



ATTACHMENT A
DECISION RECORD

Request Details

FOI Request: FA 15/08/01815
File Number: ADF2015/45888

Scope of Request

You have requested access to the following documents:

'Any documents held by the Department about the company Dragon Industries Asia which relate to the procurement of boats, being wooden-hulled vessels. The company name could also be Dragon Industries Asia Limited. The timeframe for this request is 1 September 2014 to 31 November 2014.'

Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

Relevant material

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act;
- consultation responses from third parties consulted in accordance with the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

Reasons for Decision

I am satisfied that I have been provided with all the documents that are relevant to your request. The schedule of the 28 documents that fall within the scope of your request at **ATTACHMENT B** sets out the decision on access and, where appropriate, refers to various sections of the FOI Act. My reasoning in relation to the application of each section to particular documents is set out below.

1 Section 22 of the FOI Act – irrelevant to request

I have decided that the deleted parts of a number of documents, as identified in the attached schedule, would disclose information that could reasonably be regarded as irrelevant to your request.

In its letter to you dated 1 September 2015, the Department indicated that it is the Department's policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request. As such that information has been deleted from the from the documents pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

2 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33(a)(i) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the security of the Commonwealth.

I have decided that certain documents, as identified in the attached schedule, are exempt from disclosure under section 33(a)(i) of the FOI Act, as disclosure of that information would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as:

- (5) *Without limiting the generality of the expression **security of the Commonwealth**, that expression shall be taken to extend to*
 - (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth ...*

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant.¹ That Act defines 'security' as:

- (a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*
 - (i) *Espionage*
 - (ii) *Sabotage*
 - (iii) *Politically motivated violence*
 - (iv) *Promotion of communal violence*
 - (v) *Attacks on Australia's defence system; or*
 - (vi) *Acts of foreign interference;**Whether directed from, or committed within, Australia or not; and*
- (aa) *the protection of Australia's territorial and border integrity from serious threats; and*

¹ See *Staats and National Archives of Australia* [2010] AATA 531 at [99].

- (b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

Paragraph (aa) is particularly on point. It was inserted by the *Anti-People Smuggling and Other Measures Act 2010* (Cth) (Schedule 2). The Explanatory Memorandum for the *Anti-People Smuggling and Other Measures Bill 2010* (Cth), states that 'serious threats to Australia's territorial and border integrity' include 'those posed by people smuggling activities' (at 2-3).

The integrity of Australia's physical borders is an obvious part of the security of the Commonwealth. This concept of security includes a range of threats against Australia's interests, functions connected to piracy, maritime terrorism, biosecurity, prohibited imports and exports and illegal exploitation of Australia's natural resources can all readily be seen as aspects of maintaining the security of the Commonwealth through detection, prevention or suppression of these activities.

The Department, now incorporating the former Australian Customs and Border Protection Service, is part of a whole-of-government response to border protection issues that has been established through the Operation Sovereign Borders Joint Agency Task Force. Operation Sovereign Borders is the name given to the military-led border security operation supported and assisted by a wide range of federal government agencies. The Department is responsible for the Detection, Interception and Transfer Task Group within the Joint Agency Task Force and supports that Group through the activities of Maritime Border Command.

The documents that fall within the scope of your request, would disclose, if released, further details that are currently in the public realm regarding the Department's capabilities as part of the action of detecting and intercepting vessels trying to enter Australia by sea with the intention of offloading passengers without the authority of the Australian Government and taking steps to maintain Australia's borders when such vessels are intercepted.

The aim of those capabilities is to ensure that Australia has effective control of the circumstances in which people enter Australia.

Damage

I consider that the release of the material in the documents would have the capacity to cause damage to the security of the Commonwealth by the following means:-

- The integrity of Australia's borders is part of Australia's security, as Australia's national interests are potentially threatened by any unauthorised arrival of people. If Australia cannot effectively manage who can enter the country, and the circumstances and conditions under which people enter, then the security of the Commonwealth is compromised.
- If the information in the documents were released, it would provide further insight into the manner in which on water activities are conducted in relation to people smuggling in terms of capabilities, tactics and posture, which would likely result in the compromise of operational functions.
- The current level of awareness of the targeted border protection measures under Operation Sovereign Borders is high and while people smugglers are seeking out alternate opportunities to deliver people into the Australian jurisdiction, the threat of illegal maritime arrivals seeking entry to Australia is

ongoing. It is necessary to continue operations in an effective manner to ensure a high level of pressure is maintained against the threat that people smuggling efforts pose to Australia.

