Australian Government
Office of the Australian Information Commissioner

'AC' and Department of Health and Ageing [2013] AICmr 50 (24 April 2013)

Decision and reasons for decision of
Acting Freedom of Information Commissioner, Toni Pirani

Applicant:	**'AC'**
Respondent:	**Department of Health and Ageing**
Other parties:	**Anonymous**
Decision date:	**24 April 2013**
Application number:	**MR11/00296**
Catchwords:	**Freedom of information — Scope of review of access grant decision — (CTH) *Freedom of Information Act 1982* ss 27, 27A, 47, 47F, 47G, 53B, 54M** **Freedom of information — Public interest conditional exemption — Business — (CTH) *Freedom of Information Act 1982* ss 11B, 47G**

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Summary

1. I affirm the decision of the Department of Health and Ageing (the **Department**) of 19 August 2011 to grant access to documents requested under the *Freedom of Information Act 1982* (the **FOI Act**).

Background

2. The Therapeutic Goods Administration (the **TGA**), a division of the Department, is responsible for regulating therapeutic goods, such as medical devices, in Australia. Before a medical device can lawfully be supplied in Australia it must be included on the Australian Register of Therapeutic Goods (the **Register**). The TGA is responsible for assessing therapeutic goods for inclusion on the Register, as well as the post-market monitoring and enforcement of standards for these goods.

3. On 4 March 2011, a person (the **FOI applicant**) applied to the Department for access to:

> A copy of any correspondence, in the form of letters and emails, over the last five years between the Therapeutic Goods Administration and [the applicant for Information Commissioner review], the sponsor of [a medical device], alerting them to, and discussing the problems with the device.

4. On 5 April 2011, the Department wrote to the applicant ('AC') to advise it had received an FOI request. The Department offered the applicant the opportunity to make submissions that the documents it had identified were exempt documents under ss 47, 47F and 47G of the FOI Act.

5. On 20 April 2011, the applicant made submissions that the documents requested were exempt documents under ss 45 and 47G of the FOI Act.

6. On 21 June 2011, the Department advised that it had decided to release two documents in full, 36 documents in part and to exempt one document from release. Exemptions under ss 45 and 47F of the FOI Act were applied.

7. By letter dated 22 July 2011, the applicant sought internal review of the Department's decision of 21 June 2011. On 19 August 2011, the Department varied its decision by exempting one additional document in full and making documents 15 and 18 subject to further deletions.

8. By letter dated 19 September 2011, the applicant sought IC review of this decision under s 54M of the FOI Act.[1]

[1] The applicant sought IC review with respect to documents 1, 2, 4–8, 10–15, 18–20, 22–24a, 27–30 and 35–38. However, as the Department decided document 38 was exempt in full and the applicant has made no submissions about it, it appears document 38 was included in the IC review application in error. I have not treated document 38 as subject to IC review.

9. On 30 November 2011, the FOI applicant applied, under s 55A(2) of the FOI Act, to become a review party. This application was granted under s 55A(3).

Decision under review

10. The decision under review is the decision of the Department on 19 August 2011 to grant access to documents requested by the FOI applicant.

The scope of IC review of access grant decisions

11. Section 54M of the FOI Act permits applications to be made to the Information Commissioner for review of access grant decisions. The term 'access grant decision' is defined in section 53B of the FOI Act. A decision to give access to a document after consultation under either ss 27 or 27A is an access grant decision under s 53B. Section 27 provides for consultation in relation to business documents. Section 27A provides for consultation in relation to documents affecting personal privacy. The Department consulted the applicant under ss 27 and 27A before making a decision to grant access to the documents subject to this IC review.

12. As was noted by the FOI Commissioner in the decision of *'E' and National Offshore Petroleum Safety and Environmental Management Authority* [2012] AICmr 3, the consultation provisions in ss 27 and 27A give the applicant an opportunity to contend only that specified exemptions should apply and that access would be contrary to the public interest.

13. In this IC review, I must consider the applicant's submissions only in relation to the application of s 47G. Although the Department invited the applicant to make submissions in relation to s 45,[2] this is not one of the exemptions referred to in s 27 of the FOI Act and accordingly it is not an issue on which the applicant can validly make an 'exemption contention'.[3]

14. I also cannot consider whether the Department correctly applied s 47F[4] because although the Department invited the applicant to make submissions that the documents were exempt under s 47F of the FOI Act, the applicant did not do so. An affected third party who is invited to make a submission, but who does not do so, cannot apply for internal or IC review of an access grant decision.[5] Because the applicant did not make submissions that the documents were exempt under s 47F of the FOI Act, it is not open to me, in conducting this IC review, to consider whether s 47F applies to exempt the documents from disclosure.

