



Australian Government
**Department of Employment
and Workplace Relations**

Our Ref LEX 1305

Jenny Bree

By email: foi+request-12469-78cbf1a1@righttoknow.org.au

Dear Ms Bree

Your Freedom of Information request - decision

I refer to your request, received by the Department of Employment and Workplace Relations (department) on 4 December 2024, and revised on 22 January 2025, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

- “1. a full copy of document 17 of LEX 1114 (that appears on the Department's Disclosure Log) including its attachment entitled 'working draft principles and short-term options’*
- 2. all notes taken from the meeting (at 2pm on 23 November 2023) to discuss draft principles and short-term options (that is referred to in document 17) and*
- 3. documents 18 to 39 of LEX 1114”.*

My decision

The department holds 23 documents (totalling 44 pages) that fall within the scope of parts 1 and 3 of your revised request.

I have decided to:

- grant you **access in full** to 3 documents (documents 13 – 15)
- grant you **access in part** to 15 documents (documents 1 – 12 and 21 – 23) on the basis that they contain deliberative material, operational material and/or personal information, and

- **refuse access** to 5 documents (documents 16 – 20) on the basis that they contain deliberative material.

A schedule of the documents and the reasons for my decision are set out at **Attachment A**.

I have decided to refuse part 2 of your request pursuant to section 24A of the FOI Act. This is because I am informed that all reasonable steps have been taken by relevant departmental officers within the relevant line areas to find 'notes taken from the meeting (at 2pm on 23 November 2023) to discuss draft principles and short-term options (that is referred to in document 17)' and I am satisfied, based on consultations with relevant departmental officers, that those documents do not exist.

How we will send your documents

The documents being released are attached to my email to you.

You can ask for a review of my decision

If you disagree with any part of the decision, you can ask for a review. There are 2 ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

An extract of relevant legislation is available at **Attachment C**.

If you have any questions, please email foi@dewr.gov.au.

Yours sincerely



Marcus
Authorised decision maker
Department of Employment and Workplace Relations

10 February 2025

SCHEDULE OF DOCUMENTS – JENNY BREE – LEX 1305

Number	Pages	Date	Description	Decision	Exemptions and Comments
1.	1	23/11/2023	Departmental email to Minister Burke's Office – subject: Working draft - principles and short term options for discussion at 2pm	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Personal information deleted under section 47F(1) of the FOI Act. <i>(Please be aware that documents 1 – 23 correspond to documents 17 – 39 in LEX 1114 on the department's disclosure log in exactly the same order)</i>
2.	2 – 4	Undated	Attachment to document 1: Outline of options	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
3.	5	08/02/2024	Departmental email to Minister Burke's Office – subject: Regarding mutual obligations	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Personal information deleted under section 47F(1) of the FOI Act.

					Deliberative material deleted under section 47C(1) of the FOI Act.
4.	6	Undated	Flowchart: Regarding payment suspensions	Grant access in part	Deliberative material deleted under section 47C(1) of the FOI Act.
5.	7	Undated	Flowchart: Regarding payment suspensions	Grant access in part	Deliberative material deleted under section 47C(1) of the FOI Act.
6.	8 – 13	Undated	Briefing document: Mutual obligations and compliance options	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
7.	14	25/02/2024	Departmental email to Minister Burke's Office: Regarding NPP	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Personal information deleted under section 47F(1) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
8.	15 – 16	Undated	Briefing document: Background information	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.

9.	17	Undated	Briefing document: Mutual Obligations policy options	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
10.	18	25/02/2024	Departmental email to Minister Burke's Office: Regarding provider appointments	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Personal information deleted under section 47F(1) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
11.	19 – 26	Undated	Attachment to document 10: Options for reducing clash of work and appointments	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
12.	27 – 31	Undated	Briefing document: Options for reducing clash of work and appointments	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.
13.	32	Undated	Flowchart: what happens if a person fails to meet a mutual obligation	Grant access in full	N/A

