



**Australian Government**

**Department of Infrastructure and Transport**

FOI

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

**Decision and reasons for decision of Andrew Jagers, Executive Director, Nation Building Infrastructure Investment**

**Applicant:**

Decision date: October 2012

FOI reference number: 13-08

**Documents:** East Coast Freight Network Strategy conducted by Deloitte Touche  
Tohmatsu

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## Summary

1. I have made a decision not to release the documents subject to your request.
2. I have made a decision not to impose charges.

## Authority to make this decision

3. I, Andrew Jagers, Executive Director, Nation Building Infrastructure Investment am an officer authorised by the Secretary of the Department of Infrastructure and Transport (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.

## Background

4. On 13 September 2012 you made a request for access to documents in the possession of the Department of Infrastructure and Transport (the Department). Your request sought access to:

*"the East Coast Freight Network Strategy conducted by Deloitte Touche Tohmatsu and/or others."*

## Documents subject to this request

5. I have undertaken a search of the Department's records and identified two (2) documents relevant to your request, as set out above. The documents are listed in the schedule of documents at Schedule 1.

## Decision

6. I have made a decision not to release the documents subject to your request pursuant to section 47C (Deliberative processes) with the reasons for my decisions as follows.

## Reasons for decision

7. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to refuse access to documents follow.
8. In making my decision, I had regard to 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 47C (Deliberative processes)
9. A full extract of all provisions I have used to make my decision are provided in Schedule 2.

## Deliberative process documents

### **Documents –1 and 2**

10. I have decided to conditionally exempt documents 1 and 2 in their entirety pursuant to subsection 47C (1) of the FOI Act. Section 47C(1) provides an exemption for opinions, advice or recommendations that have been obtained, prepared or recorded, or consultations or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the agency or a minister.

11. Documents 1 and 2 comprise draft reports prepared by the Department of Infrastructure and Transport, with inputs provided by Deloitte Touche Tohmatsu, on the east coast freight network. The reports look at the major north-south road and rail links that currently exist between Melbourne and Cairns. The reports aim to identify priority areas for potential future infrastructure investment decisions.
12. The reports contain opinions, advice and/or recommendations that have been obtained, prepared or recorded, or consultations and/or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the Department and the Minister. I have, therefore, decided that the information is conditionally exempt in accordance with Section 47C.
13. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
  - (a) promote the objects of the FOI Act;
14. I have considered this factor, and agree that the objects of the Act should be promoted.
15. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
  - (a) reasonably be expected to prejudice the management function of an agency;
  - (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
  - (c) reasonably be expected to damage the ongoing and cooperative relationship that exists between the commonwealth and various state governments
16. I am satisfied that the premature disclosure of the reports could reasonably be expected to prejudice the management and functioning of the Department's ongoing research and policy programs by inhibiting the flow of similar information in the future as well as potentially undermining the cooperative working partnerships that currently exist between the Commonwealth and States. Various state governments were consulted in the preparation of these reports and premature release of the reports could reasonably be expected to damage that working relationship.
17. The documents contain deliberations, discussions, options and recommendations which have not been fully considered or finalised by senior officials or the Minister.
18. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents, would, on balance, be contrary to the public interest. The provision of information to the Commonwealth and the Ministers ability to consider the material prior to release is a vital component to the successful operation of the Department's functions, and the factors favouring access are not overriding considerations in this instance.
19. Accordingly, I am satisfied that the documents are exempt under section 47C(1) and that disclosure would be contrary to the public interest

## Your rights of review

20. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).
21. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:
- Post:** FOI Coordinator  
Department of Infrastructure and Transport  
GPO Box 594  
Canberra ACT 2601  
**Fax:** +61 2 6247 1347  
**Email:** FOI@infrastructure.gov.au
22. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:
- Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** GPO Box 2999  
Canberra ACT 2601  
**Fax:** +61 2 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3  
25 National Circuit  
Forrest, ACT; or at  
Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney, NSW
- More information about Information Commissioner Reviews is available from  
[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

## Contacts

23. If you wish to discuss this FOI decision, please contact the Department's FOI coordinator on (02) 6274 7844 or via email at [foi@infrastructure.gov.au](mailto:foi@infrastructure.gov.au)



Andrew Jaggers  
Executive Director  
Nation Building – Infrastructure Investment

3 October 2012



Australian Government

Department of Infrastructure and Transport

FOI

Schedule 1

## Schedule of documents

Applicant:

Decision date:

October 2012

FOI reference number:

13-08

Documents:

East Coast Freight Network Strategy conducted by Deloitte Touche Tohmatsu

Document reference	Author	Recipient	Document description	Decision	Exemption Provision
1	Department of Infrastructure and Transport	NA	East Coast Freight Network Strategy	Exempt in full	S47C
2	Department of Infrastructure and Transport	NA	East Coast Freight Network Strategy: Technical Report	Exempt in full	S47C



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

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

### 11 Right of access

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

#### 11A Access to documents on request

##### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

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

#### *Exemptions and conditional exemptions*

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

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

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

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

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

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

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
  - (i) under Division 2 of Part IV (exemptions); or
  - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## **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).

## 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 an agency or Minister or of 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 public interest (see section 11A).



**Australian Government**

**Department of Infrastructure and Transport**

**FOI**

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

**Decision and reason for decision of Andrew Jagers, Executive Director, Nation Building – Infrastructure Investment**

**Applicant:**

**Decision date:** January 2013

**FOI reference number:** 13-11

**Documents:** Documents relating to the Sydney Intermodal Terminal Alliance

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## Summary

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

## Authority to make this decision

2. I, Andrew Jagers, Executive Director, Nation Building – Infrastructure Investment, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 25 October 2012 you made a revised request for access to documents in the possession of the Department. Your request sought access to documents relating to the Sydney Intermodal Terminal Alliance. We note that parts of this request have been transferred to the Department of Finance and Deregulation (DFD) as the subject matter of some of the documents sought is more closely aligned with functions and roles carried out by that Department and you have been advised of this previously.
4. On 23 November 2012, the Department provided you with an estimate of a charge of \$5419.52.
5. On 29 November 2012, you agreed to pay the charge, and paid the amount in full.

## Documents subject to this request

6. The Department has undertaken a search of its records and has identified 27 documents that fall within the scope of your request, as set out above.
7. The documents subject to your request are listed in the schedule of documents at Schedule 1.

## Decision

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

I have decided to grant access in full to the following documents:

- Documents 8, 16, 19 and 20

I have decided to grant access to the following documents in part:

- Documents 1-7, 9-15, 17-18 and 21-24

I have decided to refuse access to the following documents:

- Document 25, 26 and 27

## Reasons for decision

9. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to documents follow.
10. In making my decision, I had regard to 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 provision of the FOI Act relevant to my decision:

- Section 34 (Cabinet documents)
- Section 42 (Legal Professional Privilege)
- Section 47C (Deliberative processes)
- Section 47F (Personal privacy)

11. A full extract of all provisions I used to make my decision are provided in Schedule 2.

## **Statement of reasons**

### **Section 34 - Cabinet Documents**

#### ***Documents 13, 14, 26 and 27***

12. I have decided to exempt documents 13 and 14 in part and documents 26 and 27 in full subject to section 34 of the FOI Act.
13. Section 34(1)(a) provides that a document is exempt if it has been submitted to Cabinet or was proposed to be submitted to Cabinet and it was brought into existence for the dominant purpose of consideration by Cabinet. Document 27 was a report which was prepared for submission to Cabinet and is therefore exempt pursuant to section 34(1)(a) of the FOI Act. Further, document 26 is a copy of a Cabinet submission and therefore I consider it appropriately exempt pursuant to section 34(1)(a).
14. Section 34(1)(c) further exempts documents that were brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies. Documents 13 and 14 contain information in the form of briefing material used to brief the Minister regarding Cabinet issues and therefore I am satisfied that the documents are exempt under this section.
15. The Department has sought advice from the Department of Premier and Cabinet (PM&C) on each document which falls under section 34 of the FOI Act.