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2 This exemption covers documents containing material obtained in confidence.

3 Section 27(1)(b) of the FOI Act.

4 This exemption covers personal privacy.

5 See Office of the Australian Information Commissioner, *Personal and business information: Third party review rights under the Freedom of Information Act 1982: Consultation paper*, (August 2012) 4.

15. Accordingly, in this IC review, I can only consider the applicant's submissions in relation to the application of s 47G. Its submissions in relation to s 45 do not relate to the exemption contention.

The business exemption (s 47G)

16. The documents under review are documents 1, 2, 4–8, 10–15, 18–20, 22–24a, 27–30 and 35–37.

17. Section 47G of the FOI Act provides:

> **Public interest conditional exemptions—business**
>
> (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
>
> (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
>
> (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

18. The Australian Information Commissioner has issued Guidelines under s 93A of the FOI Act to which regard must be had for the purpose of performing a function, or exercising a power, under the FOI Act.[6] The Guidelines state:

> 6.167 When disclosure would result in the release of facts already in the public domain, that disclosure would not amount to an unreasonable adverse effect on business affairs.[7]

19. The Department did not consider that disclosure of the documents would have an unreasonable adverse effect on the applicant's business or that disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth, because the information contained in the documents is already in the public domain. To the extent that the information in the documents is not in the public domain, the Department did not consider it to be conditionally exempt under either ss 47G(1)(a) or 47G(1)(b).

20. The applicant acknowledges that much of the information in the documents is in the public domain; however it claims that not all the information is. The applicant says the documents reveal consultation between it and the TGA,

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6 Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*.

7 *Re Daws and Department of Agriculture, Fisheries and Forestry* [2008] AATA 1075.

deliberative processes, and the timing of action taken with respect to the subject matter of the documents. The applicant claims the Department erred in concluding the documents were not exempt because the information in the documents is similar to, but not the same as, that which is publicly available.

21. I have viewed the documents and the publicly available material. This includes letters to practitioners, safety alerts, field safety notices, the websites of the applicant, its subsidiary (the manufacturer of the medical device), the TGA and its overseas counterparts, as well as the annual reports of the relevant professional medical body and a Senate Committee report.

22. The only information in the documents under review that is not already publicly available is some of the detail in correspondence between the applicant and the TGA. I agree with the Department that all but a small amount of this information is already in the public domain.

23. To the extent that the information in the documents is publically available, its release to the FOI applicant is not unreasonable. As a result, I do not consider that this information is conditionally exempt under s 47G(1)(a).

Would or could unreasonably adversely affect

24. Section 47G(1)(a) applies if disclosure of the information in the documents 'would, or could reasonably be expected to, unreasonably affect [the IC review applicant] adversely in respect of his or her business affairs … affairs'.

25. The Guidelines state:

> 6.164 The presence of 'unreasonably' in s 47G(1) implies a need to balance public and private interests, but this does not amount to the public interest test of s 11A(5) which follows later in the decision process …
>
> 6.165 The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. For example, the disclosure of information that a business's activities pose a threat to public safety may have a substantial adverse effect on that business but it may be reasonable in the circumstances to disclose it. Similarly, it would not be unreasonable to disclose information about a business that revealed unlawful conduct.[8] These considerations necessitate a weighing of public interest (public safety) against a private interest (preserving the profitability of a business) but at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.

26. The applicant submitted that:

- because documents 1, 2, 8, 10–12, 14, 15, 23, 35 and 37 contain draft documents, disclosure could cause confusion about the applicant's intentions, harm its commercial reputation and competitors could use the information for negative marketing purposes

[8] *Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* (1992) 108 ALR 163.

- release of documents 2, 4–8, 11, 13, 14, 18–20, 24, 24a, and 27–30 could allow a competitor or litigant to rely on the information contained in these documents to the disadvantage of the applicant
- release of documents 22, 24 and 36 would give rise to the perception that the applicant cannot be trusted with confidential information
- disclosure of any of the documents would unreasonably affect the applicant's profitability by giving rise to a real risk of loss of profits, loss of trust within the industry, and damage to the public perception of its business.