14.	33	Undated	Flowchart: what happens if a person fails to meet a mutual obligation	Grant access in full	N/A
15.	34	Undated	Flowchart: what happens if a person fails to meet a mutual obligation	Grant access in full	N/A
16.	35	Undated	Briefing document: Regarding mutual obligations	Refuse access	Deliberative material deleted under section 47C(1) of the FOI Act.
17.	36	Undated	Briefing document: Regarding mutual obligations	Refuse access	Deliberative material deleted under section 47C(1) of the FOI Act.
18.	37	Undated	Briefing document: Future Targeted Compliance Framework flowchart	Refuse access	Deliberative material deleted under section 47C(1) of the FOI Act.
19.	38	Undated	Briefing document: Regarding penalties	Refuse access	Deliberative material deleted under section 47C(1) of the FOI Act.
20.	39	Undated	Briefing document: Regarding mutual obligations	Refuse access	Deliberative material deleted under section 47C(1) of the FOI Act.
21.	40	05/03/2024	Departmental email to Minister Burke's Office: Regarding penalties	Grant access in part	Operations of agencies material deleted under section 47E(d) of the FOI Act. Personal information deleted under section 47F(1) of the FOI Act. Deliberative material deleted under section 47C(1) of the FOI Act.

22.	41 – 42	28/02/2024	Departmental email to Minister Burke's Office: Regarding NPP	Grant access in part	<p>Operations of agencies material deleted under section 47E(d) of the FOI Act.</p> <p>Personal information deleted under section 47F(1) of the FOI Act.</p> <p>Deliberative material deleted under section 47C(1) of the FOI Act.</p>
23.	43 – 44	17/10/2023	Departmental email to Minister Burke's Office: Regarding mutual obligations	Grant access in part	<p>Operations of agencies material deleted under section 47E(d) of the FOI Act.</p> <p>Personal information deleted under section 47F(1) of the FOI Act.</p> <p>Deliberative material deleted under section 47C(1) of the FOI Act.</p>

REASONS FOR DECISION

What you requested

1. On 4 December 2024, the department received your request, seeking access to:

“... a full unredacted copy of Document 17 of LEX 1114 that appears on the Department's disclosure Log including the attachments [and] ... all briefings, emails and other communications between your Department and the Minister between 20 November 2023 to 30 April 2024 relating to draft principles, short term options and possible future directions around mutual obligations and compliance.”
2. On 13 December 2024, the department informed you that it would treat the following as falling outside of scope of your request, unless you told us otherwise:
 - duplicates
 - drafts where there is a final version available
 - email chains other than the final versions of the chains
 - documents that are publicly available.
3. Also in that same correspondence, the department informally notified you that the work involved in processing your request in its original form was likely to substantially and unreasonably divert the resources of the department from its other operations due to the large number of sensitive documents that appear to be relevant.
4. Additionally, in that same correspondence, the department sought your agreement to a 30 day extension of time to process your request, pursuant to section 15AA of the FOI Act.
5. On 17 December 2024, the department received your revised request seeking access to:

“all briefings and emails between the Department of Employment and Workplace Relations and the Minister of Employment and Workplace Relations from 31 January 2024 to 30 April 2024 relating to draft principles, short term options and possible future directions of changes to mutual obligations and compliance policy settings.”
6. In that same correspondence, you informed the department that you agreed to treat the following as falling outside of the scope of your revised request:
 - duplicates
 - drafts where there is a final version available
 - email chains other than the final versions of the chains.
7. Also in that same correspondence, you confirmed your agreement to a 30 day extension of time.

Request consultation process

8. On 16 January 2025, the department sent you a consultation notice under section 24AB of the FOI Act. The department notified you that 948 pages were relevant to your revised request and that it would take approximately 120 hours to process your revised request.

9. On 22 January 2025, you further revised your request as follows:

“my original request ... for document 17 of LEX 1144 [including] its attachment entitled 'working draft principles and short term options ...

... all notes taken from the meeting [at 2pm on 23 November 2023] to discuss drat (sic) principles and short term options that is referred to in document 17 ...

[and] documents 18 to 39 of LEX 1114 ...”

10. On 24 January 2025 the department informed you that it had interpreted your further revised request to be seeking access under the FOI Act to:

“1. a full copy of document 17 of LEX 1114 (that appears on the Department's disclosure Log) including its attachment entitled 'working draft principles and short-term options’

2. all notes taken from the meeting (at 2pm on 23 November 2023) to discuss draft principles and short-term options (that is referred to in document 17) and

3. documents 18 to 39 of LEX 1114”.