### **Section 42 - Legal Professional Privilege**

#### ***Documents 4, 12, 21, 22 and 24***

16. Section 42 provides that 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 grounds of legal professional privilege.
17. I have decided that parts of documents 4, 12, 21, 22 and 24 contain information that is subject to legal professional privilege. The documents either comprise of legal advice or contain references to confidential legal advice sought by the Australian Government from an independent and external legal advisor. This information is not publically available and I am satisfied that it would be unreasonable to disclose this information.

### **Section 47C - Deliberative process documents**

#### ***Documents 4, 5, 6 and 12***

18. I have decided to exempt parts of documents 4, 5, 6 and 12 in part pursuant to subsection 47C (1) of the FOI Act. Section 47C(1) provides that a document is conditionally exempt if its disclosure would disclose opinions, advice or recommendations that have been obtained, prepared or recorded, or consultations or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the agency or a Minister.

19. The documents in issue contain correspondence in the form of emails, briefs and papers prepared by the Department regarding the Moorebank project. The correspondence discusses and summarises negotiations that were undertaken by the Department of Defence and the Sydney Intermodal Terminal Alliance (SIMTA). The documents further outline possible strategies and plans for the implementation of the Moorebank Intermodal Terminal, which will be the subject of a future competitive tender process. As the documents contain advice that was obtained, prepared or recorded, in the course of, or for the purposes of, a deliberative process of the Department and the Minister I have, therefore, decided that the information is conditionally exempt in accordance with Section 47C.

#### **Public Interest Test**

20. After coming to the conclusion that the document is conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the document would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

- (a) promote the objects of the FOI Act;

21. I have considered this factor, and agree that the objects of the Act should be promoted.

22. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

- (a) reasonably be expected to prejudice the management and functions of an agency;
- (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
- (c) reasonably be expected to damage the ongoing and cooperative relationship that exists between Commonwealth agencies involved in ongoing projects; and
- (d) could reasonably be expected to prejudice the competitive commercial activities of an agency

23. I am satisfied that the disclosure of the document could reasonably be expected to prejudice the agency's ability to obtain similar information in the future. The documents in issue include internal briefing documents used by the Department to brief senior executive on the progress of negotiations regarding the Moorebank project. I consider that if the information contained in the documents were to be released officers from other Commonwealth agencies may be unwilling to provide information to this Department in relation to future joint projects if they believe that such information will be made publically available. Further, if the documents were to be released I consider that the current cooperative working relationship that exists between this Department and various other Commonwealth agencies involved in the Moorebank project may be damaged. This would have a negative impact on current and future projects undertaken at the Federal level.

24. Further, I consider that release of the information contained in these documents would or could reasonably be expected to prejudice the commercial activities of this and other Commonwealth agencies. If the information were to be released recommendations, advice and commercially-sensitive information regarding the Moorebank project would be made public and prejudice ongoing negotiations and dealings with private enterprise, including a competitive tender process to be undertaken to identify prospective project proponents.

25. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents, would, on balance, be contrary to the public interest. The provision of information to the Commonwealth and the Ministers ability to consider the material prior to release is a vital component to the successful operation of the Department's functions. Further a cooperative relationship between this and other agencies is vital to ensure the ongoing success of

the Moorebank project as well as future Government projects. The factors favouring access are not overriding considerations in this instance and accordingly, I am satisfied that the documents are exempt under section 47C(1) and that disclosure would be contrary to the public interest

### **Section 47F - Personal Privacy**

26. Section 47F(1) relevantly provides that a document is an exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). I have decided to not release mobile phone numbers and email addresses of non-public servants and redactions have been to documents where these appeared.
27. I consider that disclosure of the personal contact information of external parties and/or mobile phone numbers may expose the individuals to public scrutiny, and could reasonably be expected to deter the relevant individuals as well as others from providing information or raise issues with the Government in the future. There is also a risk that if disclosed, personal contact details could be subject to misuse or other dealings contrary to the wishes of the individual. I have weighed the factors to determine where the public interest lies. I have decided that the documents contain information which is exempt under Section 47F(1) and I am satisfied that the factors against disclosure outweigh those in favour of access in relation to the personal information.

### **Section 22 - Irrelevant material**

#### ***Documents 1-10, 13, 15, 17-18, 21-23 and 25***

28. I have exempted parts of documents 1-10, 13, 15, 17-18, 21-23 under Section 22 of the FOI Act.
29. Section 22 relevantly provides that if an agency decides that granting access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request, then, where it is reasonably practicable to provide a copy with deletions; such a copy should be provided.
30. I have decided to apply Section 22 of the FOI Act to delete irrelevant material in respect of the above documents, in order to facilitate the release of the remainder of those documents, as set out in Schedule 1.

### **Your rights of review**

31. If you disagree with this FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, or external review by the Office of the Australian Information Commissioner (OAIC).
32. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Transport  
GPO Box 594  
Canberra ACT 2601  
**Fax:** +61 2 6275 1347  
**Email:** FOI@infrastructure.gov.au

33. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and Ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)

**Post:** GPO Box 2999

Canberra ACT 2601

**Fax:** +61 2 9284 9666

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**In person:** Level 3

25 National Circuit

Forrest, ACT; or at

Level 8, Piccadilly Tower

133 Castlereagh Street

Sydney, NSW

More information about Information Commissioner Reviews is available from

[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

## Contacts

34. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7844 or email [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)



Andrew Jagers  
Executive Director  
Nation Building – Infrastructure Investment

24 January 2013





Australian Government

Department of Infrastructure and Transport

FOI

Schedule 1

## Schedule of documents

**Applicant:**

**Decision date:** January 2013

**FOI reference number:** 13-11

**Documents:** Documents relating to the Sydney Intermodal Terminal Alliance

Document reference (FOI 13-11 reference)	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
1	11/10/2012	7	Department of Infrastructure and Transport	Minister for Infrastructure and Transport	Meeting brief for information – Moorebank Intermodal Terminal (IMT)	Exempt in part	Section 22
2	04/10/2012	19	Department of Infrastructure and Transport	Minister for Infrastructure and Transport	Moorebank Intermodal Terminal Project – Update brief	Exempt in part	Section 22
3	17/09/2012	3	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Emails Moorebank IMT – Department [DoED MPO] letter to SIMTA	Exempt in part	Section 22
4	13/09/2012	5	Department of Infrastructure and Transport	Department of Finance and Deregulation	Emails Outcome of meeting with SIMTA on 7 Sep 12	Release in part	Sections 22, 42 and 47C
5	13/09/2012	4	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email Outcome of meeting with SIMTA 7 Sep 12	Exempt in part	Sections 22 and 47C