Draft documents

27. In support of its claim that release of draft documents would be misleading, the applicant cited decisions made by the Administrative Appeals Tribunal in relation to the now repealed s 36.[9]

28. In relation to these cases, the Guidelines state:

> 6.77 There is considerable case law on the former exemption provision (formerly s 36) as to whether disclosure of an internal working document would be contrary to the public interest, and whether reasonable grounds exist for a conclusive certificate claim to that effect. Agencies should be cautious in applying those precedents in light of the changes to the FOI Act in 2009 and 2010. Many earlier decisions applied or referred to the AAT's decision in *Re Howard and the Treasurer*,[10] which listed five factors that could support a claim that disclosure would be contrary to the public interest. Three of those factors are now declared to be irrelevant considerations by s 11B(4) of the Act (the high seniority of the author of the document in the agency to which the request for access to the document was made, misinterpretation or misunderstanding of a document, and confusion or unnecessary debate following disclosure). The other two Howard factors (disclosure of policy development, and inhibition of frankness and candour) are not, in those terms, consistent with the new objects clause of the FOI Act (s 3) and the list of public interest factors favouring access in s 11B(3). It is important that agencies now have regard to the more extensive range of public interest factors that may favour or be against disclosure (see paragraphs 6.23–6.29 above).

29. I have read the documents that contain drafts of publicly available documents and have compared them with the final documents. The drafts attached to documents 1, 2, 8, 10–12, 14, 15, 23, 35 and 37 are either identical to, or differ in no significant way from, the final documents which are publically available.

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9 *Re McKinnon and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs* [2008] AATA 161; *Matthews and Australian Securities and Investments Commission and Newmont Australia Ltd and Anor* [2010] AATA 649.

10 *Re Howard and the Treasurer* [1985] AATA 100.

30. I do not consider that release of these drafts would be confusing or cause misunderstanding or could be used by competitors of the applicant for negative marketing purposes. As the Guidelines state, when information is in the public domain, disclosure will not amount to an unreasonable adverse effect on business affairs.[11]

31. I do not consider release of these draft documents would, or could reasonably be expected to, unreasonably affect the applicant adversely in the conduct of its business affairs.

Commercial disadvantage

32. I have considered whether release of documents 2, 4–8, 11, 13, 14, 18–20, 24, 24a, 27–30 could cause a competitor or litigant to rely on the information contained in these documents to the disadvantage of the applicant.

33. The applicant explained that it operates in a highly competitive market and the subject matter of the documents has received a large amount of media attention, both in Australia and internationally. Legal proceedings have been initiated. The applicant says the timing and content of its discussions with the TGA is not publicly known and these details could be used by litigants to its commercial disadvantage.

34. It is matter of public record that the applicant consulted the TGA about the subject matter of the documents and when that consultation occurred. The TGA is the regulator of medical devices in Australia and the medical device discussed in the documents was withdrawn from the Australian market after safety alerts were issued. The applicant referred to its discussions with the TGA in letters to medical practitioners on 8 October 2007, 7 April 2010 and 26 August 2010. Furthermore, the Department issued a timeline detailing when the applicant met with the TGA and what was discussed at those meetings. This timeline is publicly available.[12]

35. The applicant says document 2 contains information that could be relied upon by a competitor or a litigant to its disadvantage. Document 2 indicates when the applicant decided to withdraw the device from the Australian and international markets. Information about the timing of these decisions, and when they were implemented, is already publicly available.[13] As stated earlier, when disclosure would result in the release of facts already in the public domain, disclosure would not amount to an unreasonable adverse effect on the applicant's business affairs.

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11 *Guidelines* [6.167].

12 Community Affairs References Committee, Parliament of Australia, *The regulatory standards for the approval of medical devices in Australia* (2011) Appendix 5.

13 Ibid.

36. Documents 4–7 are emails between the TGA and the applicant containing administrative details about a Hazard Alert. While one of the TGA's emails asks the applicant four questions, I do not consider these are 'confidential questions' as claimed by the applicant, or that the information in these documents could be relied upon to disadvantage the applicant or unreasonably adversely affect its business.