- People smugglers and other individuals seeking to engage in illegal activities within the Australian Maritime Domain are actively involved in research and information gathering about the nature, scope and capacity of Australian maritime security operations. They seek to gain insight into the Department's functions, capabilities, tactics, procedures and posture, to avoid detection or avoid adverse action if detected.
- Even if the assistance afforded is considered to be slight, any reduction in the efficiency or effectiveness of current operational methods is likely to have significant consequences given the ever-present challenge of managing Australia's exceptionally large maritime jurisdiction.
- If the details were released, border protection authorities would be forced to revise current operational methodology to minimise the harm caused by those disclosures. This is by definition a damaging to security operations. Current procedures and activities are set with a view to achieving maximum security outcomes with the available resources. Any change required by a need to counter the advantage afforded to the Department necessarily represents a compromise to operational effectiveness. I consider that if Operation Sovereign Borders is compromised, there is a real threat of damage to the security of the Commonwealth. If the Government loses the ability to determine who can enter the Australian Maritime Domain, when they can do so and under what circumstances, the security of the nation is compromised. Release of the information contained in the documents pertaining to operational information reduces the ability of the Department to do its job, as tasked by the Government.
- Additionally, the damage could be in increasing the risk to personnel undertaking border protection work. Patrolling and protecting Australia's borders is an inherently dangerous task. It is not at all fanciful to suggest that people who are involved in illegal acts may be willing to harm Australian personnel in order to escape detection or sanction for their activities. By releasing information that would make the activities of border protection vessels and officers on those vessels more predictable, the risk that a person would be willing to, and successful in, causing harm or damage to these officers is increased.

3 Section 47 of the FOI Act – Trade Secrets

Section 47 of the FOI Act provides that a document is an exempt document if its disclosure would disclose:

- (a) Trade secrets; or
- (b) any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Certain information contained within the documents was provided to the Department by a third party. It appears to the Department that this third party might reasonably wish to make a contention that the information is exempt under section 47 of the FOI Act. That third party has made submissions in relation to the exemption of the information and in making my decision, I have had regard to those submissions.

3.1 I have decided that the release of certain documents, as identified in the attached schedule, would disclose trade secrets.

I have taken the following factors into consideration when deciding that the information contains trade secrets:

- the information is not known outside the business of the owner of that information;
- the third party is not known to be associated with the matters contained within these documents;
- the information is not availability from publicly accessible sources, and the third party has taken measures to guard the secrecy of the information;
- the documents disclose design and technical details which were produced by privately owned and developed software not available to the general public;
- the information is valuable to the third party and if disclosed to a competitor, the information would be liable to cause real or significant harm to that third party as the owner of the Trade Secrets disclosed within these documents; and
- the effort and money spent by the third party in developing the information.

I have therefore decided that this information is exempt from disclosure under section 47 of the FOI Act.

3.2 I have also decided that the release of parts of certain documents, as identified in the attached schedule, would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value.

The information contained within these documents is valuable for the purpose of carrying on the commercial activities in which the third party entity is engaged. The information is relevant to the profitability or viability of a continuing business operation. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity.

The information within these documents consists of the commercial value of a contract together with invoices associated with that contract, including terms of payment. The information contained within the documents is repeated, and consists of information of the same nature through the documents identified above.

I have taken the following factors into consideration when deciding that the information contains commercially valuable information:

- the information is known only to the Department and the third party. It is not otherwise publically available;
- the information is current and relates to the 2014-15 financial year. As such, I consider that it still has commercial value to the third party, and disclosure of the information would destroy or diminish that value; and
- The disclosure of the information would reduce the value of the business operation or commercial activity of the third party.

I note that the third party has provided submissions contending that the commercially sensitive information should be exempt from disclosure under section 47 of the FOI Act. The third party has contended that as a privately owned company based outside Australia, it is subject to company and privacy laws of the jurisdiction in which it is located. This includes provisions that information concerning a Company's affairs or about its shareholders may not be released to the public or transferred outside that jurisdiction without the specific permission of the shareholders and directors.

