial adverse effect on Australia's economy includes a substantial adverse effect on:
 - (a) a particular sector of the economy; or
 - (b) the economy of a particular region of Australia.
- (2A) For the purposes of paragraph (2)(b), Norfolk Island is taken to be a region of Australia.
- (3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:
 - (a) currency or exchange rates;
 - (b) interest rates;
 - (c) taxes, including duties of customs or of excise;
 - (d) the regulation or supervision of banking, insurance and other financial institutions;
 - (e) proposals for expenditure;
 - (f) foreign investment in Australia;
 - (g) borrowings by the Commonwealth, Norfolk Island, a State or an authority of the Commonwealth, of Norfolk Island or of a State.

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



Schedule of documents

Applicant: [applicant]
Decision date: [month/year]
FOI reference number: XX-XX
Documents: [scope]

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
[no]	[date]	[author]	[recipient]	[document description]	[release in part] [exempt in full]	



Australian Government
**Department of Infrastructure, Transport,
 Cities and Regional Development**

FOI

Statement of reasons made under the Freedom of Information Act 1982

Decision and reasons for decision of [decision-maker], Executive Director, [division]

Applicant: [applicant]
Decision date: [month/year]
FOI reference number: XX-XX
Documents: [scope]

Contents

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Contacts	4
Schedule 1: Schedule of documents	X
Schedule 2: Schedule of relevant provisions in the <i>Freedom of Information Act 1982</i>	X

[reminder: check page numbers and paragraph numbers before finalising]

[reminder: complete schedule of documents]

[reminder: delete non-applicable provisions in schedule 2]

Summary

1. I have made a decision to release the documents subject to your request in full.

Authority to make this decision

2. I, [decision-maker], [Executive Director/Chief Operating Officer/Deputy Secretary], [division], am an officer authorised by the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development (the 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 (the FOI Act).

Background

3. On [date] you made a request for access to documents in the possession of the department. Your request sought access to:

[scope]

4. On [date] an officer of the department contacted you to clarify the scope of your request. You later confirmed by email that your request sought access to:

[refined scope]

Charges for providing access

4. On [date] the department provided you with an estimate of a charge in the amount of [price].

5. On [date] you agreed to pay the charge and paid [a deposit of [price] / the amount in full].

4. As you are seeking access to [a] document[s] that contain your own personal information, Regulation 5(1) of the Freedom of Information (Charges) Regulations 1982 provides that no charge is payable.

6. [As a decision has now been made, charges have been reassessed based on the actual cost of processing your request, as required by Regulation 10(1) of the Freedom of Information (Charges) Regulations 1982. The final charge is [price].

[Options below – select and modify the most appropriate]

7. [As the new charge is less than the amount already paid by you, regulation 10(4)(a) provides that a refund of the difference in the amount of [price] shall be made.]

7. [As the new charges is less than the amount already notified to you, but more than the deposit you paid, you are required to pay the difference between the deposit paid and the new calculation. As such, documents released to you in accordance with this decision will be provided upon payment of remaining charges in the amount of [price] [(final charge) – (deposit)], in accordance with section 11A(1)(b) of the FOI Act.]

7. [As the new charge is more than the amount already paid by you, but I have decided not to grant the request for access, regulation 10(2) provides that no further charge is payable.]

7. [As the new charge is more than the amount already paid by you, and I have decided to give access to all documents without deletions and in the form requested, Regulation 10(3) provides that the higher amount can be charged. Regulation 4(10)(b) provides that the payment already made by you

shall be treated as a deposit on account of the charge. As such, documents released to you in accordance with this decision will be provided upon payment of remaining charges in the amount of [price] [(final charge) – (paid amount)], in accordance with section 11A(1)(b) of the FOI Act.]

7. [As you were not notified of a decision within the statutory time limit (including any extension), Regulation 5(2)-(3) provides the department cannot impose a charge for providing access. Regulation 14 provides that your [payment][deposit] is to be refunded.]

Documents subject to this request

8. The department has undertaken a search of its records and has identified [number of documents] documents that fall within the scope of your request. Documents are listed in the schedule of documents at Schedule 1.
9. During the processing of your request we consulted [x department][a third party] [third parties] potentially affected by the release of the document[s].

Decision

10. I have made a decision to release the documents subject to your request in full.

Access to documents

11. The document[s] released to you in accordance with the FOI Act [is][are] enclosed.
11. Following payment of the outstanding charge as set out above, the department will provide the document[s] released to you in accordance with the FOI Act.
11. During the processing of your request the department consulted [a third party] [third parties] potentially affected by the release of the document[s]. [That third party has] [Those third parties have] 30 days from the date of notification of my decision, to seek a review of my decision. Subject to the outcome of a review, the department will provide you with the document[s] released to you in accordance with the FOI Act.

Your rights of review

20. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

21. You can ask the department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the department extends the application time. You should contact the department if you wish to seek an extension. The department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601

Fax: (02) 6275 1347
Email: <FOI@infrastructure.gov.au>

Information Commissioner Review

22. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
12. You can ask the OAIC to review the department's decision. You do not need to seek an internal review from the department before seeking a review from the OAIC. However, going through the department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
13. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
14. You must apply in writing and you can lodge your application 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

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

Contacts

18. If you wish to discuss this decision, please contact the department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.

[decision-maker]
[Executive Director/Chief Operating Officer]
[Division]
[month][year]



Australian Government

Department of Infrastructure, Transport,
Cities and Regional Development

Schedule of documents

Applicant: [applicant]
Decision date: [month/year]
FOI reference number: XX-XX
Documents: [scope]

Document reference [doc #]	Date of document	Author	Recipient	Document description	Decision	Exemption provision [section X]
				[email/letter/brief/etc – Re:...]	[Exempt in full] [Release in part] [Release in full]	



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.