6	29/05/2012	5	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Meeting brief	Exempt in part	Sections 22 and 47C
7	8/05/2012	3	Minister for Infrastructure and Transport	NSW Minister for Transport	Letter Outcomes of 2012-13 Budget for transport infrastructure in NSW	Exempt in part	Section 22
8	23/04/2012	3	Minister for Finance and Deregulation, and Minister for Infrastructure and Transport	President Business Council of Australia	Letter Moorebank Intermodal Terminal Project	Full release	
9	23/04/2012	2	Minister for Infrastructure and Transport	NSW Premier	Letter Moorebank Intermodal Terminal	Exempt in part	Section 22
10	22/04/2012	11	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email Moorebank Announcement Pack	Exempt in part	Section 22
11	20/04/2012	7	Department of Infrastructure and Transport	Minister for Infrastructure and Transport	Brief Moorebank Intermodal Terminal – Announcement Arrangements	Exempt in part	Section 22
12	02/04/2012	6	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email SIMTA – Owners Consent	Exempt in part	Sections 42 and 47C
13	02/04/2012	9	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email Moorebank Talking Points	Exempt in part	Sections 34 and 22
14	30/03/2012	5	Prime Minister	NSW Premier Barry O'Farrell and Qube Managing Director Maurice James	Letters Intermodal Freight Facilities at Moorebank in Sydney	Exempt in part	Section 34
15	29/03/2012	4	Department of Infrastructure and Transport	Department of Finance and Deregulation	Email Letter to NSW re SIMTA	Exempt in part	Section 22
16	16/12/2011	5	Department of Finance and Deregulation	Department of Infrastructure and Transport	Emails Seeking input from Infrastructure to letter to SIMTA	Full release	

17	12/12/2011	1	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email Moorebank – Letter and Meeting	Exempt in part	Section 22
18	21/11/2011	2	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email Extracts from MPO update brief	Exempt in part	Section 22
19	22/11/2011	1	Stockland (SIMTA)	Minister for Infrastructure and Transport	Letter Timely delivery of a port shuttle at Moorebank	Full release	
20	21/11/2011	1	Department of Infrastructure and Transport	Stockland (SIMTA)	Letter SIMTA - Moorebank Intermodal Terminal	Full release	
21	03/11/2012	9	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email re Moorebank IMT Project	Exempt in part	Sections 42 and 22
22	28/10/2011	10	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email SIMTA's letter to Mike Mrdak	Exempt in part	Sections 42 and 22
23	12/09/2011	2	Department of Infrastructure and Transport	Minister for Infrastructure and Transport	Minute Moorebank Intermodal Terminal – Project update	Exempt in part	Section 22
24	19/11/2010	6	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email SIMTA memo	Exempt in part	Section 42
25	14/09/2012	3	Department of Finance and Deregulation	Department of Infrastructure and Transport	Email SIMTA proposed letter	Exempt in full	Section 42
26	April 2012	74	Minister for Infrastructure and Transport	Cabinet	Cabinet Submission Development of an Intermodal Terminal at Moorebank in Western Sydney	Exempt in full	Section 34
27	March 2009	71	Infrastructure Australia	Minister for Infrastructure, Transport, Regional Development and Local Government	Development of an Intermodal Freight Terminal at Moorebank: A Way Forward	Exempt in full	Section 34



## **Schedule of relevant provisions in the FOI Act**

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### **3 Objects—general**

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

### **11 Right of access**

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

### **11A Access to documents on request**

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

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

#### *Exemptions and conditional exemptions*

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

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

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

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

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

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

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
  - (i) under Division 2 of Part IV (exemptions); or
  - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## **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).

public interest (see section 11A).

## 34 Cabinet documents

### *General rules*

(1) A document is an exempt document if:

(a) both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or

(b) it is an official record of the Cabinet; or

(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or

(d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

### *Exceptions*

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) A document by which a decision of the Cabinet is officially published is not an exempt document.

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

- (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
- (b) the existence of the deliberation or decision has not been officially disclosed.

## 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

## 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; or
  - (d) the Government of Norfolk Island.

### *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 public interest (see section 11A).

## 47F Public interest conditional exemptions—personal privacy

- (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).



**Australian Government**

**Department of Infrastructure and Transport**

**FOI**

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

### **Decision and reason for decision of John Doherty, Executive Director, Aviation and Airports**

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**Applicant:**

**Decision date:** January 2013

**FOI reference number:** 13-13

**Documents:** Documents relating to the 2008 Canberra Airport Master Plan

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## Summary

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

## Authority to make this decision

2. I, John Doherty, Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 23 October 2012 you made a request for access to documents in the possession of the Department. Your request sought access to:
  1. *The record of a meeting between the Department and Canberra Airport dated 8 December 2008, plus cover email;*
  2. *Email from the Minister's office to the Department requesting advice on release of Minister's letter dated 24 November 2008;*
  3. *Email with notification letters to politicians dated 21 November 2008;*
  4. *Questions and answers in respect of Canberra Airport draft Master Plan and cover email dated 19 November 2008;*
  5. *Internal Departmental email (annotated) regarding Q&A 19 November 2008;*
  6. *Assessment package including draft Canberra Airport Master Plan dated 18 November 2008;*
  7. *Draft Statement of Reasons and Media release submitted by the Department to the Minister's Office in respect of Canberra Airport draft Master Plan dated 14 November 2008;*
  8. *Draft Canberra Airport Master Plan compliance statements and documents, Annexures A to E;*
  9. *Draft Canberra Airport Master Plan Master Plan Annexures F-H submissions;*
  10. *Draft Canberra Airport Master Plan Annex F-H submissions;*
  11. *Supplementary brief to the Minister dated 20 November 2008; and,*
  12. *Correspondence from Minister's Office to the Department – revisions to draft media release and cover email, dated 19 November 2008.*

*After discussions with your office on 24 October 2012 you agreed to remove part ten (10) of the request as it was the same as part nine (9).*

4. On 16 November 2012 the Department provided you with an estimate of a charge of \$4,766.51.
5. On 28 November 2012 you agreed to pay the charge, and paid the amount in full.

## Documents subject to this request

6. The Department has undertaken a search of its records and has identified 11 documents that fall within the scope of your request, as set out above.
7. The documents subject to your request are listed in the schedule of documents at Schedule 1.

## Decision

8. I have made a decision to release the documents subject to your request in part:
  - I have decided to grant access in full to documents 3 and 4.

- I have decided to grant access in part to documents 1, 2, 6, 8, 9 and 12.
- I have decided to refuse access to documents 5, 7 and 11.

#### **Reasons for decision**

9. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to documents follow.
10. In making my decision, I had regard to 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 47C (Deliberative processes)
  - Section 47F (Personal privacy)
11. A full extract of all provisions I used to make my decision are provided in Schedule 2.
12. We note that this request is similar in nature to an FOI request lodged by your client in 2008. Although the 2008 FOI request was not as broad as the current request a number of documents were released to you in that request. Please note that in relation to parts 8 and 9 of your current request (Canberra Airport Master Plan – Annexures A-E and Annexures F-H) the Department has not considered any documents that were released to you as part of the previous request.