37. Document 8 is an email with draft documents attached. The applicant claims release of the covering email will disclose information that a competitor or litigant could rely upon to its commercial disadvantage. The email lists the draft documents attached to it. As stated earlier, the draft documents differ in no significant way from the final versions and I do not consider that release of the covering email could reasonably be expected to adversely affect the applicant in relation to its business.

38. The applicant claims document 11 involves a discussion of the terminology to be used in the recall process and says this might be used by a competitor or litigant to its disadvantage. Document 11 comprises an email attaching a draft document expressed in identical terms to a letter issued to medical practitioners on 7 April 2010. The covering email asks the TGA to review the attached letter. There is no discussion about terminology in either the email or the attached document. I do not consider release of this document would or could unreasonably affect the applicant's business adversely.

39. The applicant objects to the release of document 14 on the basis that it reveals the timing of meetings between it and the TGA to discuss the medical device. The meetings and discussions referred to in the email are listed in a publicly available timeline prepared by the TGA.[14] Consequently I do not consider that release of document 14 could have an unreasonable adverse effect on the applicant's business.

40. The applicant states that document 18 contains commercial information relating to the medical device and release could prejudice its defence of pending litigation. Document 18 is a brief email with a document attached. The email contains no commercial information and the document is expressed in the same terms to a letter sent by the applicant to surgeons in the United Kingdom on 5 March 2007.[15] I do not consider this document is exempt under s 47G(1)(a) of the FOI Act.

41. The applicant claims documents 19 and 20 contain commercial information about its manufacturing operations. I do not consider these documents contain such information. The information is of an administrative nature and I do not consider release could reasonably be said to have a negative adverse impact on the applicant in the conduct of its business.

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14 Ibid.

15 See www.mhra.gov.uk/home/groups/dtsbi/documents/fieldsafetynotice/con2030612.pdf.

42. Documents 24, 24a and 29 are requests from the TGA for information. Document 29 is a formal notice issued under s 41JA of the *Therapeutic Goods Act 1989* compelling the applicant to provide information about the medical device. The applicant says that because its responses are exempt, the requests for information should also be exempt and that competitors or litigants could rely on this information to its commercial disadvantage. The information relating to the medical device is already in the public domain. While the questions asked by the TGA are not in the public domain, there is nothing to indicate they are confidential and I do not consider release of the first five questions in documents 24 and 24a would, or could, reasonably be said to have an adverse impact on the business affairs of the applicant.

43. However, the sixth request in documents 24 and 24A comprises a statement followed by a question. The statement is a factual one, based on information available in a publicly available report. I do not consider that release of the statement would, or could reasonably be expected to, have an unreasonable adverse effect on the business affairs of the applicant. It repeats publicly available information.

44. However, the question that follows this statement does, in my view, reveal information that would only be known by the TGA and the applicant. The question arises because of the regulatory relationship between the TGA and the applicant. I consider that disclosure of this question could reasonably be expected to adversely affect the applicant with respect to its lawful business affairs.

45. Documents 27 and 28 are emails between the TGA and the applicant discussing problems with the medical device. The applicant states competitors or litigants could rely upon the information in these emails to disadvantage it commercially. Information about the subject of the emails is publically available. To the extent that this material is not publically available, I do not consider release could be reasonably be said to adversely affect the applicant's business affairs.

46. The applicant states that release of document 30 would reveal commercially sensitive information that could be used by a competitor or litigant to its disadvantage. The information in this document is publically available in the annual reports of the relevant professional medical body. I do not consider release would, or could reasonably be expected to, adversely affect the applicant in the conduct of its business.

The applicant as the repository of confidential information

47. The applicant claims that release of documents 22, 24 and 36 would give rise to the perception that it cannot be trusted with confidential information.

48. Document 22 is a report prepared by the TGA about the medical device. It contains information about the device's recall, expressed in similar terms to a safety alert sent to surgeons in October 2007. The report states it is

confidential and should not be released to the public. I do not consider that release of this document would give rise to a perception that the applicant cannot be trusted with confidential information; the document is being released by the TGA as required by the FOI Act, it is not being released by the applicant.

49. Document 24 is a letter from the TGA to the applicant requesting information about the medical device. The letter cites data from a publically available report. I do not consider that the Department releasing a document written by the TGA would give rise to a perception that the applicant cannot be trusted with confidential information.