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.



Australian Government

**Department of Infrastructure, Transport,
Cities and Regional Development**

FOI

FOI Advice for publication of documents

Applicant:

Decision date:

FOI reference number:

Documents:

☐ I confirm that the documents released under this FOI request may be published in the FOI disclosure log on the department's external website.

or

☐ I have decided that some/all of the documents released under this FOI request shall not be published in the FOI disclosure log on the department's external website, as:

- ☐ The documents contain personal information and it would be unreasonable to publish the information.
- ☐ The documents contain information about the business, commercial, financial or professional affairs of any person and it would be unreasonable to publish the information.
- ☐ Other information of a kind determined by the Information Commissioner if publication of that information would be 'unreasonable'.

☐ A schedule of documents which lists which documents can and cannot be published is attached.

or

☐ No documents will be published in the FOI disclosure log as no documents are being released under this FOI request. The documents subject to this request do not exist.

[Name]

Executive Director/Chief Operation Officer – Division

Date



FOI Advice for release of documents

Applicant: [applicant]
Decision date: [Month/Year]
FOI reference number: [XX-XX]
Documents: [scope]

I confirm that *[Please tick relevant statements below]*:

☐ The relevant Deputy Secretary has been notified about the decision.

☐ [Insert Relevant Minister] Office is being briefed of my decision.

- PDMS item number: [PDMS #]
- Date PDMS brief to be sent to the MO no later than [date]

AND

☐ I have discussed my brief with the MO

Name of advisor: _____

Date discussed: / /

OR

☐ The MO will not be briefed of my decision as the request does not relate to significant policy or programme matters and covers routine administrative functions or lower profile activities.

AND

☐ I have not discussed this FOI with the MO because the request does not relate to significant policy or programme matters and covers routine administrative functions or lower profile activities.

Please note: The FOI team will forward your decision and relevant documents to officers in the office of the relevant minister two (2) days prior to the decision being due for release.

In accordance with my statement of reasons, these documents may be sent to the applicant:

- ☐ Statement of reasons
- ☐ Documents released in accordance with the FOI Act

[decision-maker]
[Executive Director/Chief Operating Officer]
[division]
[month/year]

Subject: Access to Documents FOI XX-XX

Dear [applicant]

Access to documents - FOI XX-XX – [subject]

I refer to your request for access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the Freedom of Information Act 1982.

Your request sought access to:

Copy and paste request here (do not paraphrase)

On [date], I wrote to you advising you of the department's decision on access in relation to your FOI request, and requested that you pay the outstanding charges in the amount of [price]. On [date], the department received your payment for the outstanding charges.

Please see attached documents released to you in accordance with the statement of reasons. The originals have been posted to you.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX (or through the department's switchboard number on 1800 075 001) or by email at <FOI@infrastructure.gov.au>.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line.

Regards,

From: FOI
Sent: Friday, 13 January 2017 1:31 PM
Cc: FOI
Subject: FOI XX-XX - Notice of intention to Refuse Request s.24AA

Dear [applicant]

Your FOI request - FOI XX-XX – [subject]- Notice of intention to refuse request (S24(1) of the FOI Act)

I refer to your email received on [insert date]. In your email you make a request access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the *Freedom of Information Act 1982* (the FOI Act). Your request seeks access to:

“Scope of request”

I am writing to notify you of our intention to refuse your request under section 24 of the FOI Act. Section 24 provides that an agency may refuse to process an FOI request if a practical refusal reason, as defined in section 24AA, exists.

Section 24AA(1) relevantly provides:

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:*
- a. The work involved in processing the request;*
 - i. In the case of any agency – would substantially and unreasonably divert the resources of the agency from its other operations; or*
 - ii. In the case of a Minister – would substantially and unreasonably interfere with the performance of the Minister’s functions*
 - b. The request does not satisfy the requirement in paragraph 15(2)(b)(identification of documents)*

The department has identified a number of documents at this point and the preliminary estimate indicates that your request is expected to require an excess of [include hours] of departmental resources. [expand content and provide examples of how the request may be reduced or clarified if able]

In accordance with the FOI Act I am writing to notify of our intention to refuse your request. In order for your FOI request to be processed we invite you to discuss the scope of your request.

Ms/r [insert FOI coordinator] is available to assist you if you have any questions regarding the processing of your request. Ms/r [insert FOI coordinator] be reached by telephone on (02) 6274 6495 (or through the department’s switchboard number on 1800 075 001) or by email at <FOI@infrastructure.gov.au>.

To assist the department in responding to your future communication on this request, please quote the FOI reference number above.

Please note that in accordance with Section 24AB(2)(e) you have **14 days from the date of this email** to contact the department regarding your request, or your request will be deemed to be withdrawn.

Regards,

From: FOI
Cc: FOI
Subject: FW: Your FOI request - FOI XX-XX - Notice of intention to refuse request (S24(1) of the FOI Act)

Dear [applicant]

Your FOI request - FOI XX-XX – [subject]- Notice of intention to refuse request (S24(1) of the FOI Act)

I refer to your email received on[insert date]. In your email you make a request access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the *Freedom of Information Act 1982* (the FOI Act). Your request seeks access to:

“Scope of request”

On the basis of the information you have provided we are unable to proceed with your request. We are not capable of locating documents at this point due to the generality of your request. You may wish to contact us with the intention of refining and clarifying the scope of your request.

Section 24 provides that an agency may refuse to process an FOI request if a practical refusal reason, as defined in section 24AA, exists.

Section 24AA (1)(b) relevantly provides:

- (1) *For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if the following applies:*
 - b. *The request does not satisfy the requirement in paragraph 15(2)(b)(identification of documents)*

Section 15(2)(b) states:

- (2) *The request must:*

- (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;*

In accordance with the FOI Act I am writing to notify you that in order for your FOI request to be processed we invite you to discuss the scope of your request.