#### **Statement of reasons**

##### **Section 47C - Deliberative process documents**

##### ***Documents 1, 2, 5, 6, 7, 11 and 12***

13. I have decided to exempt documents 1, 2, 6, and 12 in part and documents 5, 7 and 11 in their entirety pursuant to Subsection 47C(1) of the FOI Act. This section provides a conditional exemption for documents disclosing deliberative processes. A deliberative process relates to documents that contain opinions, advice, deliberations, consultations or recommendations that have been obtained, prepared or recorded and which are relevant to the functions of the Department.
14. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
  - (a) promote the objects of the FOI Act; and
  - (b) inform debate on a matter of public importance.
15. Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that the release of the documents will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of planning guidance for airport developments. The documents were prepared for the deliberative purposes of the Department in so far as they contain preliminary advice, recommendations and discussions which, at the time they were created had not been fully considered by the Minister or senior officials. In some cases the documents are draft documents such as Media Releases and statements which underwent significant amendment and changes and are not fully representative of the final decision and outcome. Further material includes briefing material or correspondence between

Ministerial advisors and senior officials that amount to preliminary views, opinions and recommendations on an Airport Master Plan which was not approved and has been superseded.

16. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
  - (a) reasonably be expected to prejudice the management function of an agency; and
  - (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
17. I am satisfied that the disclosure of the deliberative material would, or could reasonably be expected to prejudice the management and functioning of the Department in respect of its role in the assessment and approval of Airport Master Plans pursuant to the *Airports Act 1996*. The documents in issue contain discussions and recommendations between the Department and Ministerial advisors on a draft Airport Master Plan. These discussions were not made public and to do so may undermine and constrain the ability of Departmental staff and advisors to provide fulsome and frank advice and recommendations to the Minister now and into the future. Further if these discussions and views were made public it may prejudice the flow of information from third parties to the Commonwealth on future airport developments and Master Plan proposals.
18. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents would, on balance, be contrary to the public interest. The flow of information to the Commonwealth as well as the ability of Departmental staff and advisors to fully brief the Minister is a vital component to the successful operation of the Department's functions, and the factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

#### **Personal Privacy**

##### ***Documents 8 and 9 (Canberra Airport Master Plan annexures A-E and F-H)***

19. Section 47F(1) relevantly provides that a document is an exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). I have decided to not release the submissions at annexure F or the late submissions which appear at annexure H.
20. Documents 8 and 9 comprise in excess of 100 submissions made to Canberra Airport as part of the requirements of their [Canberra Airport] 2008 draft Master Plan. The submissions were made by numerous community groups and individual members of the public regarding their views on the Master Plan and potential expansion of Canberra Airport. The submissions contain the name, address and in some, but not all cases, the relationship status and/or further contact details such as phone numbers or email address of the individual(s) concerned. Both documents 8 and 9 also contain a summary by way of a copy of each submission and an analysis of the considerations and regard Canberra Airport had to these submissions (at Annexures E and G) these annexures have been provided in part.
21. During the course of processing this FOI request the Department attempted to contact the individuals who lodged a submission and seek their view on release or not of the documents concerned. Due to the passage of time since the submissions were lodged a large proportion of individuals were not able to be contacted for comment. I consider that the release of this information would be an unreasonable disclosure of personal information as the relevant individuals supplied the information to a private organisation on the understanding that it would not be made publicly available. I have therefore decided to release the comments and analysis the Canberra Airport had to each submission but not the submissions.

22. Disclosure of the information may expose the individuals to public scrutiny, and could reasonably be expected to deter the relevant individuals as well as others from providing information to public consultation or committees or raise issues with the Government in the future. There is also a risk that if disclosed, personal contact details could be subject to misuse or other dealings contrary to the wishes of the individual. Upon consultation some individuals did object to the information being released as they were concerned that the views expressed in their submission would be made public and this may interfere with their legitimate business and/or employment dealings. I have weighed the factors to determine where the public interest lies. I have decided that the documents contain information which is exempt under Section 47F(1) and I am satisfied that the factors against disclosure outweigh those in favour of access in relation to the personal information. As noted above in paragraph 12 we understand that your client has previously been provided with copies of some of the submissions and corresponding considerations in a previous FOI request – as noted we have not considered this information again, however have provided a copy of what was released previously for ease of reference.

### **Your rights of review**

23. If you disagree with this FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, or external review by the Office of the Australian Information Commissioner (OAIC).
24. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different Departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:
- Post:** FOI Coordinator  
Department of Infrastructure and Transport  
GPO Box 594  
Canberra ACT 2601  
**Fax:** +61 2 6275 1347  
**Email:** FOI@infrastructure.gov.au
25. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and Ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:

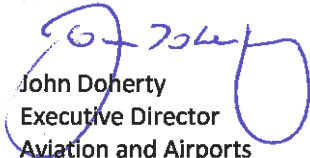
**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** GPO Box 2999  
Canberra ACT 2601  
**Fax:** +61 2 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3

25 National Circuit  
Forrest, ACT; or at  
Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney, NSW

More information about Information Commissioner Reviews is available from  
[http://www.oaic.gov.au/publications/FOI\\_fact\\_sheet12\\_your\\_review\\_rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

#### Contacts

26. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7844 or email [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)



John Doherty  
Executive Director  
Aviation and Airports

24 January 2013



Australian Government

Department of Infrastructure and Transport

FOI  
Schedule 1

## Schedule of documents

### Applicant:

Decision date: January 2013

FOI reference number: 13-13

### Documents: *Documents relating to the 2008 Canberra Airport Master Plan*

Document reference (FOI 13-13 reference)	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
1	8/12/2008	3	Department of Infrastructure and Transport		The record of a meeting between the Department and Canberra Airport dated 8 December 2008, plus cover email	Release in part	Section 47C
2	24/11/2008	3	Minister's Office	Department of Infrastructure and Transport	Email from the Minister's office to the Department requesting advice on release of Minister's letter dated 24 November 2008	Release in part	Section 47C
3	21/11/2008	21	Department of Infrastructure and Transport	Minister's Office	Email with notification letters to politicians dated 21 November 2008	Release in full	



4	19/11/2008	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Questions and answers in respect of Canberra Airport draft Master Plan and cover email dated 19 November 2008	Release in full	
5		Department of Infrastructure and Transport	Department of Infrastructure and Transport	Internal Departmental email (annotated) regarding Q&A 19 November 2008	Exempt	Section 47C
6	18/11/2008	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Assessment package including draft Canberra Airport Master Plan dated 18 November 2008	Part release	Section 47C
7	14/11/2008	Department of Infrastructure and Transport	Minister's Office	Draft Statement of Reasons and Media release submitted by the Department to the Minister's Office in respect of Canberra Airport draft Master Plan dated 14 November 2008	Exempt	Section 47C
8		Canberra Airport	Department of Infrastructure and Transport	Draft Canberra Airport Master Plan compliance statements and documents, Annexures A to E	Release in part	Section 47F

9 [same as 10]	20/11/2008	Canberra Airport	Department of Infrastructure and Transport	Draft Canberra Airport Master Plan Master Plan Annexures F-H submissions	Release in part	Section 47F
11	20/11/2008	Department of Infrastructure and Transport		Supplementary brief to the Minister dated 20 November 2008	Exempt	Section 47C
12	19/11/2008	Minister's Office	Department of Infrastructure and Transport	Correspondence from Minister's Office to the Department – revisions to draft media release and cover email, dated 19 November 2008	Release in part	Section 47C



## **Schedule of relevant provisions in the FOI Act**

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### **3 Objects—general**

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

### **11 Right of access**

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

#### **11A Access to documents on request**

##### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

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

#### *Exemptions and conditional exemptions*

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

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

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

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

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

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

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
  - (i) under Division 2 of Part IV (exemptions); or
  - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## **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).

