



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

**Decision and reason for decision of Philippa Power, Acting Executive Director, Policy and Research**

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**Applicant:** Mr Malcolm Mars  
**Decision date:** December 2013  
**FOI reference number:** 14-38  
**Documents:** Documents relating to the Tasmanian Forest Agreement public funding

**Contents**

Summary ..... 2  
 Authority to make this decision ..... 2  
 Background ..... 2  
 Charges for providing access..... 2  
 Documents subject to this request ..... 2  
 Decision ..... 3  
     *Reasons for decision* ..... 3  
     *Statement of Reasons* ..... 3  
         *Documents containing material obtained in confidence (s45)* ..... 3  
         *Commonwealth-State relations (s47B)*..... 4  
         *Deliberative processes (s47C)* ..... 5  
         *Personal privacy (s47F)*..... 6  
         *Business (s47G)* ..... 7  
         *Irrelevant material (s22)*..... 8  
     Access to documents ..... 9  
 Your rights of review ..... 9  
     *Internal Review* ..... 9  
     *Information Commissioner Review* ..... 9  
 Contacts ..... 10  
  
 Schedule 1: Schedule of documents ..... 11  
 Schedule 2: Schedule of relevant provisions in the *Freedom of Information Act 1982* ..... 14

## Summary

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

## Authority to make this decision

2. I, Philippa Power, Acting Executive Director, Policy and Research, am an officer authorised by the Secretary of the Department of Infrastructure 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 18 September 2013, you made a request for access to documents in the possession of the Department. Your request sought access to:

*“information regarding Tasmanian Forest Agreement public funding as detailed in my emails below, namely:*

*Projects funded by \$100 million forest peace deal to diversify the state's economy*

1. *The criteria for the assessment of the projects*
2. *A complete list and full details of all the applications including those which were unsuccessful*
3. *How the applications were rated against the criteria*
4. *The persons who assessed the applications*
5. *The person(s) who was responsible for the final funding decisions”*

4. On 19 September 2013, you emailed the Department seeking further access to:

*“information in regard to the successful applications:*

1. *Details of any terms and conditions associated with the payments*
2. *Funding programme/schedule*
3. *Details of how the recipients of funds will be monitored/audited to ensure compliance with programme requirements”*

5. On 1 October 2013, the Department acknowledged your requests and advised that for efficiency your two requests would be combined and treated as one.

## Charges for providing access

6. On 1 November 2013, the Department provided you with an estimate of charges in the amount of \$223.58 for the processing of your request.
7. On 5 November 2013, you requested a waiver of the charges associated with your request.
8. On 5 December 2013, the Department notified you of a decision to waive charges associated with the processing of your request in full.

## Documents subject to this request

9. The Department has undertaken a search of its records and has identified 13 documents that fall within the scope of your request, as set out above.
10. The documents subject to your request are listed in the schedule of documents at Schedule 1.

11. During the processing of your request the Department consulted third parties potentially affected by the release of the documents.

## Decision

12. I have made a decision to release the documents relevant to your request in part. The documents that I have chosen to grant access to in part are set out in Schedule 1, together with applicable exemption provisions. Where I have decided to grant access in part to documents, I have provided access to an edited copy of documents, modified by deletions in accordance with section 22(2) of the FOI Act.

## Reasons for decision

13. 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 findings were based and the reasons for my decision to grant partial access to the documents follow.
14. I have taken the following material into account in making my decision:
- the content of the documents that fall within the scope of your request;
  - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:

section 11B	public interest exemption – factors
section 22	access to edited copies with exempt or irrelevant material deleted
section 45	documents communicated in confidence
section 47B	commonwealth-State relations
section 47C	deliberative processes
section 47F	personal Privacy
section 47G	business
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines); and
  - the views of third parties consulted by the Department under section 27A of the FOI Act;
15. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

## Statement of reasons

16. I have decided to grant partial access to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

### ***Documents containing material obtained in confidence (section 45)***

17. Section 45 provides that a document is an exempt document if its disclosure under the Act would found an action by a person for a breach of confidence. The exemption is available where the person/s that provided the confidential information would be able to bring an action under the general law for breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure.

18. The documents in issue contain information communicated between the Commonwealth and State Government's with the reasonable expectation that the information would be treated in confidence. Some of the communications are marked as 'confidential' and while dissemination classification markers in themselves do not exempt documents from release under the FOI Act, it provides evidence of the expectation that the information communicated would be treated confidentially.
19. Further, while conducting third party consultation on the release of documents subject to this request, State Government representatives advised that they considered the information to have been communicated in confidence and as such considered it exempt in accordance with this section of the FOI Act.
20. I agree that the communications were made with the mutual understanding that they would be maintained in confidence. Accordingly, I have decided that parts of documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for exemption.