No such consent exists for this information to be released outside the specific purposes for which it was provided to this Department.

I have therefore decided that this information is exempt from disclosure under section 47 of the FOI Act.

4 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under FOI would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the Privacy Act 1988).

I consider that disclosure of parts of certain documents, as identified in the attached schedule, would disclose personal information relating to a private individual third parties. Some of this information consists of an individual's name, employment circumstances, and direct contact details, including a mobile phone number. Other documents are photographs which contain images of private individuals.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have taken the following factors into consideration when deciding that the information contains commercially valuable information:

- The third parties' information is not well known and would only be known to a limited group of people with a business need to know.
- As the third parties' information is only known to a limited group of people, the individual concerned is not generally known to be associated with the matters referred to in the documents.
- The third parties' information is not available from publicly accessible sources.
- I do not consider that the third parties' information would be relevant to the broader scope of your request, as you are seeking access to information regarding the procurement of boats rather than information which wholly relates to private individuals.

I am satisfied that the disclosure of the information identified within these documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have

turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 7 below.

5 Section 47G(1)(a) of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I have considered that parts of certain documents, as identified in the attached schedule, contains information concerning the business, commercial or financial affairs of an organization. The information is in the nature of company details, including their location, contact details and bank account information.

I consider that the disclosure of the information concerning the organisation would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs. I have therefore decided that parts of the documents referred to above are conditionally exempt from disclosure under section 47G(1)(a) of the FOI Act.

I also consider that the disclosure of this information 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 or of a Territory of the administration of matters administrated by the Department. I have therefore decided that parts of the documents referred to above are also conditionally exempt from disclosure under section 47G(1)(b) of the FOI Act.

I have taken the following factors into consideration when deciding that the information contains business affairs information:

- The affected third party entity has made submissions to the Department that the disclosure of the documents would result in the disclosure of their business affairs information. The information contained within the documents relates directly to the business affairs of the third party.
- The matters referred to in these documents are sensitive in nature, and the affected third party entity is not publicly known to be associated with these matters. Any public disclosure of their association with these matters would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.
- The affected third party entity has contended that the information was provided to a senior officer within the Department in good faith and that the company had no expectation at that time that this information would be disclosed publicly.
- Whilst the affected third party entity does have a public profile, in so far as it has a website which discloses the nature of its business, the extent of its involvement with this Department and the matters referred to in the documents is not well known.

Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 7 below.

6 The public interest – section 11A of the FOI Act

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.*

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does have the character of public importance and would be of interest, but to a very narrow section of the public.
- Insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents:

- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of a number of individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

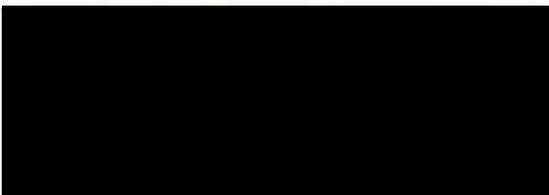
- I consider that the disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of a third party organisation.
- I consider it to be in the public interest that the Department be able to secure the future supply of information in relation to its delivery of sensitive operational activities by providing a degree of confidence in its dealings with commercial third parties to the extent that there is not a precedent of public disclosure of the information that those third parties provide to the Department. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- (a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- (b) *access to the document could result in any person misinterpreting or misunderstanding the document;*
- (c) *the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;*
- (d) *access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.