## 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; or
  - (d) the Government of Norfolk Island.

### *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 public interest (see section 11A).

#### **47F Public interest conditional exemptions—personal privacy**

(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).



**Australian Government**

**Department of Infrastructure and Transport**

**FOI**

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

### **Decision and reasons for decision of Andrew Wilson, Deputy Secretary**

**Applicant:**

**Decision date:** March 2013

**FOI reference number:** 13-21

**Documents:** Documents relating to the Gold Coast Airport Master Plan

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## Summary

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

## Authority to make this decision

2. I, Andrew Wilson, Deputy Secretary, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 6 November 2012 you made a request for access to documents in the possession of the Department. Your request sought access to:
  - *all reports, recommendations or other documents prepared by the Department for the purpose of briefing the Minister about the Gold Coast Airport Master Plan 2012;*
  - *all documents recording the Minister's decision or reasons to approve the Gold Coast Airport Master Plan 2012; and*  
*(In relation to points 1 and 2, our client does not require any information already placed in the public arena, such as ministerial or departmental media releases.)*
  - *all documents recording or relating to the decision by Ms Horrocks to refuse a statement of reasons for the Minister's decision to approve the Gold Coast Airport Master Plan 2012 to the Fingal Head Community Association Inc.*  
*(In responding to this request, our client does not require you to produce any unmarked copies of correspondence between Ms Horrocks and EDO NSW.)*
4. On 19 November 2012, the Department provided you with an estimate of a charge in the amount of \$458.01.
5. On 7 December 2012, you sought internal review of the decision to impose a charge.
6. On 4 January 2013, the Department provided you with a decision to uphold the decision to impose a charge, however, provided you with a reduced charge of \$428.01.
7. On 9 January 2013, the Department was notified by the Office of the Australian Information Commissioner (OAIC) that you had requested an Information Commissioner review of the decision to impose a charge.
8. On 8 March 2013, the Department received a letter from you, enclosing a cheque for the amount of \$107.00 being for the deposit of charges associated with processing your request. You noted in your letter that your client "*considers it necessary, while maintaining its application for review of the charges imposed with the OAIC and without prejudice to that application, to pay the fees required by the department in the interim, in order to obtain the relevant documents*".
9. The Department awaits further advice from the OAIC in relation to your request for review of the Department's decision to impose a charge in this matter.

## **Documents subject to this request**

10. The Department has undertaken a search of its records and has identified 21 documents that fall within the scope of your request, as set out above.
11. The documents subject to your request are listed in the schedule of documents at Schedule 1.

## **Decision**

12. I have decided to grant access in full to documents *11, 12, 13, 14, 15, 16 and 17*.

I have decided to refuse access to documents *1, 2, 5 and 10*

In accordance with Section 22(2) of the FOI Act, I have decided to provide access to an edited copy, modified by deletions of documents *3, 4, 6, 7, 8, 9, 18, 19, 20 and 21*

## **Reasons for decision**

13. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to grant partial access to documents follow.
14. In making my decision, I had regard to 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 42 – Documents subject to legal professional privilege
  - Section 47C(1) – Deliberative process documents
  - Section 22(1)(a)(ii) – Irrelevant matter deleted

A full extract of all provisions I used to make my decision are provided in Schedule 2.

## **Statement of reasons**

### **Section 42 – Documents subject to legal professional privilege** ***Documents 1, 2, 3, 4, 5, 6, 7 and 20***

15. I have decided to exempt documents 3, 4, 6, 7, and 20 in part and documents 1, 2 and 5 in their entirety pursuant to subsection 42(1) of the FOI Act. This section provides an exemption for documents of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege (LPP). The underlying policy basis for LPP is to promote the full and frank disclosure between a lawyer and client to the benefit of the effective administration of justice.
16. I consider that the documents contain communications between the Department and the Australian Government Solicitor (AGS), which were created for the dominant purpose of receiving legal advice. I also consider that the advice was provided independently and confidentially and was received from an AGS employee acting as a solicitor for the Department. As such, I consider that the documents are subject to legal professional privilege and are therefore exempt or partially exempt from being released.

## **Section 47C - Deliberative process documents**

### ***Document 6, 8 and 10***

17. I have decided to exempt parts of documents 6 and 8 as well as document 10 in its entirety pursuant to Subsection 47C(1) of the FOI Act. This section provides a conditional exemption for documents disclosing deliberative processes. A deliberative process relates to documents that contain opinions, advice, deliberations, consultations or recommendations that have been obtained, prepared or recorded and which are relevant to the functions of the Department.
18. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
  - (a) promote the objects of the FOI Act; and
  - (b) inform debate on a matter of public importance.
19. Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that the release of the document will significantly inform debate on a matter of public importance, nor have effect on the effective oversight of planning guidance for airport developments. The approved Master Plan has been published and provides a basis for understanding and discussion of the plans for the airport.
20. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
  - (a) reasonably be expected to prejudice the management function of an agency; and
  - (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
21. I am satisfied that the disclosure of the deliberative material would, or could reasonably be expected to prejudice the management and functioning of the Department in respect of its role in the assessment and approval of Airport Master Plans pursuant to the *Airports Act 1996*. The documents in issue contain discussions and recommendations from the Department to the Minister on a draft Airport Master Plan. These discussions were not made public and to do so may undermine and constrain the ability of Departmental staff to provide full and frank advice to the Minister now and into the future. Further if these discussions and views were made public it may prejudice the flow of information from third parties to the Commonwealth on future airport developments and Master Plan proposals.
22. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the document would, on balance, be contrary to the public interest. The flow of information to the Commonwealth as well as the ability of Departmental staff to fully brief the Minister is a vital component to the successful operation of the Department's functions, and the factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

## **Section 22 - Irrelevant matter deleted**

### ***Documents 8, 9, 18, 19 and 21***

23. I have exempted parts of documents 8, 9, 18, 19 and 21 under Section 22 of the FOI Act.
24. Section 22 relevantly provides that if an agency decides that granting access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request,

then, where it is reasonably practicable to provide a copy with deletions; such a copy should be provided.

25. I have decided to apply Section 22 of the FOI Act to delete material which I consider to be irrelevant to the scope of your request.

### **Outstanding charges**

26. On 4 January 2013, the Department provided you with a notice of your liability to pay a reduced charge, and a preliminary estimate for the reduced amount of \$428.01. As your request has now been finalised and as you have paid a deposit of \$107.00, in accordance with Section 11 (1) of the Freedom of Information (Charges) Regulations 1982 you are therefore liable to pay the remaining balance of charges notified to you, in order to gain access to the documents subject to this decision. The remaining balance of charges associated with your request is \$321.01.

As stated in paragraph 9 of this decision, the Department awaits further advice from the OAIC in relation to your request for review of the Department's decision to impose a charge.