***Commonwealth-State relations (section 47B)***

21. 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.
22. As discussed at paragraphs 17 - 20 the documents in issue contain information communicated between the Commonwealth and State Government's with the reasonable expectation that the information would be treated in confidence. Some of the communications are marked as 'confidential' and while dissemination classification markers in themselves do not exempt documents from release under the FOI Act, it provides evidence of the expectation that the information communicated would be treated confidentially.
23. Further, while conducting third party consultation on the release of documents subject to this request, State Government representatives advised that they considered the information to have been communicated in confidence and as such considered it exempt in accordance with this section of the FOI Act. It was noted during these consultations that if the information were disclosed there would be a reasonable expectation that the State Government would be hesitant to provide similar information in future, thus affecting future funding negotiations and causing Commonwealth and State relations to be diminished.
24. Accordingly, I have decided that parts of documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

*Application of the public interest test:*

25. 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.
26. 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; and
  - (c) disclosure would promote effective oversight of public expenditure;
27. 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; and
  - (c) disclosure could reasonably be expected to prejudice the Department's ability to obtain similar information in the future.
28. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
29. I consider that if this information were disclosed it could reasonably be expected to diminish the ongoing relationship between the Commonwealth and Tasmanian State Government. It is important that all jurisdictions are able to share confidential information as part of negotiations with the expectation that neither party will breach that confidentiality. As such, I consider that if the information were disclosed there would be a reasonable expectation that the Tasmanian and other State Governments would be hesitant to provide such information to the Department in future.
30. 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)***

31. 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.
32. The documents in issue contain material of a deliberative nature. Information within the documents was gathered for the purposes of conducting deliberations regarding the assessment of submissions made to the Department for funding under the scheme. Further, material contained

within the documents contains opinions, advice and recommendations made by Tasmanian State Government.

33. Further, some of the documents in issue contain information relating to budget processes which is not publicly available. Although some budget figures are publicly available, the movement and allocation of budgetary funds over financial years is not. The movement and allocation of these funds may be subject to change over the period and although the documents are not classified 'budget-in-confidence', the material contained within the documents is not dissimilar to information which would ordinarily be classified 'budget-in-confidence'. I consider that this type of information would be exempt from disclosure as the information contained within those documents would reveal government deliberations. As such, I consider that the release of information contained within documents subject to your request could reasonably be expected to disclose budget processes, revealing government deliberations and subsequently undermine future budgetary and funding processes.
34. Accordingly, I have decided that parts of documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

*Application of the public interest test:*

35. 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.
36. 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; and
  - (c) disclosure would promote effective oversight of public expenditure.
37. 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;
  - (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
  - (c) disclosure could reasonably be expected to reveal government deliberations; subsequently undermining future budgetary and funding processes.
38. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

39. 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)***

40. 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).
41. The document in issue contains the mobile phone number/s of departmental staff. Departmental officers are contactable during normal business hours via official email addresses and phone numbers. I consider that if personal phone numbers were to be released they could be subject to misuse and have an unreasonable effect on the officer's right to privacy.
42. Accordingly, I have decided that parts of documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

***Application of the public interest test:***

43. 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.
44. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factor which favours disclosure:
- (a) disclosure would promote the objects of the FOI Act.
45. I also considered the following factor which does not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.
46. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
47. 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 (section 47G)***

48. Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; 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.

- 49. The documents in issue contain information relating to the estimated costs associated with different projects. This information was provided by individuals and organisations for the purpose of applying for funding under the scheme. If this information were to be released it could reasonably be expected to cause harm to the business affairs of said individuals and organisations.
- 50. Accordingly, I have decided that parts of documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

*Application of the public interest test:*

- 51. 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.
- 52. 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.
- 53. I also considered the following factors which do not favour disclosure:
  - (a) disclosure would, or could reasonably be expected to, unreasonably affect a person adversely in respect of his or her lawful business or professional affairs or an organisation or undertaking in respect of its lawful business, commercial or financial affairs.
- 54. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
- 55. As stated above, the documents in issue contain information relating to the estimated costs associated with different projects. This information was provided by individuals and organisations for the purpose of applying for funding under the scheme. Some of the project submissions made to the Department were not successful in receiving funding. I consider that if the costing provided by various individuals and organisations were released it would reasonably be expected to harm the business interests of said individuals and organisations, insofar as the costing estimates provided could be used by their competitors to gain an advantage in future funding submissions or other professional activities. This could result in loss of business and income for said parties.
- 56. 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 (section 22)***

- 57. 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).