The FOI coordinator [insert name] is available to assist you if you have any questions regarding the processing of your request. [insert name] be reached by telephone on (02) 6274 6495 (or through the department's switchboard number on 1800 075 001) or by email at FOI@infrastructure.gov.au.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number (FOI – XX-XX located in the subject line.

Please note that in accordance with Section 24AB(2)(e) you have **14 days from the date of this email** to contact the department regarding your request, or your request will be deemed to be withdrawn.

Regards,



From: FOI
Sent: Wednesday, 27 January 2016 11:21 AM
Cc: FOI
Subject: FOI Request XX-XXX - Acknowledgement

Dear [applicant]

Acknowledgment - FOI XX-XX – [subject]

Thank you for your correspondence received on [insert date], requesting access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the Freedom of Information Act 1982 (the FOI Act).

I confirm receipt of your request and note the department may be in contact with you to discuss your request - if clarification is required, where we may be able to process your request outside of the FOI Act or for any other reason.

Otherwise you will be notified of any charges payable in relation to your request or of a decision regarding your FOI request as soon as this has been determined. In accordance with subparagraph 15(5)(b) you can expect to hear from the department regarding this matter within 30 days.

Your name, telephone number, email or postal address, and any information about yourself provided in connection with your FOI request is considered to be personal information. As indicated above personal information is used to contact you in relation to your request and is also used for administrative purposes involved in the processing of your request. Information on FOI requests received by the department is disclosed to Portfolio Ministers. If you do not consent to your information (typically only your name) being disclosed please advise the department at your earliest opportunity. The Department's [privacy policy](#) contains information regarding complaint handling processes and how to access and/or seek correction of personal information held by the Department.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 6495 or by email at FOI@infrastructure.gov.au.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line.

Regards,

From: FOI
Sent: Wednesday, 27 January 2016 11:21 AM
Cc: FOI
Subject: Acknowledgement - FOI XX-XXX- subject

Dear [applicant](#),

Acknowledgement - FOI XX-XXX- Subject

Thank you for your email received on [\(date\)](#) requesting access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the Freedom of Information Act 1982 (the FOI Act).

I confirm receipt of your request and note the department may be in contact with you to discuss your request - if clarification is required, where we may be able to process your request outside of the FOI Act or for any other reason.

Otherwise you will be notified of any charges payable in relation to your request or of a decision regarding your FOI request as soon as this has been determined. In accordance with subparagraph 15(5)(b) you can expect to hear from the department regarding this matter within 30 days.

Your name, telephone number, email or postal address, and any information about yourself provided in connection with your FOI request is considered to be personal information. As indicated above personal information is used to contact you in relation to your request and is also used for administrative purposes involved in the processing of your request. Information on FOI requests received by the department is disclosed to Portfolio Ministers. If you do not consent to your information (typically only your name) being disclosed please advise the department at your earliest opportunity. The Department's [privacy policy](#) contains information regarding complaint handling processes and how to access and/or seek correction of personal information held by the Department.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 6495 or by email at FOI@infrastructure.gov.au.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line.

Regards,

FOI Officer
Governance Section
Communications, Parliamentary and Governance Branch | Corporate Services
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government
Department of Infrastructure
Cities and Regional Development

Sent: Wednesday, 13 January 2016 6:37 PM
Subject: Acknowledgement and notification of third party consultation - FOI XX-XX – [subject]

Dear [applicant]

Acknowledgement and notification of third party consultation - FOI XX-XX – [subject]

Thank you for your [letter/email] received [date] requesting access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the *Freedom of Information Act 1982* (the FOI Act).

Your request sought access to:

Copy and paste request here (do not paraphrase)

You will be notified of any charges payable in relation to your request or of a decision regarding your FOI request as soon as this has been determined. In accordance with Section 15(5)(b) you can expect to hear from the department regarding charges within 30 days.

[select one of the following 3 options and delete irrelevant]

1.

While processing your request, the department has identified that your request includes documents affecting Commonwealth-State relations. In accordance with Section 26A of the FOI Act, the department is required to consult with a State Government agency before making a decision on the release of documents.

Or

2.

While processing your request, the department has identified that your request includes documents containing the business information of a person, organisation or undertaking. In accordance with Section 27 of the FOI Act, the department is required to consult with that person, organisation or undertaking before making a decision on the release of documents.

Or

3.

While processing your request, the department has identified that your request includes documents containing personal information about a person. In accordance with Section 27A of the FOI Act, the department is required to consult with the person concerned before making a decision on the release of documents.

As such, please be advised that the processing time limit for your request has been extended by 30 days in accordance with Section 15(6) of the FOI Act.

Please also be advised that where documents found to be within scope of your request contain the names and contact details of departmental employees below Senior Executive Service (SES) level, those names and contact details will be considered to be irrelevant to the scope of your request unless you notify the department otherwise.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX (or through the department's switchboard number on 1800 075 001) or by email at <FOI@infrastructure.gov.au>.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line.

Regards,



Sent: Wednesday, 20 May 2015 3:30 PM
Subject: Charges notice - FOI XX-XX – [subject]
Attachments: FOI_credit_card_payment_authority.pdf

Dear [applicant]

Charges notice - FOI XX-XX – [subject]

I refer to your request for access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the Freedom of Information Act 1982.

A determination of your liability to pay a charge and a preliminary charges estimate is attached. **[ATTACH CREDIT CARD FORM]**

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX (or through the department's switchboard number on 1800 075 001) or by email at <FOI@infrastructure.gov.au>.