### **Your rights of review**

27. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).
28. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Transport  
GPO Box 594  
Canberra ACT 2601  
**Fax:** +61 2 6275 1347  
**Email:** FOI@infrastructure.gov.au

29. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** GPO Box 2999  
Canberra ACT 2601  
**Fax:** +61 2 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3  
25 National Circuit  
Forrest, ACT; or at  
Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney, NSW

More information about Information Commissioner Reviews is available from  
[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

## Contacts

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



Andrew Wilson  
Deputy Secretary

25 March 2013



**Australian Government**

**Department of Infrastructure and Transport**

FOI

Schedule 1

## Schedule of documents

**Applicant:**

**Decision date:**

**March 2012**

**FOI reference number:**

**13-21**

**Documents:**

**Documents relating the Gold Coast Airport Master Plan**

Document reference (FOI 13-21)	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
1	28/06/12	5	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Exempt in full	Section 42 – Legal professional privilege
2	29/06/12	7	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Exempt in full	Section 42– Legal professional privilege
3	02/07/12	48	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Release in part	Section 42– Legal professional privilege
4	19/07/12	2	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Release in part	Section 42– Legal professional privilege
5	19/07/12	6	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Exempt in full	Section 42– Legal professional privilege
6	20/07/12	11	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Release in part	Section 47C – Deliberative processes

7	20/07/12			Department of Infrastructure and Transport	Department of Infrastructure and Transport	Legal advice re request for Statement of Reasons	Release in part	and section 42 – Legal professional privilege
8	15/05/12	7		Office of the for Infrastructure and Transport (Minister's Office)	Department of Infrastructure and Transport	Email in relation to Q&A on the Gold Coast Airport Master Plan	Release in part	Section 22 - Irrelevant matter deleted and section 47D – Deliberative processes
9	15/05/12	4		Department of Infrastructure and Transport - email	Minister's Office	Email in relation to Q&A on the Gold Coast Airport Master Plan	Release in part	Section 22 - Irrelevant matter deleted
10	30/04/12	24		Department of Infrastructure and Transport	Minister's Office	Ministerial submission (01396-2012) in relation to the Gold Coast Airport Master Plan	Exempt in full	Section 47C – Deliberative processes
11	14/5/12	2		Minister for Infrastructure and Transport	Gold Coast Airport Pty Ltd	Letter notifying the decision	Release in full	
12	14/05/12	3		Minister for Infrastructure and Transport	AirServices Australia	Letter notifying the decision	Release in full	
13	14/05/12	3		Minister for Infrastructure and Transport	Civil Aviation Safety Authority (CASA)	Letter notifying the decision	Release in full	
14	14/05/12	1		Minister for Infrastructure and Transport	Gold Coast Mayor	Letter notifying the decision	Release in full	
15	14/05/12	1		Minister for Infrastructure and Transport	Premier of NSW	Letter notifying the decision	Release in full	
16	14/05/12	1		Minister for Infrastructure and Transport	Premier of QLD	Letter notifying the decision	Release in full	
17	14/05/12	1		Minister for Infrastructure and Transport	Mayor for Tweed Shire	Letter notifying the decision	Release in full	
18	15/05/12	2		Department of Infrastructure and Transport	Department of Infrastructure and Transport	Back pocket brief for May Senate estimates	Release in part	Section 22 - Irrelevant matter deleted
19	15/05/12	1		Department of Infrastructure and Transport	Department of Infrastructure and Transport	Executive briefs for May Senate Estimates	Release in part	Section 22 - Irrelevant matter deleted
20	20/09/12	2		Minister's Office	Department of Infrastructure and Transport	Input for Minister's opening at Banora Point	Release in part	Section 42 – Legal professional privilege

21	04/10/12	2	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Back pocket brief for October Senate Estimates	Release in part	Section 22 - Irrelevant matter deleted
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## **Schedule of relevant provisions in the FOI Act**

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### **3 Objects—general**

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

### **11 Right of access**

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

### **11A Access to documents on request**

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

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

#### *Exemptions and conditional exemptions*

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

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

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

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

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

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

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
  - (i) under Division 2 of Part IV (exemptions); or
  - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## **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).

## 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.

## 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; or
- (d) the Government of Norfolk Island.

### *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 public interest (see section 11A).



**Australian Government**

**Department of Infrastructure and Transport**

FOI

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

**Decision and reason for decision of Jim Wolfe, A/g Executive Director, Aviation and Airports**

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### **Applicant:**

**Decision date:** February 2013

**FOI reference number:** 13-29

**Documents:** Review of Brisbane Airport Curfew

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## Summary

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

## Authority to make this decision

2. I, Jim Wolfe, A/g Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 4 December 2012, you made a request for access to documents in the possession of the Department of Infrastructure and Transport (the Department). Your request sought access to:
  1. *the Terms of Reference for the upcoming review of the Curfew for the Brisbane Airport. This covers all versions including the draft copies of the Terms of Reference; and*
  2. *any document relating to the makeup and appointment of the committee relating to the writing of the Terms of Reference including who are the members of the committee and their positions.*
4. I note that you requested a waiver of charges in your request for access to documents. You also provided a copy of your current pension card in support of your request for waiver.
5. I have decided to waive charges in this instance.

## Documents subject to this request

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

## Decision

8. I have made a decision to release the documents subject to your request in part.
9. I have decided to grant access in full to documents 4, 7, 8, 9 and I have decided to refuse access to documents 1, 2, 3, 5, and 6.

## Reasons for decision

10. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to grant partial access to documents follow.
11. In making my decision, I had regard to 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 provision of the FOI Act relevant to my decision:
  - Section 47C (Deliberative processes)
12. A full extract of all provisions I used to make my decision are provided in Schedule 1.

## Statement of reasons

### Deliberative process documents

#### *Documents 1,2,3,5 and 6*

13. I have decided to exempt documents 1,2,3,5, and 6 in their entirety pursuant to subsection 47C (1) of the FOI Act. This section provides a conditional exemption for documents disclosing deliberative processes. A deliberative process relates to documents that contain opinions, advice, deliberations, consultations or recommendations that have been obtained, prepared or recorded and which are relevant to the functions of the Department. The documents in issue consist of draft versions of the terms of reference for the Brisbane airport curfew review, as well as discussion papers and internal briefs to senior officials and the Minister that include recommendations and advice.
14. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
  - (a) promote the objects of the FOI Act; and
  - (b) inform debate on a matter of public importance.
15. Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that the release of the documents will significantly inform debate on a matter of public importance. The documents were prepared for the deliberative purposes of the Department and Brisbane Airport curfew review steering committee in so far as they contain preliminary advice, recommendations and discussions relating to the terms of reference for the Brisbane Airport curfew review. Given that the terms of reference have not yet been finalised or publicly released, I do not consider that these preliminary opinions and advice would provide any sound basis for public debate. The steering committee is currently considering a draft discussion paper that will inform public submissions to the review and the terms of reference for the review will only be made publicly available upon the release of this discussion paper.
16. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
  - (a) reasonably be expected to prejudice the management function of an agency;
  - (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
  - (c) reasonably be expected to damage the ongoing working relationship with members of the review committee.
17. I am satisfied that the disclosure of the documents and deliberations would, or could reasonably be expected to, prejudice the management and functioning of the review process. The review of the need for a curfew at Brisbane Airport is currently underway, but the terms of reference for the review have not yet been finalised or made publicly available. As the review is being undertaken by several parties including state government bodies I consider that the premature release of the terms of reference or discussion papers would have an adverse and prejudicial effect on the ongoing cooperative working relationship that exists between the department and these external parties. Further, I consider that the release of the documents may deter these or other agencies from providing information to, or working collaboratively with, the Commonwealth now and into the future.



