



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/07/01970

File Number ADF2015/40586

Scope of request

I am seeking the latest Ministerial Submissions/Briefings (with attachments), as well as the latest briefings to the Secretary of the Department, Mr Pezzullo, (with attachments) relating to:

- 1. asylum seekers on SIEVs who have been intercepted and detained under the Maritime Powers Act,*
- 2. asylum seekers on SIEVs who have been intercepted and have been subject to turnbacks.*
- 3. abuse of asylum seekers (both adults and children) in detention centres.*

I do not want drafts.

Documents in scope

1. Departmental document – Ministerial Submission (with attachment) – containing 7 folios.
2. Departmental document – Minute to the Secretary (with attachments) - containing 19 folios.
3. Departmental document – Minute to the Secretary - containing 6 folios.
4. Departmental document – Ministerial Submission (with attachments) - containing 9 folios.
5. Departmental document – Ministerial Submission (with attachments) - containing 11 folios.

Authority to make decision

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

Information considered

In reaching my decision, I have considered the following:

- the *Freedom of Information Act 1982*;
- Departmental documents (identified above); and
- the Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of exempt or irrelevant material under s.22 of the FOI Act

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

Deletion of irrelevant material as applied to your FOI request

The documents contain information which is considered irrelevant to your request. Irrelevant information includes the names of Departmental staff below senior executive level as well as the direct contact details of all staff.

Exempt documents

Part of the documents I have considered fall under an exemption of the FOI Act. The exemptions in Division 2 of Part IV of the FOI Act are not subject to an overriding public interest test. If part of a document meets the criteria to establish a particular exemption, that part is exempt. There is no additional obligation to weigh competing public interests to determine if that part of the document should be released.

Exemptions as applied to your request

Exemption - Documents affecting national security – s.33(a)(i)

Section 33(a)(i) of the FOI Act provides that a document is an exempt document if disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth. 'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as:

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

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant. That Act defines 'security' to include 'the protection of Australia's territorial and border integrity from serious threats'. This definition was inserted by the *Anti-People Smuggling and Other Measures Act 2010* (Cth) (Schedule 2). The Explanatory Memorandum for the *Anti-People Smuggling and Other Measures Bill 2010* (Cth) states that

'serious threats to Australia's territorial and border integrity' include 'those posed by people smuggling activities' (at 2-3).

The ABF is part of a whole-of-government response to border protection issues that has been established through the Joint Agency Task Force Operation Sovereign Borders. The integrity of Australia's borders is an obvious part of national security, as Australia's national interests are potentially threatened by any unauthorised arrival of people. The Australian Government is responsible for the lawful entry of people into Australia and ensuring only appropriately authorised foreign nationals can stay within Australia.

Parts of documents 3,4 and 5 relate directly to the interception of vessels that are a potential threat against national security. They include reports related to Suspected Irregular Entry Vessels and the measures taken in respect of these vessels by border security assets and operational staff. Accordingly parts of those documents go directly to the issues of national security at the heart of Operation Sovereign Borders. Parts of document also go to the collection of information about the operations of these vessels, which can be used to contribute to Australia's security into the future.

For these reasons, I have formed the view that parts of documents 3, 4 and 5 relate to the security of the Commonwealth.

Exemption - Documents affecting international relations – s.33(1)(a)(iii)

I have decided that parts of documents 3,4 and 5 are exempt under s.33(1)(a)(iii) of the FOI Act, as they are documents concerning international relations between Australia and a number of foreign governments the disclosure of which could reasonably be expected to cause damage to Australia's relations with these foreign governments.

In my opinion the expectation of damage that would be caused is a reasonable one, having paid regard to the nature of the information and the context of the submission in which the information is contained, and the nature and significance of Australia's relations with its regional partners. I am of the view that releasing the material I have exempted under this part would contribute to a lessening of confidence these foreign governments place in the Australian government and could affect the maintenance of good working relations with those governments.

Exemption - legal professional privilege – s.42

Parts of documents 3, 4 and 5 contain summaries of communications which are themselves privileged. Those communications are confidential communications between legal officers (both within and external to the Department) and the client area within the Department, where information was conveyed.

The legal officers, in response to requests for legal advice, prepared the communications. The Department, as the client, claims legal professional privilege (LPP) over the parts of those documents and is not waiving privilege because of the detrimental effect this could have on the conduct of its legal affairs.

Based on the above, it is my decision that parts documents 3, 4 and 5 are exempt under s.42(1) of the FOI Act.

Conditionally exempt documents

Parts of the documents I have considered also fall under a 'conditional' exemption in the FOI Act. Therefore, I will explain what a 'conditionally exempt' document is before discussing the exemption I have applied.

The FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information. The FOI Act now provides that 'conditionally exempt' information **must** be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

I will now consider each conditional exemption that I have applied in my decision.