Regards,



Sent: Tuesday, 29 March 2011 3:48 PM
Subject: Decision on access - FOI XX-XX – [subject]

Dear [applicant]

Decision on access - FOI XX-XX – [subject]

I refer to your request for access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the *Freedom of Information Act 1982* (the FOI Act).

Your request sought access to:

Copy and paste request here (do not paraphrase)

A statement of reasons regarding access to the documents subject to your request is attached. Documents released to you, as specified in the statement of reasons, will be provided upon payment of the outstanding charges ([insert price]).

OR

A statement of reasons regarding access to the documents subject to your request, as well as documents released to you in accordance with the FOI Act, are attached.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX (or through the department's switchboard number on 1800 075 001) or by email at <FOI@infrastructure.gov.au>.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line.

Regards,



From: FOI
Sent: Wednesday, 13 January 2016 6:37 PM
Subject: Deemed withdrawal of Freedom of Information (FOI) request - FOI XX-XX

Dear [applicant],

Deemed withdrawn - FOI XX-XX – [subject]

I refer to your email dated [date], requesting access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department), in accordance with the *Freedom of Information Act 1982* (the FOI Act). Your request sought access to:

[Copy and paste request here](#) (do not paraphrase)

[\[Select one of the following, option 1, 2 or 3, and delete irrelevant option\]](#)

1. (If charges letter sent)

On [date] the department provided you with a determination of your liability to pay a charge and provided you with a preliminary estimate of charges.

The charges estimate asked you to notify the department (in writing) within 30 days:

- of your agreement to pay the charge, or
- of your contention that the charge had been wrongly assessed or should be reduced or not imposed, or both, or
- that you withdraw your request for access to the documents concerned.

As the department has not received written advice in relation to the above, and the 30 day time limit has expired, I am advising you that this FOI request is now taken to be withdrawn.

2. (If no contact after FOI request made – no reduction in scope)

On [date], the department wrote to you advising you that your FOI request was likely to be a large request. I requested that you revise the scope of your request to enable the Department to assist you in the FOI process. I asked if you would provide more details of the specific subject-matter of the documents relating to all [add reason here].

Your request was considered to be on hold until the department received a response from you.

3. (if Practical refusal notice sent and no response)

On [date], the department wrote to you advising you that, in its current form, the processing of your FOI request would unreasonably divert the resources of the department. In accordance with Section 24AB(2)(e) you were offered the opportunity to refine the scope of your request within 14 days.

If you have any questions in relation to the processing of your request please contact me on (02) 6274 XXXX or by email at <FOI@infrastructure.gov.au>.

To assist the department in responding to communication in relation to this request, please quote FOI reference number XX-XX.

Regards,

[name]

FOI Officer

Governance Section

Communications, Parliamentary and Governance Branch | Corporate

Services

Department of Infrastructure, Transport, Cities and Regional

Development

GPO Box 594, Canberra ACT 2601



Australian Government

**Department of Infrastructure
Cities and Regional Development**

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au

From: FOI
Sent: Wednesday, 4 March 2015 3:39 PM
Subject: FOI request [XX-XX] - notification of Information Commissioner review

Dear [third party]

FOI request [XX-XX] - notification of Information Commissioner review

Thank you for your comments on the release of documents under the FOI Act, [which you made on behalf of [X]].

I am now writing to notify you that The FOI applicant has sought a review with the Office of the Australian Information Commissioner (OAIC) of the department's decision to exempt documents from release in [part]/[full]. Some exemptions made to documents were done so in accordance with the objections/comments you raised.

At this stage the OAIC is requesting the department provide [(edit as necessary) copies of the FOI request, documents within scope of the request, correspondence between you and the department for consultation on this matter and your contact details]. Please note that the OAIC will not provide these documents to the FOI applicant. The OAIC is only requesting the documents in order to assist in the review of the decisions.

Please note that I am notifying you of this review only at this stage and no action is required by you. I will keep you informed as the reviews progress.

If you have any questions about this matter please don't hesitate to contact me on 02 6274 XXXX or by return email.

Regards

[name]

FOI Officer

Governance Section

Communications, Parliamentary and Governance Branch | Corporate

Services

Department of Infrastructure, Transport, Cities and Regional Development

GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government

**Department of Infrastructure
Cities and Regional Development**

From: FOI
Sent: Thursday, 19 March 2015 1:39 PM
Subject: FOI Weekly Status Report - as at [date]

Hi [portfolio contact]

I have attached [portfolio agency]'s extract from the last FOI status report. Please update as necessary and forward to the FOI inbox (foi@infrastructure.gov.au) by **COB Wednesday [date]**.

Please ensure updates are made in **blue text**. I would be grateful if you could please use the attached template to provide updates.

If you have any questions or concerns please don't hesitate to give me a call.

Regards,

[name]

FOI Officer

Governance Section

Communications, Parliamentary and Governance Branch | Corporate

Services

Department of Infrastructure, Transport, Cities and Regional Development

GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government

**Department of Infrastructure
Cities and Regional Development**

From: FOI
Sent: Wednesday, 13 January 2016 6:59 PM
Subject: Information for the Estimate of Charges FOI XX-XX - SUBJECT

Dear [line area contact/action officer]

The information below is required for the FOI Coordinator to develop an estimate of charges for this request.

Grateful if you would advise of the following:

- Time taken to do electronic searches for documents -
- No of relevant documents held electronically (not on registry files) -
- No of relevant pages in documents held electronically (not on registry files) -
- Number of relevant registry files -
- Number of relevant documents on registry files -
- Number of relevant pages in documents on registry files -
- Number of exempt pages (electronic AND on registry files) -
- Number of pages released with deletions (electronic AND on registry files) -
- Number of third parties to consult -

Please provide a response via email by COB: [insert date]. Once this information has been received the FOI team will put together an estimate of charges for your comment.