**Authorised Decision Maker
Department of Immigration and Border Protection**

3 November 2015

ATTACHMENT B

Schedule of Documents

FOI request: FA 15/08/01815
 File Number: ADF2015/45888

| | Date of document | No. of pages | Description | Decision on release | |
|-----|------------------|--------------|---------------------------------------|---------------------|-------------------------------------|
| | | | | | |
| 1. | 1\10\2014 | 1 | Email re Procurement | Exempt in full | 22(1)(a)(ii) 33(a)(i) |
| 2. | 1\10\2014 | 10 | Draft Procurement Spending Proposal | Exempt in full | 22(1)(a)(ii) 33(a)(i)) 47 |
| 3. | 7\10\2014 | 2 | Email re Procurement | Exempt in full | 22(1)(a)(ii) 33(a)(i) |
| 4. | 10\10\2014 | 1 | Email re Procurement | Exempt in full | 22(1)(a)(ii) 33(a)(i) |
| 5. | 27\10\2014 | 1 | Email –transfer vessel | Release in part | 47(1)(a) 47G(1)(a) 47F |
| 6. | 27\10\2014 | 2 | Hydrostatics report | Exempt in full | 33(a)(i) 47(1)(a) |
| 7. | 27\10\2014 | 1 | transfer vessel zebra | Exempt in full | 33(a)(i) 47(1)(a) |
| 8. | 27\10\2014 | 5 | PDF design | Exempt in full | 33(a)(i) 47(1)(a) |
| 9. | 27\10\2014 | 1 | Transfer Boat – General arrangement | Exempt in full | 33(a)(i) 47(1)(a) |
| 10. | 27\10\2014 | 1 | transfer vessel alu | Exempt in full | 33(a)(i) 47(1)(a) |
| 11. | 27\10\2014 | 1 | transfer vessel body silver | Exempt in full | 33(a)(i) 47(1)(a) |
| 12. | 27\10\2014 | 1 | transfer vessel lines development | Exempt in full | 33(a)(i) 47(1)(a) |
| 13. | 27\10\2014 | 1 | transfer vessel lines sketch | Exempt in full | 33(a)(i) 47(1)(a) |
| 14. | 27\10\2014 | 1 | transfer vessel profile demonstration | Exempt in full | 33(a)(i) 47(1)(a) |

| | Date of document | No. of pages | Description | Decision on release | |
|-----|------------------|--------------|--|---------------------|---|
| | | | | | |
| 15. | 27\10\2014 | 3 | Design hydrostatics report | Exempt in full | 33(a)(i) 47(1)(a) |
| 16. | 27\10\2014 | 1 | transfer vessel linesplan | Exempt in full | 33(a)(i) 47(1)(a) 47G(1)(a) & (b) |
| 17. | 27\10\2014 | 1 | Email –vessel frame construction | Release in part | 47F 47G(1)(a) and (b)) |
| 18. | 27\10\2014 | 1 | Photograph –vessel frame construction | Exempt in full | 33(a)(i) |
| 19. | 31\10\2014 | 1 | Email –vessel frame construction | Release in part | 22(1)(a)(ii) 33(a)(i) 47G 47F |
| 20. | 31\10\2014 | 3 | Photographs –vessel frame construction | Exempt in full | 33(a)(i) 47F |
| 21. | 4\11\ 2014 | 1 | Invoice | Exempt in full | 47F 47G(1)(a) |
| 22. | 4\11\ 2014 | 1 | Foreign Currency Payment Request | Release in part | 47G(1)(a) 47F |
| 23. | 4\11\ 2014 | 2 | Email – payment of Invoice | Release in part | 22(1)(a)(ii) 33(a)(i) 47G(1)(a) |
| 24. | 4\11\ 2014 | 1 | Payment detail report | Release in part | 47(1)(b) 47G(1)(a) 47F |
| 25. | 25\11\ 2014 | 2 | Email re Procurement | Exempt in full | 22(1)(a)(ii) 33(a)(i) 47(1)(b) |
| 26. | 25\11\ 2014 | 2 | Email re Procurement | Exempt in full | 22(1)(a)(ii) 33(a)(i) 47(1)(b) |
| 27. | 25\11\ 2014 | 10 | Draft Procurement Spending Proposal | Exempt in full | 22(1)(a)(ii) 33(a)(i) 47(1)(b) 47G(1)(a) & (b) |
| 28. | 26\11\ 2014 | 2 | Email re Procurement | Exempt in full | 22(1)(a)(ii) 33(a)(i) 47(1)(b) |

ATTACHMENT C

Relevant Legislation

Section 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.

Section 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.

Section 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.

Section 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.

Section 47F - Public interest conditional exemptions—personal privacy

- (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.

Section 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.

11B - Public interest exemptions—factors

- (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.

Section 22 - Access to edited copies with exempt or irrelevant matter deleted

- (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.

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