11. In that same correspondence, the department informed you that the 6-day consultation period (from 16 January 2025 to 22 January 2025) during which the department worked with you to resolve the practical refusal reason is disregarded for the purposes of calculating the statutory period for processing your request (as per section 24AB(8) of the FOI Act).

12. Also in that same correspondence, the department requested your agreement to treat the following as irrelevant to the scope of the request under section 22 of the FOI Act:

- the names, signatures, identification numbers and direct contact details of Commonwealth staff and Ministerial Office staff
- internal group emails of Commonwealth agencies and Minister’s Offices
- security classifications (dissemination limiting markers) that are no longer applicable or potentially misleading.

13. As you did not confirm that you agreed to have this information excluded from the scope of your further revised request, I have considered the above information to fall within the scope of your further revised request.

What I took into account

14. In reaching my decision, I took into account:

- your original request dated 4 December 2024
- your revised request dated 17 December 2024

- your further revised request dated 22 January 2025
- other discussions and correspondence with you
- the documents that fall within the scope of your request
- consultation with other Commonwealth Government agencies and the Office of Minister Burke about documents which contain information concerning them
- consultations with departmental officers about the nature of the documents and the operating environment and functions of the department
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the FOI Act.

Reasons for my decision

15. I am authorised to make decisions under section 23(1) of the FOI Act.

16. I have decided to:

- grant you access in **full** to 3 documents (documents 13 – 15)
- grant you access in **part** to 15 documents (documents 1 – 12 and 21 – 23) on the basis that they contain irrelevant material and/or personal information, and
- **refuse access** to 5 documents (documents 16 – 20) on the basis that they contain deliberative material.

17. My findings of fact and reasons for deciding that exemptions apply to those documents are discussed below.

Section 47C of the FOI Act: deliberative processes

18. I have applied the conditional exemption in section 47C of the FOI Act to all, or parts of, documents 2 – 12 and 16 – 23.

19. Section 47C(1) of the FOI Act conditionally exempts documents containing deliberative matter. Deliberative matter is content that is in the nature of, or relating to, either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded, or
- a consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes of the government, an agency, or minister.

20. The FOI Guidelines provide at paragraph 6.54 that ‘... a *deliberative process* involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.’

21. Paragraphs 6.55 and 6.56 of the FOI Guidelines further provides that a deliberative process must relate, relevantly, to the functions of an agency, such as functions under the instrument or Act that establish an agency.
22. I have reviewed the relevant parts of the aforementioned documents and have consulted with the relevant line area within the department, the Employment Strategy and Policy Division about the documents. I am satisfied that the relevant parts of these documents are opinions and recommendations that were created for the purpose of assisting the department, and the Office of Minister Burke (in the Ministers previous role as Minister for Employment and Workplace relations), in their consultations and deliberations regarding reform options for the mutual obligation system.
23. In my view, it is an integral function of the department to advise the government on participation and compliance policies for participation payment recipients, which includes providing policy advice on the mutual obligation system.
24. I consider that the exceptions in sections 47C(2) and 47C(3) of the FOI Act do not apply, as any purely factual information contained within the relevant parts of the documents is intertwined with, or forms an integral part of, the deliberative content.
25. Accordingly, I have decided that the conditional exemption under section 47C(1) of the FOI Act applies to relevant parts of the aforementioned documents. As I have found the relevant material is conditionally exempt, I am required to consider whether it would be contrary to the public interest to grant access to the conditionally exempt material at this time.

Public interest

26. Section 11A(5) of the FOI Act provides:

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.

27. When weighing the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act
- inform debate on a matter of public importance, being the government's consideration of reform options for the mutual obligation system, and
- enhance scrutiny on government decision-making.

28. I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the following factors:

- the disclosure of internal, deliberative considerations regarding the benefits and drawbacks associated with the adoption of policy options for the reform of the mutual obligation system would adversely affect the department's ability to provide

the government with frank and candid advice on the mutual obligation system in the future

- the dissemination of deliberative material about alternative or supplementary policy options, which is intertwined with material about early versions of the mutual obligation system reforms which have been subsequently announced, could negatively impact the government's ongoing, or future, consideration of those options
- the premature release of material about policy proposals that the Government may still be considering could reasonably be expected to adversely affect the department's ability to provide advice to the Government on the pros and cons of those policy proposal
- that the divulgence of particular material, which is intertwined with, or forms an integral part of, advice or opinions about the mutual obligation system, could potentially be used to circumvent mutual obligation requirements in a manner which could reduce the effectiveness and efficiency of the mutual obligation system as a whole
- the public interest in maintaining the integrity of the mutual obligation system, and
- that the release of some parts of the deliberative material could potentially reveal the substance of matters considered, or to be considered, by Cabinet.