## **Your rights of review**

18. If you disagree with this FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, or external review by the Office of the Australian Information Commissioner (OAIC).
19. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Transport  
GPO Box 594  
Canberra ACT 2601  
**Fax:** +61 2 6275 1347  
**Email:** FOI@infrastructure.gov.au

20. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and Ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** GPO Box 2999  
Canberra ACT 2601  
**Fax:** +61 2 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3  
25 National Circuit  
Forrest, ACT; or at  
Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney, NSW

More information about Information Commissioner Reviews is available from  
[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

## Contacts

21. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7844 or email [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)



Jim Wolfe  
A/g Executive Director  
Aviation and Airports

/ February 2013



## Schedule of documents

**Applicant:**

**Decision date:** February 2013

**FOI reference number:** 13-29

**Documents:** *Review of Brisbane Airport Curfew*

Document reference (FOI 13-29 reference)	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
1	08/12/11	3	Department of Infrastructure and Transport		Brief to Minister regarding Review of the need for a curfew at Brisbane Airport	Exempt	Section 47C
2	08/12/11	3	Department of Infrastructure and Transport		Draft - brief to Minister regarding Review of the need for a curfew at Brisbane Airport	Exempt	Section 47C
3	10/05/12	3	Department of Infrastructure and Transport		Brief to Minister regarding Review of the need for a curfew at Brisbane Airport	Exempt	Section 47C
4	May 2012	6	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Minute to Secretary regarding Letters to establish the Steering Committee to oversee the review of the need for a curfew at Brisbane Airport and attached letters	Release in full	
5	undated	42			Draft discussions paper on review of the need for a curfew at the Brisbane	Exempt	Section 47C
6	11/09/12	1	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Senate Estimates Brief – review of need for curfew at Brisbane Airport	Exempt	Section 47C

7	06/07/12	1	Brisbane City Council	Department of Infrastructure and Transport	Letter regarding representative for Steering Committee	Release in full	
8	04/06/12	1	Queensland Government	Department of Infrastructure and Transport	Email regarding representative for Steering Committee	Release in full	
9	04/06/12	1	Tourist and Transport Forum	Department of Infrastructure and Transport	Email regarding representative for Steering Committee	Release in full	



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

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

### 11 Right of access

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

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

- Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
- (a) section 12 (documents otherwise available);
  - (b) section 13 (documents in national institutions);
  - (c) section 15A (personnel records);
  - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

*Mandatory access—general rule*

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

*Exemptions and conditional exemptions*

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

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

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

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

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

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

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

## **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).

## 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; or
  - (d) the Government of Norfolk Island.

### *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 public interest (see section 11A).





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

Decision and reason for decision of Andrew Wilson, Deputy Secretary of the  
Department of Infrastructure and Transport

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**Applicant:**  
**Decision date:** March 2013  
**FOI reference number:** 13-43  
**Reference:** Detained in Dubai

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## Summary

1. I have made a decision to release 1 document subject to your request in part.
2. I have made a decision not to release 2 documents subject to your request.

## Authority to make this decision

3. I, Andrew Wilson, Assistant Secretary of the Department of Infrastructure and Transport (the Department), am an officer authorised by the Secretary of the Department of Infrastructure and Transport to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

4. On 29 January 2013 you made a request for access to documents in the possession of the Department of Infrastructure and Transport (the Department). Your request sought access to:
  - 1) *Any departmental briefing note; Ministerial briefing note or memorandum of advice or brief of advice; created by the Department and circulated to the Minister or within the Department in relation to or connection with the decision to table a document in the Senate of the, Australia on 26 November 2010 "Interpretation of Treaty on Extradition Between Australia and the State of the United Arab Emirates". ("UAE")*
  - 2) *Any Ministerial briefing notes on memorandum of advice, brief of advice or recommendations created or received by the Department touching on or connected with the application of the Mutual Assistance Treaty with the UAE and Australia concerning legal processes, torture and abuses of human rights within the UAE.*
  - 3) *Any memorandum, advice, e-mail or other correspondence from but not limited to the Assistant Secretary of the Department containing any recommendations, advice or opinions concerning the detention and charging of Matthew Joyce and Marcus Lee in the UAE.*
  - 4) *Any memoranda, advices, briefing notes, ministerial briefing notes, emails, and reports created or received by the Department concerning the jailing of Alicia Gali in the UAE.*
  - 5) *Any memoranda, briefing notes, ministerial briefing notes, reports or advices created or received by the Department concerning the export of uranium by Australia to the UAE and any risks associated with such supply.*
  - 6) *Any memorandum, advice briefing note, ministerial briefing note, reports, concerning any advice created or received by the Department concerning the vote of the UAE and/or other Gulf countries with respect to the United Nations Security Council vacancy.*
  - 7) *Any memoranda, briefing notes, Ministerial briefing notes, reports and advices created or received by the Department and provided to the Australian Government concerning the UAE harbouring or protecting terrorists.*
  - 8) *Any memoranda, briefing notes, ministerial briefing notes or other documents created or received by the Department containing advice and information with respect to the use of the UAE for the purposes of the unlawful extraordinary rendition, detention and torture.*

- 9) *Any memoranda, briefing notes, ministerial briefing notes or other documents created or received by the Department containing advice and information with respect to the participation of the UAE in the Arab League boycott of the State of Israel.*
- 10) *Any documents including memoranda briefing notes ministerial briefing notes or other documents created or received by the Department containing advice and information with respect to the potential for the Extradition Treaty between Australia and the UAE to be applied to Australian Defence Force personnel stationed or previously stationed in the Al Minhad Air Base in the UAE.*
- 11) *Any document created or received by the Department with respect to any risk assessment to Australian citizens of Qantas Airways using Dubai as a "hub" for its European flights.*

5. On 1 March 2013, you received a charges notice for the amount of \$29.10. On 4 March 2013, you paid the charge in full.

### **Documents subject to this request**

6. The Department has undertaken a search of its records and has identified all documents that fall within the scope of your request, as set out above.
7. The Department has found one (1) document relevant to part 3 of your request and two (2) documents relevant to part 11 of your request.
8. No other documents were found in the possession of the Department which relate to the remainder of your request.
9. The documents subject to your request are listed in the schedule of documents at Schedule 1.

### **Decision**

10. I have made a decision to release document 1 in part.
11. I have made the decision not to release documents 2 and 3.

### **Reasons for decision**

12. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to grant access in part to documents follows.
13. In making my decision, I had regard to 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 33 International Relations
- Section 47C Deliberative Material
- Section 47F Personal Privacy
- Section 22 Irrelevant Material

A full extract of all provisions I used to make my decision are provided in Schedule 2.