Kind regards

From: FOI
Sent: Tuesday, 29 March 2011 4:15 PM
Cc: FOI
Subject: Request for consultation under the FOI Act - FOI XX-XX - [subject] - to business or agency

Dear ,

Request for consultation under the FOI Act – FOI XXX – (Subject)

The Department of Infrastructure, Transport, Cities and Regional Development (the department) has received a request under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The department has identified the attached document(s) as falling within the scope of the FOI request. As this (these) document(s) may affect you we are therefore seeking your views on whether the document(s) should be released under the FOI Act.

If you consider the document(s) should not be released, please refer to the relevant provisions in the FOI Act under which an exemption should be claimed and provide reasons in support of this.

[delete paras which do not apply – delete irrelevant attachments]

(section 26A – comm-state relations)

In accordance with section 26A, you may contend that document should be exempt from disclosure under section 47B (Commonwealth-State relations) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47B, you will need to provide evidence on how disclosure of the documents would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the documents is undesirable. I have attached a link for guidance issued by the Office of the Australian Information Commissioner on section 47B of the FOI Act to assist you in considering whether this exemption applies.

[Insert Link to OAIC Conditional Exemption Guideline page]

(<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-affecting-commonwealth-state-relations-s-47b>)

OR

(sections 27 and 27A – business and personal)

In accordance with sections 27 and 27A, you may contend that document[s] should be exempt from disclosure under section 47 (commercially valuable information or trade secrets) or 47G (business affairs) and/or section 47F (personal privacy) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47F (personal privacy) and/or 47G (business affairs), you will need to provide evidence on how disclosure of the document[s] would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the document[s] is undesirable. I have attached a link for guidance issued by the Office of the Australian Information Commissioner on section 47, 47G and 47F of the FOI Act to assist you in considering whether these exemptions apply.

[Insert Link to OAIC Conditional Exemption Guideline page]

(<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-affecting-personal-privacy-s-47f>)

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-disclosing-business-information-s-47g>)

OR

(section 27 – Business)

In accordance with section 27, you may contend that document should be exempt from disclosure under section 47 (commercially valuable information or trade secrets) or 47G (business affairs) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47G (business affairs), you will need to provide evidence on how disclosure of the document would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the document is undesirable. I have included links of guidance issued by the Office of the Australian Information Commissioner on section 47 and 47G of the FOI Act to assist you in considering whether these exemptions apply.

[Insert Link to OAIC Conditional Exemption Guideline page]

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-disclosing-business-information-s-47g>)

OR

(section 27A – Personal)

In accordance with section 27A, you may contend that document should be exempt from disclosure under section 47F (personal privacy) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47F (personal privacy) you will need to provide evidence on how disclosure of the document would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the document is undesirable. I have attached a link for guidance issued by the Office of the Australian Information Commissioner on section 47F of the FOI Act to assist you in considering whether these exemptions apply.

[Insert Link to OAIC Conditional Exemption Guideline page]

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-affecting-personal-privacy-s-47f>)

During the course of considering this matter, I would be grateful if you would also address the question of whether the deletion of sensitive information from the attached documents under Section 22 of the FOI Act would eliminate or substantially reduce any objections that [\[you/your office/your department\]](#) may have to the release of the documents.

In deciding whether to release the documents, the department will also consider:

- a) the extent to which the information is well known
- b) whether you are 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 department considers relevant.

So that the department can comply with the statutory timeframe for processing this request, comments on release of the documents or references would be appreciated as soon as possible but no later than Close of Business [\[day/date/year\]](#) . Comments should be in writing and sent to the department's FOI mailbox at FOI@infrastructure.gov.au.

Please note that if we do not receive a response from you in relation to the documents, the decision maker will proceed to make a decision on access in the absence of your comments.

Please contact me (on [xxxxxxx](#)) if you have any questions regarding this request for consultation. To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line (FOI XX-XXX).

Regards,

FOI Officer| Governance Section
Communications, Parliamentary and Governance Branch |
Corporate Services
Department of Infrastructure, Transport, Cities and Regional
Development
GPO Box 594, Canberra ACT 2601
t 02 6274 7768
e FOI@infrastructure.gov.au | w www.infrastructure.gov.au

The Department proudly acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.



Australian Government

**Department of Infrastructure, Transport,
Cities and Regional Development**



Great Cities. Strong Regions. Connecting Australians.

From: FOI
Sent: Tuesday, 3 February 2015 12:24 PM
Subject: Making an FOI request info

Dear [applicant]

In order to obtain access to documents held by this department you will need to submit a request for documents under the Freedom of Information Act 1982 (Cth) (the FOI Act).

To do this:
(section 15(2)) of the Act requires that:

[t]he 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).*

If the request is valid the department then has 14 days to acknowledge the request and 30 days to finalise a decision and provide it to you. The timeframe may be extended where third party consultation (30 days) is required and where the department is awaiting payment of charges which may be imposed.

I trust this information is of assistance.

If you have any further questions please don't hesitate to contact me by return email or by telephone on (02) 6274 XXXX.

Regards,

From: FOI
Sent: Monday, 25 January 2016 2:08 PM
To: FOI
Subject: New FOI request - notification to Contact Officer
Attachments: FOI process flowchart.pdf; FOI - divisional guide for handling requests.docx

Dear (contact officer)

I am touching base with you on the below/attached FOI request as (decision – maker) has advised you are the divisional contact officer.

I have attached the FOI process flowchart and divisional guide which sets out the expected timeframes for each step of the FOI process. Please note this is a guide and while there are strict legislative timeframes for processing FOI requests, there is some flexibility in the timeframes outlined in the divisional guide.