29. In balancing the factors for and against disclosure of the above information, I consider that the factors against disclosure outweigh those in favour of disclosure at this time.

30. I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

31. I am therefore satisfied that all, or parts, of the aforementioned documents are conditionally exempt from release under section 47C(1) the FOI Act.

Section 47E of the FOI Act: certain operations of agencies

32. I have applied the conditional exemption in section 47E(d) of the FOI Act to parts of documents 1 – 3, 6 – 12, and 21 - 23.

33. Section 47E of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

34. A subset of the aforementioned documents contains departmental and ministerial internal email addresses which are not publicly available. The department and the Office of Minister Burke provide and administer services to a significant number of members of the public. The department and the Office of Minister Burke also receive a significant volume of correspondence from members of the public each day.

35. To ensure the department and the Office of Minister Burke can respond to and manage correspondence with the public effectively, it has established designated contact points for members of the public to use when communicating with the department or the

Office of Minister Burke. These established channels are monitored to ensure quality of service, and that the department and the Office of Minister Burke are able to respond to increased demand in a particular service as required.

36. Noting that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act, in my view, disclosure of those internal email addresses could reasonably be expected to result in additional or misdirected communications with those email addresses. This would result in correspondence being mishandled, misdirected, lost, duplicated or double-handled on account of it not being directed to the most appropriate teams through the established channels of communication.
37. Moreover, with the view of attempting to obtain a faster or preferential service, members of the public may contact specific internal email addresses rather than directing their query to the dedicated channel for contacting the department. This practice would unfairly prejudice other members of the public who use the appropriate channels.
38. I consider that disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of the department within the meaning of section 47E(d) of the FOI Act, as I am satisfied disclosure would impede the department's ability to direct and respond to incoming correspondence. I have considered the public interest test below.
39. The aforementioned documents also contain dissemination limiting markers, which are not publicly available. These markers are designed for internal use by the agency to indicate the level of information security required for a particular document or communication. Over time these markers may become less relevant or incorrect as information increases or decreases in sensitivity.
40. As discussed above, the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act. Release of department documents with incorrect or out of date markers interfere with the ability of the department to operate its information management procedures.
41. Accordingly, I consider that the relevant parts of documents 1 – 3, 6 – 12, and 21 – 23 are conditionally exempt under section 47E(d) of the FOI Act.
42. I have discussed the public interest considerations below.

Public Interest

43. When weighing the public interest factors for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act, increase scrutiny of the Government's activities and inform public debate on a matter of public importance.
44. I have considered the factors that weigh against disclosure by considering the extent to which disclosure could reasonably be expected to harm the interests of an individual or a group of individuals.

45. As discussed above, I consider that disclosure of this material could reasonably be expected to result in harm to the interests of individuals who receive services from the department or the Office of Minister Burke, and the broader public, given the adverse operational impact of disclosure which could be reasonably expected.
46. In assessing the factors for and against disclosure of the relevant information, I consider that the factors against disclosure outweigh those in favour of disclosure at this time. I have not taken into account any of the irrelevant factors pursuant to subsection 11B(4) of the FOI Act in making this decision.
47. Accordingly, I am satisfied that parts of documents 1 – 3, 6 – 12, and 21 – 23 are conditionally exempt from release under section 47E(d) of the FOI Act.

Section 47F of the FOI Act: personal privacy

48. I have applied the conditional exemption in subsection 47F(1) of the FOI Act to documents 1, 3, 7, 10, and 21 – 23.
49. Section 47F(1) of the FOI Act relevantly provides that a document is conditionally exempt if disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person). In determining whether disclosure involves the ‘unreasonable disclosure of personal information’, I must have regard to the matters under section 47F(2).
50. I am satisfied the document contains ‘personal information’ noting ‘personal information’ under the FOI Act has the same meaning as in the *Privacy Act 1988*. This is because the document contains the names and direct contact details of identified individuals and individuals who are reasonably identifiable.
51. In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.133 of the FOI Guidelines provides:

The personal privacy conditional exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

52. I am satisfied that the disclosure of the personal information would be unreasonable for the following reasons:
- the information is not well known
 - the individuals to whom the information relates are not known to be (or to have been) associated with the matters dealt with in the document
 - the information is not available from publicly accessible sources
 - the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
 - the individuals concerned have not consented to the release of their personal information.

