



**Australian Government**  

---

**Department of Health and Aged Care**  
Therapeutic Goods Administration

Scott Bennett

**Email:** [foi+request-10770-e560e9c1@righttoknow.org.au](mailto:foi+request-10770-e560e9c1@righttoknow.org.au)

Dear Mr Bennett

**FREEDOM OF INFORMATION REQUEST FOI 4766**  
**Notice of Decision**

1. I refer to your request dated 18 October 2023 under the *Freedom of Information Act 1982* (the FOI Act) and subsequent correspondence between you and the TGA in which the scope of your request was clarified as being for access to the following documents:

*'The OCABR certificates for the 3 specific batches of COVID-19 vaccines listed below: ER7449 FA4598 FA7812.'*

**Decision Maker**

2. I am the Therapeutic Goods Administration (TGA) officer authorised to make this decision under section 23 of the FOI Act. What follows is my decision under the FOI Act.

**Scope of the FOI request**

3. The TGA has identified three (3) documents that fall within the scope of your request.

**Background**

4. On 18 October 2023 the TGA received a request from you under the FOI Act for access to the following documents:

*"The Batch release assessment of COVID-19 vaccines as published online,\* does not contain the specific test details as headed in the table of information.*

*Can you please supply the particular assessment data for each batch, including the Composition and strength result, Purity and integrity result, Identity result, Endotoxin result or other measured quality or quantity undertaking in laboratory testing by the TGA (Pathway two) in the first instance and by the OCABR (Pathway 2) in the second case where applicable.*

*\*<https://www.tga.gov.au/products/covid-19/covid-19-vaccines/batch-release-assessment-covid-19-vaccines>."*

5. On 23 October 2023 the TGA advised you that it is likely that the scope of your initial request would be considered too voluminous to process, based on the number of batches assessed by the TGA, and the number of documents associated with each batch release assessment.
6. In your email to the TGA FOI Team on the same day, you clarified that the scope of your request was for the specific "results numbers" in the fields of the database referenced in the scope of your request. This database shows whether a batch of COVID-19 vaccines have either passed or failed testing in four different areas.

7. On 3 November 2023 you were advised that the processing of your request would be an unreasonable diversion of TGA resources. You were invited to undertake a Request Consultation Process in an attempt to reduce the scope of your request to a manageable size.
8. On 7 November 2023, you clarified that you are seeking a limited number of the batch release certificates, an example document being Document 11 released under FOI 3390 which is published on the Disclosure Log on the TGA website.
9. On 9 November 2023, the TGA advised that based on previous experiences of processing these documents, up to 3 batches would be processable by the TGA, noting the complex technical material in the documents and consultation required.
10. On 11 November 2023 you confirmed that you are willing to limit your scope to the OCABR certificates for 3 specific batches of COVID-19 vaccines.
11. On 13 November 2023 you provided a revised scope (as set out in paragraph 1 above).
12. On 14 November 2023 the TGA confirmed that a practical refusal reason no longer existed in relation to your request. You were also advised that personal information such as TGA staff names, numbers, internal email addresses and Senior Executive Service (SES) staff mobile numbers would be removed unless you advised otherwise.
13. On 14 November 2023 you confirmed that personal information of third parties and staff below the Senior Executive Service (SES) level was exempt from the scope of your request.
14. On 20 November 2023 you were advised that the cost of processing your request amounted to \$195.05 and you were asked to pay a deposit of \$48.76. You were also advised at this time of the need to conduct third party consultation in relation to your request.
15. On 19 December 2023 the TGA received a deposit in the amount of \$48.76 for the processing of your request. Third party consultation was subsequently initiated.
16. On 19 January 2024, you requested an internal review as  
*'the response to my request has been delayed. By law, the authority should normally have responded promptly and by January 18, 2024'*
17. On 22 January 2024, the FOI team advised you that internal reviews can only be requested for decisions that have been made, and that the due date for a decision is 25 January 2024.

### **Material Considered in Decision-Making**

18. In coming to my decision, I had regard to the following:
  - the correspondence between the TGA and yourself;
  - the documents that fall within the scope of the FOI request;
  - the provisions of the FOI Act, in particular sections 22 and 47 of the FOI Act;
  - the guidelines issued by the Office of the Australian Information Commissioner (OAIC) under section 93A of the FOI Act; and
  - consultation with third parties whose documents are involved.