Conditional Exemptions as applied to your request

Conditional exemption – documents affecting Commonwealth-State relations – s.47B(b)

Section 47B(b) of the FOI Act provides that documents are conditionally exempt if information is communicated in confidence to the Commonwealth Government or an agency by a State or an authority of the State.

I consider that the disclosure of parts of document 2 would release information that was communicated and received by the Commonwealth from a State agency under an express understanding that it would remain confidential.

Conditional exemption - certain operations of agencies – s.47E

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I consider that the disclosure of parts of documents 3, 4 and 5 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Australian Border Force (ABF).

Managing the security and integrity of Australia's borders is integral to the operations of ABF. Any prejudice to the effectiveness of operational activities used in undertaking that role would result in a substantial adverse effect on the operations of ABF and its partner agencies.

Access to the conditionally exempt information may be reasonably expected to undermine the tactical advantage that ABF, and partner border protection agencies, surveillance and response assets have over people smuggling ventures by providing operational information about assets engaged in counter-people smuggling operations.

The assets concerned are not only engaged in operations concerning illegal maritime arrivals, but also respond to other maritime security threats such as illegal fishing and resource exploitation, prohibited imports/exports, piracy, violence at sea, as well as the prevention of marine pollution and environmental crime.

I am of the opinion that disclosing this information, and the resulting change to asset use and assessment methods that would have to occur, would cause those border protection activities to be less efficient.

Conditional exemption- personal information- s.47F(1)

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

Personal Information

I am satisfied that the information contained in documents 1, 2, 3, 4 and 5 is the 'personal information' of the individuals concerned. The 'personal information' includes the signatures of Departmental officers as well as the names of third parties.

Unreasonable disclosure

Section 47F(2) of the FOI Act sets out the factors that may be considered when determining whether release is 'unreasonable'. They are:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document;
- the availability of the information from publically accessible sources; and
- any other matters that the department considers relevant.

I have considered each of these factors below.

The extent to which the information is well known

The third parties' personal information is not well known and would only be known to a limited group of officers with a business need-to-know. The information would not be known outside the Department. On balance, I believe that this factor weighs against the release being reasonable.

Whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document

The third parties' personal information is only known to those with a business need-to-know. Therefore, the individuals concerned are not generally known to be associated with the matters discussed in the document. On balance, I believe that this factor weighs against the release being reasonable.

The availability of the information from publically accessible sources

This personal information is not available from publically available sources and does not appear to be in the public forum. The information is contained in internal Departmental documents, created for an administrative process. On balance, I believe that this factor weighs against the release being reasonable.

Any other matters that the department considers relevant

I have considered the following factors:

- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- No purpose would be achieved by releasing the third parties' personal information. This weighs against the release being reasonable.
- The degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government. This weighs against the release being reasonable.
- The current relevance of the information. This weighs against the release being reasonable.

On balance I am satisfied that the release of the third parties' personal information would be 'unreasonable' in the context of the request.

Therefore, I am satisfied that the conditional exemption in s.47F(1) applies to the documents.

Conditional exemption- documents affecting business- s.47G(1)

Section 47G of the FOI Act provides that a document is conditionally exempt if it discloses information concerning a person in respect to his or her lawful business or professional affairs. To be conditionally exempt, the disclosure of business information in a document must reasonably be expected to have either one of the following outcomes:

- An unreasonable and adverse effect on the business or professional affairs of a person or on the business, commercial or financial affairs or an organisation or undertaking, or
- Prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters managed by an agency.

I consider parts of document 3 to be conditionally exempt on the basis that the release of such information creates:

- A reasonable expectation of a reduction in the quantity or quality of business affairs information to the government; and
- The reduction will prejudice the operations of the agency.

The public interest test

I must now consider the application of the public interest test in s.11B of the FOI Act to determine whether the release of the information in the documents would be 'contrary to the public interest'.

Factors weighing in favour of release

In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the information would:

- (a) *promote the objects of the Act; or*
- (b) *inform debate on a matter of public importance; or*
- (c) *promote effective oversight of public expenditure; or*
- (d) *allow a person to access his or her personal information.*

The objects of the FOI Act, set out in s.3(1), are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities.

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines (IC Guidelines) that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the FOI Act).

The Information Commissioner has since issued Guidelines that contain a **non-exhaustive** list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the IC Guidelines).

The elements that weigh against disclosure are:

Whether disclosure of the personal information could reasonably be expected to:

- (a) *prejudice the protection of an individual's right to privacy, including where:*
 - i. *the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
 - ii. *the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) *prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) *prejudice security, law enforcement, public health or public safety*
- (d) *impede the administration of justice generally, including procedural fairness*
- (e) *impede the administration of justice for an individual*
- (f) *impede the protection of the environment*
- (g) *impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) *prejudice an agency's ability to obtain confidential information*
- (i) *prejudice an agency's ability to obtain similar information in the future*
- (j) *prejudice the competitive commercial activities of an agency*
- (k) *harm the interests of an individual or group of individuals*

- (l) *prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) *prejudice the management function of an agency*
- (n) *prejudice the effectiveness of testing or auditing procedures*

Is the release contrary to the public interest?