53. On this basis, I have decided that parts of the aforementioned documents contain personal information which is conditionally exempt under section 47F(1) of the FOI Act.

54. I have discussed the public interest considerations below.

Public interest

55. When weighing the public interest for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered that the disclosure would, to an extent, promote the objects of the FOI Act.

56. I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the prejudice to the right of an individual to privacy.

57. Based on these factors, I have decided that, in this instance, the public interest in disclosing the information in the abovementioned documents is outweighed by the public interest against disclosure. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act in making this decision.

58. For the reasons set out above, I am satisfied that parts of documents 1, 3, 7, 10, and 21 – 23 are conditionally exempt under section 47F(1) of the FOI Act.

Section 24A(1) of the FOI Act: documents do not exist

59. I have decided to refuse the following part of your request pursuant to section 24A of the FOI Act:

“2. all notes taken from the meeting (at 2pm on 23 November 2023) to discuss draft principles and short-term options (that is referred to in document 17) ...”

60. Under section 24A(1) of the FOI Act, the department may refuse a request for access if:

*(a) all reasonable steps have been taken to find the document; and
(b) the agency or Minister is satisfied that the document:*

...

(i) does not exist.

61. This is because I am informed that all reasonable steps have been taken by relevant departmental officers within the relevant line areas to find documents falling within the scope of your request and I am satisfied, based on those consultations, that those documents do not exist.

62. I have consulted with officers from the relevant line area within the department, the Employment Strategy and Policy Division. They have informed me that the departmental officers who attended this meeting, that are still employed by the department, have searched for relevant documents in the places where such records would ordinarily be stored including: in their personal and shared email inboxes, records management systems, SharePoint, the intranet, shared computer drives, as well as physical folders,

diaries, and notebooks, and they have not been able to locate copies of any notes taken from the relevant meeting.

63. I also understand that departmental officers from the department's IT Forensics Team undertook extensive searches of the department's digital systems and did not discover any notes from the relevant meeting.
64. Based on the above, I am satisfied that reasonable searches have been conducted to find documents relevant to your request and that notes taken from the meeting (at 2pm on 23 November 2023) to discuss draft principles and short-term options are not on the department's systems and they do not exist.
65. As such, I have decided to refuse access under section 24A(1)(b)(ii) of the FOI Act.

Conclusion

66. In summary, I am satisfied that the documents, or parts of documents, as set out in the Schedule of Documents, contain irrelevant material, or are otherwise conditionally exempt under sections 47C, 47E(d) and/or 47F of the FOI Act.
67. Furthermore, with respect to material which is conditionally exempt under sections 47C, 47E(d) and/or 47F of the FOI Act, I have decided that access would, on balance, be contrary to the public interest. Accordingly, I have decided not to release parts of certain documents to you.
68. I have deleted the exempt material from the documents and have released the remaining material to you in accordance with section 22 of the FOI Act.

YOUR RIGHTS OF REVIEW

Asking for an explanation of an FOI decision

Before you ask for a formal review of an FOI decision, you can contact us and we will explain the decision to you.

Asking for a formal review of an FOI decision

If you still believe the decision is incorrect, the FOI Act gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the one who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application by either:

Post: Information Law Team
Legal and Assurance Division
Department of Employment and Workplace Relations
Location Code: C50MA1
GPO BOX 9880
CANBERRA ACT 2601
or
Email: foi@dewr.gov.au

Applying for external review by the Australian Information Commissioner

If you do not agree with this decision, you can ask the Australian Information Commissioner to review the decision.

You have 60 days to apply in writing for a review by the Australian Information Commissioner

You can lodge your application in one of the following ways:

Online:
<https://webform.oaic.gov.au/prod?entitytype=ICReview&layoutcode=ICReviewWF>

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5288

SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

<https://webform.oaic.gov.au/prod?entitytype=Complaint&layoutcode=FOIComplaintWF>

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

RELEVANT LEGISLATION

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.

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

Document lost or non-existent

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

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth.

Exceptions

(2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (a) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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.