



Revised decision made under section 55G of the *Freedom of Information Act 1982*

Decision and reason for decision of Joshua (Position Number 62331110), Acting Director, Information Access Unit, Client and Information Access Branch, Department of Veterans' Affairs

Applicant:	Mr Alan Ashmore
Date of primary decision:	25 January 2024
LEX reference number:	LEX 62926 & LEX 64862IR
Revised decision date:	28 August 2024
Revised decision reference number:	MR24/00542

Dear Mr Ashmore,

Freedom of Information Request: LEX 62926 & LEX 64862IR

1. The purpose of this correspondence is to advise you of a revised decision the Department of Veterans' Affairs (**Department**) has made under section 55G of the *Freedom of Information Act 1982 (FOI Act)* in relation to LEX 62926 & LEX 64862IR.

Revised Decision

2. I have made a decision to vary the original decision made by Jesse (Position Number 62371652), Information Access Officer, Information Access Unit, Client and Information Access Branch. That decision was to grant access in part to one (1) document bundle.
3. The Department has undertaken a reasonable search of its records and identified twelve (12) documents, combined into one (1) document bundle relevant to your request.
4. Additionally in compiling the document bundle, it was found that there were blank pages and these have been removed. This would mean that the page numbering at the bottom associated with some of the documents might not be completely sequential as a result of the removals. If you would like to have a copy with the blank pages included, please let us know.

5. I have made a decision to grant access in part to an edited copy of the document bundle, modified by deletions in accordance with section 22(2) of the FOI Act and the applicable exemption provision, as set out in **Schedule 1**.

Authority to make decision

6. I, Joshua (Position Number 62331110), Acting Director, Information Access Unit, Client and Information Access Branch, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Summary

7. On 28 November 2023, you made a request for access to documents in the possession of the Department. Your request sought access to:

'...BACKGROUND:

In the Veterans' Mates Report – 2004-2010 reference is made to a study, "Pharmaceutical brand substitution in Australia: Identifying factors associated with having multiple brand substitutions." It notes, "Ethical approval to conduct the study was obtained from the DVA Human Research Ethics Committee."

INFORMATION I AM SEEKING:

I am seeking all background documentation and the formal approval of DVA's Human Research Ethics Committee to conduct the study, "Pharmaceutical brand substitution in Australia: Identifying factors associated with having multiple brand substitutions...'

8. On 25 January 2024, the primary decision maker made a decision to grant part access to one (1) document bundle.
9. On 31 January 2024, you requested an internal review of the primary decision. In your request, you advised:

'...I am writing to request an internal review of Department of Veterans' Affairs's handling of my FOI request 'MATES - Ethical approval of specific study'.

My specific request was, "I am seeking all background documentation and the formal approval of DVA's Human Research Ethics Committee to conduct the study, "Pharmaceutical brand substitution in Australia: Identifying factors associated with having multiple

brand substitutions...”

I note receipt of some of the requested documents and note as part of the "all background documentation," some was missing. I note background documentation would have to include the formal application to conduct the study that I note was approved by DVA Ethics Committee....’

10. On 2 March 2024, the internal review decision deemed, thereby affirming the original decision in accordance with section 54D of the FOI Act.
11. On 24 May 2024, the Office of the Australian Information Commissioner (**OAIC**) sent the Department a notice under section 54Z of the FOI Act advising that it had commenced a review of the Department’s decision.
12. On 27 June 2024, the Department advised the OAIC of its intention to issue you with a revised decision in accordance with section 55G of the FOI Act.

Material taken into account

13. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based, and the reasons for my decision to grant access in part to the documents.
14. I have taken the following material into account in making my decision:
 - the terms of your request on 28 November 2023 and the primary decision on 25 January 2024;
 - the terms of your internal review request on 31 January 2024 and the deemed internal review decision on 2 March 2024;
 - the terms of your request for external review through the OAIC;
 - the types of documents that are in the possession of the Department;
 - the content of the documents that fall within the scope of your request;
 - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to

my decision:

- Section 11B Public interest exemption – factors
- Section 15 Request for Access
- Section 22 Access to edited copies with exempt or irrelevant material deleted
- Section 47 Documents disclosing trade secrets or commercially valuable information
- Section 47F Public interest conditional exemptions--personal privacy
- Section 55G Procedure in IC review--revocation or variation of access refusal decision

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

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

Reasons for decision

16. I have decided to grant access in part to the documents, subject to the following exemption in accordance with the FOI Act.

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

17. 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 other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

18. It is my view that section 47 of the FOI Act applies to both documents. In assessing if section 47 applies, I have considered:

- whether the information contained in the documents is trade secrets or the valuable commercial information of another individual or organisation;
- whether the information, if disclosed to a competitor would be liable to cause real or significant harm to the owner of the information;

- the extent to which the information is known only to the department or third party 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 department or third party to whom it relates;
- whether a genuine 'arms-length' buyer would be prepared to pay to obtain that information; and
- whether the information is still current or out-of-date.

19. Following consultation with the relevant business area as well as University of South Australia (UniSA), I find that the document contains valuable commercial information in the form of the information and methodology within the submission to the Human Research Ethics Committee as well as within the PhD Research proposal.
20. The brief and methodology, which was developed by UniSA to facilitate the conduct of research by its staff was made with significant investment to ensure the value of the information to its ongoing research functions. This value is from its ongoing business viability and that value would be reasonably expected to diminish or be destroyed if disclosed to parties outside of those whom the document's owner has currently given access. The ongoing nature of the research would lead to the information being current.
21. Accordingly, I have decided that the relevant information in the document is exempt under section 47(1)(b) of the FOI Act.
22. As section 47 of the FOI Act is not a conditional exemption, I am not required to consider a public interest test.