The first step in processing this request is for you to undertake/arrange for searches for relevant documents:

Copy and paste request here (do not paraphrase)

Please keep in mind that searches you undertake for documents should cover the whole division, where this may be relevant to various branches. If you are aware of other divisions that could potentially hold documents I would be grateful if you could advise the FOI team as soon as possible.

Please be aware that every document held by the department is discoverable through FOI regardless of its security classification. This includes, but is not limited to: emails, Cabinet submissions, briefs, documents in PDMS, G:drives, hard files, drafts and information held in databases. It is important you track the time you spend undertaking document searches and preferable if you can make note of this in your calendar or make file notes. If no documents can be found or if the information is held within a database, please get in touch with the FOI Team to discuss next steps.

Once you have an idea of the documents held, including quantity and potential sensitivities, I would be grateful if you could contact the FOI team to arrange a scoping meeting. This meeting will be used to discuss the nature of the request, affected third parties, consultations and possible exemptions that may apply to the documents.

If you have any concerns relating to the documents and would like to meet before you undertake searches please let me know:

Regards,

FOI Officer
 Governance Section
 Communications, Parliamentary and Governance Branch | Corporate
 Services
 Department of Infrastructure, Transport, Cities and Regional Development
 GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government
Department of Infrastructure
Cities and Regional Development

From: FOI
Sent: Monday, 3 September 2012 11:22 AM
Subject: New request: FOI XX-XX – Applicant – Subject
Attachments: FOI - divisional guide for handling requests.docx; FOI process flowchart.pdf

Dear (decision maker),

New request: FOI XX– applicant - subject

A new FOI request has been received from (applicant). The request seeks access to:

Copy and paste request here (do not paraphrase)

The request, as received, is [attached/below].

The first step in processing this request is for you to nominate your divisional action officer and notify the FOI team of this as soon as possible. The FOI team will then make contact with the action officer to discuss next steps.

A guide and flowchart are attached that set out the steps which will be undertaken by divisions and governance and their associated timings.

[You may note that the applicant has not identified themselves in making this request. The FOI Act does not require an applicant who is a natural person to disclose or provide proof of their identity when making a request.] – only keep if needed.

Please do not hesitate to call me on extension XXXX if you have any questions.

Regards,

FOI Officer
 Governance Section
 Communications, Parliamentary and Governance Branch | Corporate
 Services
 Department of Infrastructure, Transport, Cities and Regional Development
 GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government
Department of Infrastructure
Cities and Regional Development

From: FOI
Sent: Wednesday, 13 January 2016 6:59 PM
Subject: Notice of intent to deem withdrawn - FOI XX-XX

Dear [applicant],

FOI XX-XX – [scope]

I refer to the attached internal review of charges decision for FOI XX-XX sent to you on [date]. In the charges decision you were advised of your options and further appeal rights for progressing this request.

If the department has not heard from you by [date], your request will be deemed to be withdrawn and you will need to submit a new FOI request should you wish to proceed.

Regards,

From: FOI
Sent: Wednesday, 13 January 2016 6:59 PM
Subject: Notice to applicant of s16 transfer - functions more closely aligned

Dear [applicant]

Transfer of freedom of information request to another agency

I refer to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act), relating to [subject]

I am writing to advise you that under section 16(1) of the FOI Act an agency is able to transfer a request if the requested document is not in its possession but in the possession of another agency or if the subject matter of the document is more closely connected with the functions of another agency.

Accordingly, I have transferred your request to [agency] whose functions are more closely connected to the subject area of your request. [agency] will continue to process your request.

The contact officer at [agency] is [contact name and details].

Regards,

From: FOI
Sent: Wednesday, 13 January 2016 6:59 PM
Subject: Notification [to third party] of an access grant decision and review rights under the FOI Act - FOI XX-XX – [scope]

Dear [third party]

Notification of an access grant decision under the FOI Act - FOI XX-XX – [scope]

I refer to an [email/letter] sent to you on [date] regarding a request for consultation under the *Freedom of Information Act 1982* (the FOI Act) and your final response by [email/letter] on [date].

As advised in the consultation email, the Department of Infrastructure, Transport, Cities and Regional Development (the department) received a request under the FOI Act for access to information relating to [scope], specifically:

'exact wording of request'

You confirmed by [email/letter] on [date] that you objected to the release of the [documents/following parts of the documents]:

[List documents/parts of documents]

In your response to the department you submitted that the documents should be exempt from release on the basis that release of the documents would be divulging [personal information/commercially valuable information/material obtained in confidence/information affecting Commonwealth-State relations] and may cause harm to [yourself/the business affairs of [company/business name]/the relationship between the department and your agency].

The authorised decision maker in the department considered your comments when making their decision on access to the documents.

The department has elected to release the document in [full/part], [if in part: applying Section/s XX (provision name) to parts of the document which the department found to fall within said exemption provision.]

The department has considered your objections and does not agree that release of the information you have objected to in the documents would divulge [personal information/commercially valuable information/material obtained in confidence/information affecting Commonwealth-State relations] and therefore the documents should not be redacted under section/s XX.

Taking the above into consideration the department does not agree that the documents, which you have objected to the release of, are exempt under the FOI Act.

A copy of the statement of reasons, as is being sent to the applicant today is enclosed for your reference (the applicant's details have been removed).

As you will note at paragraph XX, the department is **not** providing the applicant with access to the parts of the document outlined in your objection, until you have had an opportunity to apply for a review of this access grant decision.