I have considered the factors set out in the public interest test in s.11B(3) and s.11B(5) of the FOI Act.

Factors in favour of disclosure

I am satisfied that access to the documents would promote the objects of the FOI Act.

I consider that the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.

I consider that no insights into public expenditure will be provided through examination of the documents.

I am satisfied that you do not require access to the documents in order to access your own personal information.

Factors against disclosure

I have also considered the factors that weigh against the release of the documents.

In relation to the application of s.47B(1)

- Document 2 contains information that was expressly communicated in confidence to the Commonwealth Government and disclosure could reasonably be expected to adversely affect the continued level of trust or cooperation in existing relationships and could impair or prejudice the flow of information to the Commonwealth. I consider that this factor weighs heavily against disclosure.

In relation to the application of s.47E(d)

- The disclosure of parts of documents 3, 4 and 5 could reasonably be expected to prejudice the law enforcement functions of border protection agencies and, as a result, the ability of the ABF and its partner agencies to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the ABF, and partner law enforcement agencies, to conduct on-water operations in an efficient manner is not compromised or prejudiced in any way. I consider this factor weighs heavily against disclosure.
- The disclosure of conditionally exempt information would likely provide people smuggling organisers with official government information which they could use to manipulate and convince any potential illegal immigrants to embark on voyages to Australia. This would be an improper use of the information which may also cause a risk to human life. To disclose information that indicates the success or otherwise of ventures may also encourage others to engage in people smuggling activities. Preventing improper use of government information is in the public interest. I consider that this factor weighs heavily against the disclosure.
- The disclosure of the parts of documents 3, 4 and 5 may adversely impact upon Australia's relations with foreign states and undermine any actual or potential future cooperation and agreement on ameliorating people smuggling issues and other law enforcement issues at an international level. Reducing cooperation on trans-national

criminal activity is against the public interest which supports the application of the 47E(d) conditional exemption.

- I consider that there is a strong public interest in preventing the potential risk to human life associated with people smuggling, and that this factor weighs heavily against the disclosure of the conditionally exempt information.

In relation to the application of s.47F

- The disclosure of the personal information of private individuals contained in documents 1, 2, 3, 4 and 5 could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of the individuals to their own privacy. I am also strongly of the view that the disclosure of the personal information contained in document 5 could reasonably be expected to harm the interests of an individual or group of individuals.

In relation to the application of s.47G

- The disclosure of business information contained in document 3 could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purposes of the administration of a law of the Commonwealth. I am strongly of the view that the disclosure of the information could reasonably be expected to prejudice security, law enforcement and public safety.

Therefore, I am satisfied that the outlined material in the documents is exempt from release under the relevant sections of the FOI Act.

Authorised decision maker
Freedom of Information Section
Department of Immigration and Border Protection
Email foi@border.gov.au

8 March 2015



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/07/01970

File Number ADF2015/40586

1. Departmental Document: Ministerial Submission

Folio	Description	Decision	Legislation
1-7	Ministerial Submission with attachment: Responding to the Royal Commission into Institutional Responses to Child Sexual Abuse	Released in full	

2. Departmental Document: Minute

Folio	Description	Decision	Legislation
1-19	Minute to the Secretary with attachments titled: <i>Review into allegations of child abuse at the Melbourne Immigration Transit Accommodation</i>	Exempt in part	s.47B s.47F

3. Departmental Document: Minute

Folio	Description	Decision	Legislation
1-6	Minute to the Secretary titled: <i>Suspected Illegal Entry Vessels [exempt] and [exempt]</i>	Exempt in part	s.33 s.42 s.47E s.47F s.47G

4. Departmental Document: Ministerial Submission

Folio	Description	Decision	Legislation
1-9	Ministerial Submission with attachments: <i>On-Water Operation regarding Suspected Illegal Entry Vessel (SIEV) [exempt]</i>	Exempt in part	s.33 s.42 s.47E s.47F

5. Departmental Document: Ministerial Submission

Folio	Description	Decision	Legislation
1-11	Ministerial Submission with attachments: <i>Cooperation with Vietnam – On-Water Operation regarding Suspected Illegal Entry Vessel (SIEV) [exempt]</i>	Exempt in part	s.33 s.42 s.47E s.47F

Attachment C

Extract of 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.

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.

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.

Note: See also subsection 4(10).

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.

Note: For **operational information**, see section 8A.

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or
- (c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or

- (d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or
- (e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or
- (f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary 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) 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).