### **Decision**

19. My decision in relation to the documents falling within the scope of your FOI request is to release 3 documents in part.
20. My decision not to provide you with full access to the documents is based on the application of section 47 of the FOI Act.

21. The preliminary estimate of charges associated with processing this FOI request was \$195.05. This amount includes the first five hours of decision making at no cost. In accordance with the *Freedom of Information (Charges) Regulations 2019* (the Charges Regulations), I have calculated the actual charges that can be imposed for processing your request. In this case, the actual charges that can be imposed are \$160.00.
22. Therefore, as you have already paid the deposit in the amount of \$48.76, you are required to pay the balance of \$111.24 before the documents can be released to you.

### **Payment**

23. Payments for FOI requests must be made online via the TGA's [Online Payment Portal](http://www.tga.gov.au/how-we-regulate/fees-and-payments/payment-options/online-payment-portal) ([www.tga.gov.au/how-we-regulate/fees-and-payments/payment-options/online-payment-portal](http://www.tga.gov.au/how-we-regulate/fees-and-payments/payment-options/online-payment-portal)). Please note the TGA does not accept FOI payments via other methods including bank transfers.
24. To make an FOI payment, you will be required to enter specific information as outlined below. From the Online Payment Portal site, click on the option titled '**Online payment portal**' to display the payment portal page. From the payment portal page, enter the following information:
  - '**Biller Code**', click on the drop-down arrow to select option '**11 – Freedom of Information (FOI)**'.
  - '**Client Identification Number**', enter '**CO-9001**'.
  - '**Reference Number**', enter your unique FOI identification number followed by your first and last name (e.g. '**FOI-XXXX John Smith**').
  - '**Email Address for Tax Receipt**', enter the email address you wish to receive a tax receipt for your payment transaction. This email will contain a unique 11 digit payment transaction number to quote if you have any queries. Please retain this email for your records. A tax invoice will not be issued for this transaction.
  - '**Amount (AUD)**', enter the amount of the payment being made.
  - '**Select your payment option**', click on the relevant icon to proceed to the next screen.

### **Please include reference to FOI 4766 in your payment.**

25. If you require assistance with making a payment please contact the TGA Accounts team on 1800 020 653 (option 5) or by email at [accountsrec@health.gov.au](mailto:accountsrec@health.gov.au). Users who are deaf or have a hearing or speech impairment can call through the National Relay Service: TTY or computer with modem users: phone 1800 555 677 then ask for 1800 020 653. Speak and listen (speech to speech relay) users: phone 1800 555 727 then ask for 1800 020 653.
26. **IMPORTANT:** Once payment has been made, please notify the FOI Team via the following email address: [TGAFOI@health.gov.au](mailto:TGAFOI@health.gov.au). Failure to notify the FOI Team of payment may result in delays to the processing of your FOI request.

### **Reasons for Decision**

#### ***Relevant Documents***

27. Three (3) documents have been identified as relevant to your request. A schedule listing the documents identified as falling within the scope of your request is at **Attachment A**.
28. The schedule indicates my decision to release in part, along with the exemption provisions which are claimed to apply to each document.
29. Under subsection 22 of the FOI Act, irrelevant information has been redacted from the documents as it is considered to be outside the scope of your request.

30. The reasons for the application of these exemption provisions to the documents in issue are set out in detail below. A copy of the relevant provisions of the FOI Act is at **Attachment B**.

***Subsection 22(1): Documents containing information that is irrelevant to the FOI request***

31. The effect of subsection 22(1) of the FOI Act is that where the granting of access to a document would disclose information that is not within the scope of the request and it is possible to provide a copy with information deleted, the agency can do so unless it is evident that the applicant does not wish to be provided access to such a copy. A copy of subsection 22(1) is at **Attachment B**.

32. The relevant documents contain information that does not fall within the scope of your FOI request. Specifically, the documents contain personal information such as TGA staff names, numbers, internal email addresses and Senior Executive Service (SES) staff mobile numbers which you were advised would be removed unless you advised otherwise.