Your review options are as follows:

1. Internal review

You can ask the department to review its decision to grant access in part to the documents outlined. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the department extends the application time. You should contact the department if you wish to seek an extension. The department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594
Canberra ACT 2601
Fax: +61 2 6275 1347

Email: <FOI@infrastructure.gov.au>

2. Information Commissioner review

You can ask the Office of the Australian Information Commission (OAIC) to review the department's decision to grant access in part to the documents outlined above. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the department before seeking an internal review from the Information Commissioner. However, going through the department's internal review process gives the department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 30 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218
SYDNEY, NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3
175 Pitt Street
Sydney, NSW 2000

You have **30 days** from the date of this letter to apply for an Internal Review or an Information Commissioner Review. If, after 30 days, no review is sought, the department will provide the applicant access to the documents.

If you choose to apply for an Information Commissioner Review, please ensure you notify the department immediately to ensure that the department does not assume that you have not applied for a review. This will ensure that the relevant documents are not improperly provided to the applicant.

Please do not hesitate to contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX (or through the department's switchboard number on 1800 075 001) or by email at <FOI@infrastructure.gov.au>.

To assist the department in responding to your future communication on this request, please quote the FOI tracking number located at the top of this letter.

Regards,



From: FOI
Sent: Wednesday, 18 March 2015 4:53 PM
Subject: Notification of Information Commissioner review of decision - FOI request XX-XX – Applicant – Documents relating to [subject]

Dear [insert name],

Notification of Information Commissioner review of decision - FOI request XX-XX – Applicant – Documents relating to [subject]

The OAIC has contacted the department to advise it is undertaking a review of the decision to release documents in part/exempt documents for FOI request XX-XX (Applicant - Documents related to [subject]) – see attached.

The department's decision is to [release documents in part/full or exempt all documents in full] in accordance with section/s [exemption] of the FOI Act. [applicant] has applied to the OAIC for a review of the decision.

The OAIC is seeking the following information by [date]:

- the FOI request and correspondence between the department and applicant which modifies its scope (Attachment A);
- Copies of correspondence between the department and consulted third parties (Attachment B):
[Names, business/company/gov information and phone numbers of third party contacts]
- a copy of the documents to which access was refused (Attachment C); and
- a copy of the email notifications of the IC review provided to consulted third parties (Attachment D).

If section 33: Please note the department is not required to provide material that is exempt under section 33 (national security) at this stage however we can provide them voluntarily. If we do not provide them now we will need to provide submissions/evidence to support the section 33 (national security) claim. Grateful if you could advise if you would like to provide these documents upfront or if you would prefer we provide a submission/evidence.

Grateful if you could advise if you would like to discuss this matter further. Otherwise once I have received your advice I will prepare and provide you with a response for consideration and signature prior to [date].

If you have any questions I can be contacted on extension [xxxx].

Regards,

From: FOI
Sent: Tuesday, 29 March 2011 3:16 PM
Subject: Notification of third party consultation - FOI XX-XX – Subject

Dear [Applicant]

Notification of third party consultation – FOI XX-XX

I refer to your request for access to documents in the possession of the Department of Infrastructure, Transport, Cities and Regional Development (the department) in accordance with the *Freedom of Information Act 1982* (the FOI Act).

Your request sought access to:

[insert request]

Copy and paste request here (do not paraphrase)

[select one of the following 3 options and delete irrelevant]

1.
While processing your request, the Department has identified that your request includes documents affecting Commonwealth-State relations. In accordance with Section 26A of the FOI Act, the Department is required to consult with a State Government agency before making a decision on the release of documents.

Or

2.
While processing your request, the Department has identified that your request includes documents containing the business information of a person, organisation or undertaking. In accordance with Section 27 of the FOI Act, the Department is required to consult with that person, organisation or undertaking before making a decision on the release of documents.

Or

3.
While processing your request, the Department has identified that your request includes documents containing personal information about a person. In accordance with Section 27A of the FOI Act, the Department is required to consult with the person concerned before making a decision on the release of documents.

I am writing to advise you that the processing time limit for your request has been extended by 30 days to [insert due date] in accordance with Section 15(6) of the FOI Act.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX or by email at FOI@infrastructure.gov.au

To assist the department in responding to your future communication on this request, please quote the FOI tracking number FOI XX-XX.

Kind regards



From: clientservice
Sent: Wednesday, 13 January 2016 6:59 PM
Subject: Receipt of Payment/Deposit [to applicant] - FOI XX-XX – [subject]

Dear [applicant]

Receipt of Payment/Deposit - FOI XX-XX – [subject]

I refer to your Freedom of Information request and subsequent correspondence.

On [date] the department processed your [cheque/money order/credit card payment] for the amount of [amount] being for the [deposit/payment] of charges associated with processing the request. A receipt for your payment is attached.

Please contact me if you have any questions regarding the processing of your request. I can be reached by telephone on (02) 6274 XXXX (or through the department's switchboard number on 1800 075 001) or by email at FOI@infrastructure.gov.au.

Regards,



From: FOI
Sent: Wednesday, 13 January 2016 6:59 PM
Subject: Request [to agency] for s.16 Transfer of Freedom of Information request – functions more closely aligned

Dear [agency]

Request for s.16 Transfer of Freedom of Information request – functions more closely aligned

The Department of Infrastructure, Regional Development and Cities has received the [attached/below] request relating to [scope].

We consider that the request covers or touches on subject matters that are more closely aligned with functions undertaken by your agency.

We would be grateful for your advice on whether your agency feels that it is best placed to handle this request, and whether it will accept a transfer under Section 16 of the FOI Act. Can you please confirm by return email, no later than [date] if your agency will accept transfer of this request. We will notify the applicant as appropriate, following your response.

If you would like to discuss this request please don't hesitate to give me a call on 02 6274 XXXX.

