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## Government Information (Public Access) Act 2009 No 52

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[Part 2](#) > [Division 2](#) > Section 14

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### 14 Public interest considerations against disclosure

- (1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.
- (2) The public interest considerations listed in the Table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.
- (3) The Information Commissioner can issue guidelines about public interest considerations against the disclosure of government information, for the assistance of agencies, but cannot add to the list of considerations in the Table to this section.
- (4) The Information Commissioner must consult with the Privacy Commissioner before issuing any guideline about a privacy-related public interest consideration (being a public interest consideration referred to in clause 3 (a) or (b) of the Table to this section).

#### Table

**1 Responsible and effective government**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally)—

- (a) prejudice collective Ministerial responsibility,
- (b) prejudice Ministerial responsibility to Parliament,
- (c) prejudice relations with, or the obtaining of confidential information from, another government,
- (d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,
- (e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,
- (f) prejudice the effective exercise by an agency of the agency's functions,
- (g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,
- (h) prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

**2 Law enforcement and security**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally)—

- (a) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
- (b) prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law,
- (c) increase the likelihood of, or prejudice the prevention of, preparedness against, response to, or recovery from, a public emergency (including any natural disaster, major accident, civil disturbance or act of terrorism),
- (d) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person,
- (e) endanger the security of, or prejudice any system or procedure for protecting, any place, property or vehicle,
- (f) facilitate the commission of a criminal act (including a terrorist act within the meaning of the [Terrorism \(Police Powers\) Act 2002](#)),
- (g) prejudice the supervision of, or facilitate the escape of, any person in lawful custody,
- (h) prejudice the security, discipline or good order of any correctional facility.

**3 Individual rights, judicial processes and natural justice**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects—

- (a) reveal an individual's personal information,
- (b) contravene an information protection principle under the [Privacy and Personal Information Protection Act 1998](#) or a Health Privacy Principle under the [Health Records and Information Privacy Act 2002](#),
- (c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings,
- (d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness,
- (e) reveal false or unsubstantiated allegations about a person that are defamatory,
- (f) expose a person to a risk of harm or of serious harassment or serious intimidation,
- (g) in the case of the disclosure of personal information about a child—the disclosure of information that it would not be in the best interests of the child to have disclosed.

**4 Business interests of agencies and other persons**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects—

- (a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,
- (b) reveal commercial-in-confidence provisions of a government contract,
- (c) diminish the competitive commercial value of any information to any person,
- (d) prejudice any person's legitimate business, commercial, professional or financial interests,
- (e) prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

**5 Environment, culture, economy and general matters**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects—

- (a) endanger, or prejudice any system or procedure for protecting, the environment,
- (b) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge,
- (c) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any animal or other living thing, or threaten the existence of any species,
- (d) damage, or prejudice the ability of the Government or an agency to manage, the economy,
- (e) expose any person to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Government or an agency.

**6 Secrecy provisions**

- (1) There is a public interest consideration against disclosure of information if disclosure of the information by any person could (disregarding the operation of this Act) reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the prohibition against disclosure.

**7 Exempt documents under interstate Freedom of Information legislation**

- (1) There is a public interest consideration against disclosure of information communicated to the Government of New South Wales by the Government of the Commonwealth or of another State if notice has been received from that Government that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the exemption.
- (3) In this clause, a reference to a corresponding law is a reference to—
  - (a) the [Freedom of Information Act 1982](#) of the Commonwealth, or
  - (b) a law of any other State that is prescribed by the regulations as a corresponding law for the purposes of this clause.