

## Refusal of FOI access in case of i

This precedent has been authored for LexisNexis  
**University of Queensland.**

This precedent is a part of a LexisNexis suite of fo

This precedent is current to **January 2015.**

### **Introductory note**

This precedent is a refusal of FOI access in c

### **Legislation**

Legislation providing for freedom of informati  
and territories under various names.

The Commonwealth Act is the Freedom of Inf  
territory Acts are:

- Freedom of Information Act 1989
- Information Act 2002 (NT);
- Government Information (Public
- Right to Information Act 2009 (Q
- Freedom of Information Act 1991
- Right to Information Act 2009 (Ta
- Freedom of Information Act 1982
- Freedom of Information Act 1992

The Commonwealth Act has served as the ba  
amended by the Freedom of Information Ame  
now between that Act and those laws. Indeed  
are now significant areas of difference as well

The particular state or territory law in question  
issue, ie if information is sought at state or ter  
territory agency, the relevant state or territory

### **Meaning of "conditionally exempt"**

#### **Commonwealth**

LexisNexis Sample

A document is conditionally exempt if it falls within section 3 of the Freedom of Information Act 1982 (Cth) and the information it relates to what are commonly called "public interest exemptions".

An agency or Minister must give access to a document in certain circumstances access to it at a particular time or in a particular section 11A(5).

There is a divergence of opinion in the High Court as to whether a document is in the public interest or not. The question, however, is whether disclosure is in the public interest. This requires a decision whether disclosure to the public arising from disclosure. A document is not exempt if it would undermine public interest (for example, the health of the public interest to disclose.

Factors not to be taken into account in deciding whether a document is in the public interest (section 11B(4)):

- **(government embarrassment)** embarrassment to, or loss of confidence in, Governments;
- **(potential misinterpretation)** access to the document might lead to misinterpreting or misunderstanding the document;
- **(author seniority)** the document is authored by a person of high seniority and disclosure might be prejudicial to the public interest;
- **(confusion)** access to the document might lead to confusion.

Factors favouring access in the public interest (section 11B(3)):

- promote the objects of the Freedom of Information Act;
- inform debate on a matter of public interest;
- promote effective oversight of public administration;
- allow a person to access his or her own information.

### States and territories

State and territory laws do not make provision for "public interest exemptions". Often, though, a document is exempt from disclosure under a state or territory law and its disclosure would not be in or would be contrary to the public interest.

**Australian Capital Territory:** Under the Freedom of Information Act 1982 (ACT) (eg those affecting personal privacy: section 4(1)(b); documents: section 36) are exempt only if the disclosure would be contrary to the public interest.

**Northern Territory:** Under the Information Act 1985 (NT) (eg those affecting personal privacy: section 4(1)(b); documents: section 36) are exempt only if the disclosure would be contrary to the public interest.

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### **Circumstances in which access may be re**

#### **Commonwealth**

LexisNexis Sample

In certain circumstances the Cth FOI Act allows access to documents if a practical refusal reason exists.

A "practical refusal reason" is defined in section 24AA(1)(a):

- in the case of an agency, where the refusal is substantially and unreasonably due to the nature of the operations: section 24AA(1)(a)(i)
- in the case of a Minister, where the refusal substantially and unreasonably interferes with the performance of the Minister's functions: section 24AA(1)(a)(ii).

In determining these matters, relevant considerations include the time used in identifying, locating or collating the documents in the office of the Minister concerned: section 24(2)(b).

These provisions (and state or territory equivalent provisions for government agencies) are not unduly impeded by voluminous applications. Applicants must work reasonably, and reasonableness must be implied in the process.

A decision to refuse access on the ground of a practical refusal reason must be made lightly.

There is no reason to ignore the circumstances of a particular request, an agency's ability to process requests, or the nature of the information sought.

Access to a document may be refused if a document is not in section 24A. A respondent must have done all reasonable steps to locate documents in question before access can be refused. Or a "reasonable and sufficient" search must be required. Or a "reasonable and sufficient" search must examine all documents in its possession: it need not search for or locate documents.

A claimed inability to find documents may be a practical refusal reason (on this basis) or the matter may be remitted for further search, allowing for a request for voluminous documents. The legislation provides for and prescribes the process.

### States and territories

**Australian Capital Territory:** The Freedom of Information Act 1982 (ACT) terms to the Cth FOI Act section 24AA. The maximum period is 23(2). There is no equivalent to section 24A of the Cth FOI Act.

**Northern Territory:** The Information Act 2002 (NT) allows an organisation may decide to refuse access because of the nature of the operations of the organisation. By section 10(1) effect if, after taking all reasonable steps, that organisation is unable to locate the documents.

**New South Wales:** The Government Information Act 2009 (NSW) allows an organisation may decide to refuse access because of the nature of the operations of the organisation. By section 10(1) effect if, after taking all reasonable steps, that organisation is unable to locate the documents.