Regards,

FOI Officer
Governance Section
Communications, Parliamentary and Governance Branch | Corporate
Services
Department of Infrastructure, Transport, Cities and Regional
Development
GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government
Department of Infrastructure
Cities and Regional Development

From: FOI
Sent: Tuesday, 29 March 2011 4:15 PM
Subject: Request for consultation under the FOI Act - FOI XX-XX - [subject] - to business or agency

Dear ,

Request for consultation under the FOI Act – FOI XXX – (Subject)

The Department of Infrastructure, Transport, Cities and Regional Development (the department) has received a request under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

The department has identified the attached document(s) as falling within the scope of the FOI request. As this (these) document(s) may affect you we are therefore seeking your views on whether the document(s) should be released under the FOI Act.

If you consider the document(s) should not be released, please refer to the relevant provisions in the FOI Act under which an exemption should be claimed and provide reasons in support of this.

[delete paras which do not apply – delete irrelevant attachments]

(section 26A – comm-state relations)

In accordance with section 26A, you may contend that document should be exempt from disclosure under section 47B (Commonwealth-State relations) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47B, you will need to provide evidence on how disclosure of the documents would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the documents is undesirable. I have attached a link for guidance issued by the Office of the Australian Information Commissioner on section 47B of the FOI Act to assist you in considering whether this exemption applies.

[Insert Link to OAIC Conditional Exemption Guideline page]

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-affecting-commonwealth-state-relations-s-47b>

OR

(sections 27 and 27A – business and personal)

In accordance with sections 27 and 27A, you may contend that document[s] should be exempt from disclosure under section 47 (commercially valuable information or trade secrets) or 47G (business affairs) and/or section 47F (personal privacy) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47F (personal privacy) and/or 47G (business affairs), you will need to provide evidence on how disclosure of the document[s] would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the document[s] is undesirable. I have attached a link for guidance issued by the Office of the Australian Information Commissioner on section 47, 47G and 47F of the FOI Act to assist you in considering whether these exemptions apply.

[Insert Link to OAIC Conditional Exemption Guideline page]

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-affecting-personal-privacy-s-47f>
<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-disclosing-business-information-s-47g>

OR

(section 27 – Business)

In accordance with section 27, you may contend that document should be exempt from disclosure under section 47 (commercially valuable information or trade secrets) or 47G (business affairs) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47G (business affairs), you will need to provide evidence on how disclosure of the document would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the document is undesirable. I have included links of guidance issued by the Office of the Australian Information Commissioner on section 47 and 47G of the FOI Act to assist you in considering whether these exemptions apply.

[Insert Link to OAIC Conditional Exemption Guideline page]

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-disclosing-business-information-s-47g>

OR

(section 27A – Personal)

In accordance with section 27A, you may contend that document should be exempt from disclosure under section 47F (personal privacy) of the FOI Act. However, in making your contentions you will need to address what harm would come from disclosure. If claiming section 47F (personal privacy) you will need to provide evidence on how disclosure of the document would be contrary to the public interest. Please be aware that it is not sufficient to simply assert that release of the document is undesirable. I have attached a link for guidance issued by the Office of the Australian Information Commissioner on section 47F of the FOI Act to assist you in considering whether these exemptions apply.

[Insert Link to OAIC Conditional Exemption Guideline page]

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions#documents-affecting-personal-privacy-s-47f>

During the course of considering this matter, I would be grateful if you would also address the question of whether the deletion of sensitive information from the attached documents under Section 22 of the FOI Act would eliminate or substantially reduce any objections that [\[you/your office/your department\]](#) may have to the release of the documents.

In deciding whether to release the documents, the department will also consider:

- a) the extent to which the information is well known
- b) whether you are 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 department considers relevant.

So that the department can comply with the statutory timeframe for processing this request, comments on release of the documents or references would be appreciated as soon as possible but no later than Close of Business [\[day/date/year\]](#) . Comments should be in writing and sent to the department's FOI mailbox at FOI@infrastructure.gov.au.

Please note that if we do not receive a response from you in relation to the documents, the decision maker will proceed to make a decision on access in the absence of your comments.

Please contact me (on [xxxxxxx](#)) if you have any questions regarding this request for consultation. To assist the department in responding to your future communication on this request, please quote the FOI tracking number located in the subject line (FOI XX-XXX).

Regards,

FOI Officer
Governance Section
Communications, Parliamentary and Governance Branch | Corporate
Services
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601

e FOI@infrastructure.gov.au | w www.infrastructure.gov.au



Australian Government
Department of Infrastructure
Cities and Regional Development

From: FOI
Sent: Wednesday, 18 March 2015 4:20 PM
Subject: Request for internal review: FOI [XX-XX] – Documents relating to [subject]

Dear [deputy secretary]

Request for internal review: FOI [XX-XX] – [subject]

A request for internal review of an FOI decision has been received from [applicant] (see email below/attached). [FOI applicant] sought access to documents relating to [subject (expand on documents sought)]. A copy of the original decision and documents are attached for your information.

[original decision-maker] made a decision to [exempt documents in full/release documents in full/release documents in part] on the basis that disclosure would:

- Outline exemptions used eg. could cause damage to the security of the Commonwealth (s47B).

[Include other information about release of documents]

During consultation, [third party consulted] considered that parts of document/s should be exempt under section/s [X] – **delete if not necessary**

[applicant] considers the documents should not be exempt as the matter relates to ... **(insert comments/reasoning from applicant)**.

I would be grateful if you would agree to be the decision-maker for this review. I will then contact [Dep Sec EA] to arrange a meeting to discuss.

A decision for this review is due to the applicant by [date].

Please do not hesitate to call me on extension [XXXX] if you have any questions.

Regards,

FOI Officer
 Governance Section
 Communications, Parliamentary and Governance Branch | Corporate Services
 Department of Infrastructure, Transport, Cities and Regional Development
 GPO Box 594, Canberra ACT 2601

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Australian Government
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