## Statement of reasons

### Section 33 – Documents affecting national security, defence or international relations

#### Document 1

14. I have decided to exempt parts of document 1 and 4 pursuant to section 33 of the FOI Act. Section 33 provides, relevantly, that a document is an exempt document if disclosure:
- (a) would, or could reasonably be expected to, cause damage to:*
    - (i) the security of the Commonwealth; or*
    - (ii) the defence of the Commonwealth; or*
    - (iii) the international relations of the Commonwealth.*
  - (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.*
15. The test ‘could reasonably be expected’ requires the assessment of the likelihood of the predicted or forecasted event, effect or damage occurring as a result of the disclosure of the documents.
16. I consider that releasing the document could reasonably be expected to compromise international relations between Australia and overseas governments. The Office of the Australian Information Commissioner (OAIC) has provided guidance on the terms ‘international relations’.
17. International relations include the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.
18. It is an accepted and fundamental tenet of diplomacy that foreign government interlocutors provide comments or information on the basis of confidentiality unless otherwise agreed. The disclosure of these comments publicly could cause damage to the international relations of the Commonwealth (s33(a)(iii)) with that country or with third countries which may have been the subject of discussion. Public disclosure could put at risk relations with foreign government contacts and could reduce the quality or quantity of future information provided to Australia.
19. Whilst processing this FOI request the Department sought comment from and undertook consultation with other Commonwealth agencies that hold an interest in the document. These agencies advised that they consider the material comprises information which, if disclosed, would impair Australia’s relationship with foreign governments, including that of the UAE, through a loss of trust in Australia’s ability to protect confidential information. I have taken into account these comments and concerns as I am obliged to do under the FOI Act and the concerns and objections received from these agencies support my decision to withhold parts of the document.

**Section 47C - Deliberative process documents**  
***Documents – 2 and 3***

20. I have decided to conditionally exempt parts of documents 2 and 3 pursuant to subsection 47C (1) of the FOI Act. Section 47C(1) provides an exemption for opinions, advice or recommendations that have been obtained, prepared or recorded, or consultations or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the agency or a minister.
21. The documents contain opinions, advice and/or recommendations that have been obtained, prepared or recorded, or consultations and/or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the Department. I have, therefore, decided that the information is conditionally exempt in accordance with Section 47C.
22. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
  - (a) promote the objects of the FOI Act;
23. I have considered this factor, and agree that the objects of the Act should be promoted.
24. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
  - (a) reasonably be expected to prejudice the management function of an agency;
  - (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
  - (c) reasonably be expected to damage the ongoing and cooperative relationship that exists between the commonwealth and various commercial entities.
25. I am satisfied that the disclosure of the documents could reasonably be expected to prejudice the management and functioning of the Department's ongoing ability to undertake security analysis by inhibiting the flow of similar information in the future as well as potentially undermining the cooperative working partnerships that currently exist between the Commonwealth and various commercial entities.
26. The documents in issue contain opinions, discussions, options and recommendations which have not been fully considered or finalised by senior officials or executive and release of the documents in my view would undermine the ongoing analytical functions of the Department.
27. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents, would, on balance, be contrary to the public interest. The provision of information to the Commonwealth and the Ministers ability to consider the material prior to release is a vital component to the successful operation of the Department's functions, and the factors favouring access are not overriding considerations in this instance.
28. Accordingly, I am satisfied that the documents are partially exempt under section 47C (1) and that disclosure would be contrary to the public interest



## Section 47F - Personal Privacy

### Document 1

29. Section 47F(1) relevantly provides that a document is an exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
30. The document in issue contains personal information, being the name of individuals other than yourself and I have decided to redact references to those persons. I consider that the release of this information would be an unreasonable disclosure of personal information as the relevant individuals are not public figures or public servants.
31. Disclosure of the information may expose the individual to public scrutiny, and could deter the relevant individual and other persons from providing information or raise issues with the Commonwealth Government in the future. There is also a risk that if disclosed, personal contact details could be subject to misuse or other dealings contrary to the wishes of the individual. I have weighed the factors to determine where the public interest lies. I have decided that the documents contain information which is exempt under section 47F(1) and I am satisfied that the factors against disclosure outweigh those in favour of access in relation to the personal information.
32. Whilst processing this FOI request the Department sought comment from and undertook consultation with other Commonwealth agencies that hold an interest in the document. These agencies advised that they consider information relating to individuals should be removed on the grounds of personal privacy and not disclosed to third parties under an FOI request. I have taken into account these comments and concerns as I am obliged to do under the FOI Act and the concerns and objections received from these agencies support my decision to withhold parts of the document.
33. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47F, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
- (a) promote the objects of the FOI Act;
34. I have considered this factor, and agree that the objects of the Act should be promoted.
35. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
- (a) reasonably be expected to prejudice the management function of an agency;
  - (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.
36. I have considered the factors in favour of disclosure, such as promotion of transparency and accountability in Government decision-making. The details of individuals concerned received considerable media attention. As a result, it was considered there may be some interest in the release of the information, particularly material pertaining to the views or actions of the Government. However, I do not agree that the disclosure of certain personal information of individuals attracts the same level of public interest. Rather, the disclosure of such personal opinion or views could lead to a loss of confidence in the Department's ability to appropriately handle personal information and would be prejudicial to the public interest by inhibiting the ability of members of the public to engage frankly with Government officials or Ministers.

37. Weighing up all these factors, I concluded that the release of the personal material contained in documents 1 and 4 would be both an unreasonable disclosure of personal information and contrary to the public interest.
38. Accordingly, I am satisfied that the documents are partially exempt under section 47F and that disclosure would be contrary to the public interest

**Section 22 - Irrelevant material**  
***Documents 1 and 3***

39. I have exempted parts of documents 1 and 3 under Section 22 of the FOI Act.
40. Section 22 relevantly provides that if an agency decides that granting access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request, then, where it is reasonably practicable to provide a copy with deletions; such a copy should be provided. In this instance it is not practical to provide a copy of document 3 with deletions made under Section 22, due to the remaining parts of the document being exempt under Section 47C.
41. I have decided to apply Section 22 of the FOI Act to delete irrelevant material, other than material exempted under sections 33, 47C and 47F in respect of the above documents.

**Your rights of review**

42. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).
43. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Transport  
GPO Box 594  
Canberra ACT 2601  
**Fax:** +61 2 6275 1347  
**Email:** FOI@infrastructure.gov.au

44. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the

decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)

**Post:** GPO Box 2999

Canberra ACT 2601

**Fax:** +61 2 9284 9666

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**In person:** Level 3

25 National Circuit

Forrest, ACT; or at

Level 8, Piccadilly Tower

133 Castlereagh Street

Sydney, NSW

More information about Information Commissioner Reviews is available from

[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

## Contacts

45. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 6495 or email [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)



Andrew Wilson

Deputy Secretary

Department of Infrastructure and Transport

6 March 2013





## Schedule of documents

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**Applicant:**

**Decision date:** February 2013

**FOI reference number:** 13-43

**Documents:** Detained in Dubai

Document reference	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption provision
1	18/11/12	3	DFAT	DIT	Consular Communication	Release in part	s.22, s.33, and s.47F
2	October 2012	4	DIT	N/A	Risk profile	Exempt in full	s.47C
3	06/11/12	9	DIT	N/A	UAE two year engagement strategy – plus covering Minute	Exempt in full	s.22 and s.47C



## **Schedule of relevant provisions in the FOI Act**

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### **3 Objects—general**

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

### **11 Right of access**

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

### **11A Access to documents on request**

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

**Note:** Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

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

#### *Exemptions and conditional exemptions*

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

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

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

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

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

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

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

## **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).

### **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.

### **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; or
  - (d) the Government of Norfolk Island.

#### *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 public interest (see section 11A).

#### **47F Public interest conditional exemptions—personal privacy**

(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).