33. I consider that to provide you with full access to the documents would disclose the above information that does not fall within the scope of your FOI request. Accordingly, I have decided that the irrelevant information will be deleted under section 22(1) of the FOI Act and a copy of the documents, with the irrelevant information deleted, will be provided to you.

***Section 47: Documents are exempt documents if they contain a trade secret***

34. Under section 47 of the FOI Act, a document is an exempt document if it contains a trade secret (paragraph 47(1)(a)) or contains information that has commercial value that could reasonably be expected to be destroyed or diminished if it were disclosed (paragraph 47(1)(b)). I consider any information that has a commercial value would also include any information that is a trade secret. Therefore, I have only considered whether the information in question has a commercial value. A copy of paragraph 47(1)(b) is at **Attachment B**.

35. Paragraph 5.205 of the Information Commissioner FOI Guidelines states that the following factors may assist in deciding in a particular case whether information has a commercial value:

- whether the information is known only to the agency or 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 agency or person to whom it relates – for example, it if 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); and
- whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price.

36. Having regard to the submissions of the third parties, and taking into account the FOI Guidelines, I am satisfied that the endotoxin and bioburden specification and test results for the specified batches may enable a competitor to deduce the specification limits and test results based on comparison of the results across the various batches for the COMIRNATY COVID-19 vaccines. By learning the test target levels, a competitor would not have to challenge or test a larger range in their development program, thereby significantly speeding up and reducing the cost of such development. Therefore, I consider that this information which is contained in Documents 1-3 is commercially valuable information, the value of which would be diminished or destroyed if disclosed.

37. I am satisfied that Pfizer has actively taken steps to ensure this information is not disclosed to the general public or its competitors, rather, it has been submitted (in confidence) to regulatory bodies for the purpose of evaluating the product for supply in relevant jurisdictions.

38. The TGA has been routinely publishing the results of laboratory testing related to COVID-19 vaccinations: [Batch release assessment of COVID-19 vaccines | Therapeutic Goods Administration \(TGA\)](#). This link provides guidance on the batch assessment process as well as a table of information showing the test results for each batch of COVID-19 vaccine that has been tested by the TGA. Whilst this information is available in the public domain, as far as I am aware, the endotoxin and bioburden specification limits and test methods are not otherwise publicly available in Australia or other jurisdictions.
39. Therefore, I am satisfied that the information is of a commercial value to Pfizer, the value of which would be diminished or destroyed if released, and accordingly I am satisfied that such information is exempt under section 47 of the Act.
40. Accordingly, parts of Documents 1-3 (as identified in the schedule at **Attachment A**) are exempt under paragraph 47(1)(b) of the FOI Act and have been deleted from the documents.

***Publicly available information related to your request***

41. In addition to the publication of the results of TGA Laboratory testing of COVID-19 vaccines, the TGA has provided extensive information regarding the quality and testing of COVID-19 vaccines in the form of answers to Questions on Notice from Senate Estimates processes. This information is publicly available from the Australian Parliament House website at [Senate Estimates - Questions on Notice – Parliament of Australia \(aph.gov.au\)](#).

**Release of Documents**

42. As a third party whose documents fall within the scope of the request has objected to the release of the documents in part, I am required, under subsection 27A(6) of the FOI Act, to advise the third party of my decision to release Documents 1-3 in part and give them an opportunity to seek internal review of my decision or appeal to the OAIC.
43. The third party has 30 days in which to seek review or lodge an appeal. Therefore, the documents subject to the 30 day appeal period cannot be released to you until this time period has expired, or any internal review or appeal has been completed and my decision to release the document upheld or confirmed.
44. Following expiration of the third party's review rights period, and once you have paid the balance of the charges, being \$111.24, the documents can be released to you.

**Review and Complaint Rights**

45. If you are not satisfied with this decision, you have 30 calendar days to either seek internal review or apply to the OAIC for review of the decision. Further information can be found on the OAIC website at the following link: [Freedom of information reviews | OAIC](#).

If you have any queries regarding this matter, please contact the FOI Team on (02) 6289 4630.