### **Access to documents**

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

### **Your rights of review**

59. 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***

60. 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 and Regional Development  
GPO Box 594, Canberra ACT 2601  
**Fax:** (02) 6275 1347      **Email:** [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

#### ***Information Commissioner Review***

61. You can ask the OAIC to review the Department's decision in relation to access to documents. 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 review by 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 60 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](http://www.oaic.gov.au)  
**Post:** Office of the Australian Information Commissioner  
GPO Box 2999, Canberra ACT 2601  
**Facsimile:** (02) 9284 9666      **Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3, 175 Pitt Street, Sydney 2000

62. 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-factsheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights).

### Contacts

63. If you wish to discuss this decision, please do not hesitate to contact the Department's FOI coordinator on (02) 6274 6495 or via email at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).



Philippa Power  
Acting Executive Director, Policy and Research

19 December 2013



**Australian Government**

**Department of Infrastructure and Regional Development**

FOI  
Schedule 1

## Schedule of documents

**Applicant:** Mr Malcolm Mars

**Decision date:** December 2013

**FOI reference number:** 14-38

**Documents:** Documents relating to the Tasmanian Forest Agreement public funding

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
1	30 April 2013	The Hon Anthony Albanese MP, then Minister for Regional Development	The Hon Wayne Swan MP, then Deputy Prime Minister and Treasurer	Letter providing information relating to the Jobs and Growth Plan.	Release in part	s22, s47C, 47G
2	16 May 2013	The Hon Julia Gillard MP, then Prime Minister	The Hon Anthony Albanese MP, then Minister for Regional Development	Letter providing authority for certain funding commitments	Release in part	s22, s47C, s47F, s47G
3	26 June 2013	The Hon Anthony Albanese MP, then Minister for Regional Development	The Hon Julia Gillard MP, then Prime Minister	Letter providing information about projects to be funded under the Jobs and Growth Plan	Release in part	s22, s47C, s47F

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
4	28 June 2013	The Hon Anthony Albanese MP, then Minister for Regional Development	The Hon Kevin Rudd MP, then Prime Minister	Letter seeking authority for funding of Creative Catalyst project	Release in full	
5	28 June 2013	The Hon Kevin Rudd MP, then Prime Minister	The Hon Anthony Albanese MP, then Minister for Regional Development	Letter providing authority for funding of Creative Catalyst	Release in full	
6	5 July 2013	The Department of Regional Australia, Local Government, Arts and Sport	The Hon Catherine King MP, then Minister for Regional Australia, Local Government and Territories	Brief regarding decision making process for funding of projects ( <i>signing of document incorrectly dated – should have been 8 July 2013</i> )	Release in part.	s22, s47C, s47F
7		Mislabeled - Document is attachment to doc 6				
8	18 July 2013	The Hon Lara Giddings MP, Premier of Tasmania	The Hon Kevin Rudd MP, then Prime Minister	Letter regarding decision making process for funding of projects	Release in part	s22
9	22 July 2013	The Hon Lara Giddings MP, Premier of Tasmania, then also Acting Minister for Economic Development	The Hon Catherine King MP, then Minister for Regional Australia, Local Government and Territories	Letter regarding decision making process for funding of projects	Exempt in full	s22, s45, s47B
10	23 July 2013	The Hon Catherine King MP, then Minister for Regional Australia, Local Government and Territories	The Hon Lara Giddings MP, Premier of Tasmania, then also Acting Minister for Economic Development	Letter confirming projects to be funded	Release in full	
11	23 July 2013	The Hon Catherine King MP, then Minister for Regional Australia, Local Government and Territories	The Hon Kevin Rudd MP, then Prime Minister	Letter confirming projects to be funded	Release in full	

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
12	1 August 2013	The Hon Kevin Rudd MP, then Prime Minister	The Hon Catherine King MP, then Minister for Regional Australia, Local Government and Territories	Letter providing authority	Release in full	
13		The Hon Anthony Albanese MP, then Minister for Regional Development	Presented to Regional Reference Groups	Powerpoint presentation for Regional Reference Groups	Release in part	s22



## Schedule of relevant provisions in the FOI Act

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### 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).

## **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.

## **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.

#### **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).