Public interest conditional exemptions--personal privacy (section 47F)

23. 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).
24. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Cth) (**Privacy Act**). Personal information is defined in section 6 of the Privacy Act as:

...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not;
- (b) whether the information or opinion is recorded in a material form or not.

25. The elements of 'personal information' are:

- (a) it relates only to a natural person (not, for example, a company);
- (b) it says something about the individual;
- (c) it may be in the form of an opinion, it may be true or untrue, and it may form part of a database;
- (d) the individual's identity is known or is reasonably ascertainable using the information in the document.

26. If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:

- (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; and
- (d) any other matter I consider relevant.

27. The document outlined in **Schedule 1** contains third party information, and the surname and contact details of departmental staff. This information meets the above definitions of 'personal information' relating to these individuals.

28. I find that disclosure of the document would reveal information about a third party individual and interfere with that individual's right to privacy. The information in the document is not publicly known or otherwise accessible in the public domain. It is likely the individual concerned would not wish for the information to be disclosed without their consent. Given the personal and confidential nature of the communications in the document, I consider disclosure of this information to be unreasonable.

29. The Department has policies and procedures to support staff within its operating environment and to meet its obligations as an employer to provide a safe working environment. Some policies restrict the amount of identifying information generally provided by individual staff members to clients. As outlined above, staff are generally required to identify themselves in correspondence with clients by a given name and position number. This reduces the likelihood that individuals are reasonably identifiable in a different context. For example, it reduces the likelihood that a private social media profile can be linked with an individual who is a staff member of the Department.
30. I consider that disclosure of personal information of individual staff members in both documents would be unreasonable because it would be inconsistent with Departmental policies and procedures designed to support a safe and efficient working environment. Additionally, it would be unreasonable because it would be contrary to the expectations of individual staff members, who may rely on those Departmental policies and procedures for assurance of their personal privacy.
31. I also find that disclosure of the personal information of the third party could unreasonably affect their privacy as a reasonable person would not expect such information to be put in the public domain. Release of personal information within the document would not add any substance to the information being provided under this request and there would be no public purpose achieved through the release of the personal information. Further, it is likely the individual concerned would not wish for the information to be disclosed without their consent.
32. Accordingly, I have decided that parts of both documents which are listed as exempt in accordance with this provision in **Schedule 1**, meet the criteria for conditional exemption under section 47F of the FOI Act. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) of the FOI Act, discussed below.

Application of the public interest test – section 47F

33. Section 11A(5) of the FOI Act provides that an agency must give access to a 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.
34. 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; and

b) disclosure would increase scrutiny of government activities.

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

(a) disclosure could be expected to adversely affect the delivery of services by the Department in accordance with its functions;

(b) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, both in relation to the third-party individuals and staff of the Department.

36. I have placed greater weight on the factors against disclosure and find that disclosure of the staff and third parties' personal information could reasonably be expected to result in interference with the privacy of the individuals by enabling them to be identified in their private lives.

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

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

Delete exempt material from documents and provide access to edited copies (section 22)

39. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.

40. As explained above, the documents contain exempt information. The documents also contain irrelevant or out-of-scope information.

41. On this basis, I have prepared the documents for release by removing exempt and irrelevant material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the document and at **Schedule 1**.

Access to documents

42. The document bundle released to you in accordance with the FOI Act is enclosed.

Information Publication Scheme

43. The Information Publication Scheme requires the Department to publish information released in response to individual requests made under the FOI Act, except in specified circumstances.

44. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI Disclosure Log, which can be accessed at: <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>. Please note that the Department does not publish details of FOI applicants, it only publishes details of the FOI request and the documents released in response to the request.

Application for Information Commissioner Review – request to withdraw application

45. Given the Department has now granted you access to documents in scope of your request, we seek your views regarding withdrawing your application for review before the OAIC.

46. We confirm that we will provide the OAIC with a copy of this revised decision in accordance with section 55G(2)(a) of the FOI Act.

Your rights of review

47. If you are dissatisfied with my revised decision, you may advise the OAIC that you do not wish to withdraw your application for IC Review.

48. You can contact the OAIC in one of the following ways:

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

49. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner:

<http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights>

Contact us

50. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

Online: <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>

Post: Information Access Unit
Department of Veterans' Affairs
GPO Box 9998, Brisbane QLD 4001

Phone: 1800 838 372

Email: Information.Access@dva.gov.au

Yours sincerely,

Joshua (Position Number 62331110)

Acting Director

Information Access Unit

Client and Information Access Branch

Department of Veterans' Affairs

28 August 2024



Schedule of documents

Applicant: Mr Alan Ashmore
Decision date: 28 August 2024
FOI reference number: LEX 62926 & LEX 64862IR

Doc No.	Date of document	Document description	Pages	Decision	Exemption provision
1.	Various	LEX 66766 - Document bundle	1-254	Release in part	s 22, s 47, s 47F



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.
Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
 - (a) section 12 (documents otherwise available);
 - (b) section 13 (documents in national institutions);
 - (c) section 15A (personnel records);
 - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

11B Public interest exemptions — factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (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.

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
 - (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
 - (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

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).

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

Public interest conditional exemptions

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).

55G Procedure in IC review--revocation or variation of access refusal decision

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of:
 - (a) giving access to a document in accordance with the request; or
 - (b) relieving the IC review applicant from liability to pay a charge; or
 - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
 - (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
 - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.