Yours sincerely

*Authorised and electronically signed by*

Dr Lisa Kerr PM PhD MBA  
Assistant Secretary  
Laboratories Branch  
Therapeutic Goods Administration  
23 January 2024

**Schedule of Relevant Documents**

<b>Doc. No.</b>	<b>Author</b>	<b>Addressee</b>	<b>Date</b>	<b>Description</b>	<b>Pages</b>	<b>Decision</b>	<b>Relevant Sections of the FOI Act</b>
1	Paul-Ehrlich-Institut	Pfizer	26/02/2021	OCABR Certificate ER7449	8	Release in part	Section 22, 47
2	Paul-Ehrlich-Institut	Pfizer	05/05/2021	OCABR Certificate FA4598	10	Release in part	Section 22, 47
3	Paul-Ehrlich-Institut	Pfizer	10/05/2021	OCABR Certificate FA7812	11	Release in part	Section 22, 47



## Freedom of Information Act 1982

### 11A Access to documents on request

- (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.

### 17 Requests involving use of computers etc.

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;
 the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

### 22 Deletion of exempt matter or irrelevant material

- (1) Where:
- (a) an agency or Minister decides:
    - (i) not to grant a request for access to a document on the ground that it is an exempt document; or

- (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and
  - (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:
    - (i) would not be an exempt document; and
    - (ii) would not disclose such information; and
  - (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy;
- the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.
- (2) Where access is granted to a copy of a document in accordance with subsection (1):
    - (a) the applicant must be informed:
      - (i) that it is such a copy; and
      - (ii) of the ground for the deletions; and
      - (iii) if any matter deleted is exempt matter because of a provision of this Act—that the matter deleted is exempt matter because of that provision; and
    - (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him or her a notice in writing in accordance with that section.

## 27 Consultation—business documents

### *Scope*

- (1) This section applies if:
  - (a) a request is made to an agency or Minister for access to a document containing information (***business information***) covered by subsection (2) in respect of a person, organisation or undertaking; and
  - (b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (the ***person or organisation concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:
    - (i) the document is exempt under section 47 (trade secrets etc.); or
    - (ii) the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).
- (2) This subsection covers the following information:
  - (a) in relation to a person—information about the person’s business or professional affairs;
  - (b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.
- (3) In determining, for the purposes of paragraph (1)(b), whether the person or organisation concerned might reasonably wish to make an exemption contention



because of business information in a document, the agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;
- (b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant.

*Opportunity to make submissions*

- (4) The agency or Minister must not decide to give access to the document unless:
  - (a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
  - (b) the agency or the Minister has regard to any submissions so made.
- (5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

*Notice of decision to give access*

- (6) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:
  - (a) the person or organisation concerned;
  - (b) the applicant.

*Access not to be given until review or appeal opportunities have run out*

- (7) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person or organisation concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have **run out**, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

- (8) Subsections (6) and (7) do not apply unless the person or organisation concerned makes a submission in support of the exemption contention as allowed under paragraph (4)(a).

*Edited copies and business information*

- (9) This section applies:
  - (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
  - (b) in relation to a document containing business information—to the extent to which the document contains such information.

## 27A Consultation—documents affecting personal privacy

### *Scope*

- (1) This section applies if:
- (a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and
  - (b) it appears to the agency or Minister that the person or the person's legal personal representative (the **person concerned**) might reasonably wish to make a contention (the **exemption contention**) that:
    - (i) the document is conditionally exempt under section 47F; and
    - (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

- (2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the 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 information;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.

### *Opportunity to make submissions*

- (3) The agency or Minister must not decide to give the applicant access to the document unless:
- (a) the person concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
  - (b) the agency or the Minister has regard to any submissions so made.
- (4) However, subsection (3) only applies if it is reasonably practicable for the agency or Minister to give the person concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

### *Decision to give access*

- (5) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:
- (a) the person concerned;
  - (b) the applicant.

### *Access not to be given until review or appeal opportunities have run out*

- (6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have **run out**, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

- (7) Subsections (5) and (6) do not apply unless the person concerned makes a submission in support of the exemption contention as allowed under paragraph (3)(a).

*Edited copies and personal information*

- (8) This section applies:
- (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
  - (b) in relation to a document containing personal information—to the extent to which the document contains such information.

### **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.

### **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.

#### **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.

**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.

**47B 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 (including a Territory)

**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).