50. Document 36 contains an email from the applicant to the TGA marked 'in-confidence'. Two documents are attached to this email. The documents contain information about the applicant's medical devices. It does not contain information relating to a third party to whom the applicant might owe an obligation of confidence.

51. I do not consider that release of documents 22, 24 or 36 would unreasonably affect the applicant adversely with respect to its lawful business affairs.

Loss of profits, loss trust and damage to public perception

52. The applicant claims that disclosure of the documents would unreasonably affect its profitability by giving rise to a real risk of loss of profits, loss of trust within the industry, and damage to the public perception of its business.

53. The documents under review all relate to the withdrawal from the market of a medical device sponsored by the applicant. This has been the subject of media attention and the applicant is the respondent to a number of legal proceedings. I do not consider that release of the documents could reasonably be said to cause the applicant any further harm than the harm it has already suffered as a result of the problems identified with the medical device, its withdrawal from the market and the subsequent publicity and litigation.

54. I do not consider that documents 1, 2, 4–8, 10–15, 18–20, 22, 23, 27–29, 30, 35–37 are conditionally exempt under s 47G(1)(a) of the FOI Act.

Could prejudice the future supply of information

55. Section 47G(1)(b) will apply if disclosure of the information in the documents 'could reasonably be expected to prejudice the future supply of information to … an agency for the purpose of the administration of a law of the Commonwealth … or the administration of matters administered by an agency'.

56. The Guidelines state:

> 6.174 This limb of the conditional exemption comprises two parts:
>
> - a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
> - the reduction will prejudice the operations of the agency.[16]
>
> …
>
> 6.176 Unlike the other limb of this conditional exemption, s 47G(1)(b) does not require that the prejudice to the future supply of business information be unreasonable. The unreasonableness of the prejudice may be considered in applying the public interest test under s 11B(5).

57. The applicant states that in order to preserve its commercial reputation it consulted voluntarily and confidentially with the TGA to develop material appropriate for public dissemination. The applicant says that if the documents are released, the future supply of voluntary information to the TGA by organisations in the same position as the applicant will be impaired.

58. Deputy President McMahon of the AAT said in *Telstra Australia Limited and Australian Competition and Consumer Commission*

> Paragraph 43(1)(c)(ii)[17] looks directly to the future supply of information from any source and postulates an expectation of prejudice in the supply of that information if the release of information from source A may create a perception in the mind of source B that its information will also be released.[18]

59. While the applicant says it will be less forthcoming in the future if the information in the documents is released, the test is whether the quantity and quality of information given to the TGA by sponsors of medical devices on the Register will prejudice the TGA's ability to perform its statutory functions.

60. I consider it is in the interests of organisations in the same position as the applicant to cooperate with the TGA to minimise damage to their businesses by maintaining public confidence in their products. Sponsors can protect their commercial reputation by voluntarily providing information and working with the TGA when problems are identified with medical devices on the Register.

61. Furthermore, ss 41MP(1) and 41MPA(1) of the *Therapeutic Goods Act 1989* impose an obligation on sponsors of products on the Register to report the occurrence of adverse events listed in ss 41MP(2) and 41MPA(2). The TGA also has formal powers under the Therapeutic Goods Act to require sponsors of medical devices on the Register to provide information in certain circumstances.

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16 *Re Angel and the Department of the Arts, Heritage and the Environment* [1985] AATA 314.

17 Section 43(1)(c)(ii) of the FOI Act was repealed and substituted by the *Freedom of Information Amendment (Report) Act 2010*, with effect from 1 November 2010. Section 43(1)(c)(ii) is stated in the same terms as s 47G(1)(b).

18 [2000] AATA 71 (7 February 2000) [24].

62. In such circumstances, I do not consider that release of the documents sought by the FOI applicant could reasonably be expected to prejudice the future supply of information to the TGA in relation to medical devices on the Register.

63. The documents subject to this IC review are not conditionally exempt under s 47G(1)(b) of the FOI Act.

Findings

64. The question in the sixth of the TGA's requests for information in documents 24 and 24A is conditionally exempt under s 47G(1)(a) of the FOI Act.

65. Documents 1, 2, 4–8, 10–15, 18–20, 22, 23, 27–30 and 35–37 are not conditionally exempt under either ss 47G(1)(a) or 47G(1)(b) of the FOI Act.

The public interest test (s 11A(5))

66. I have found that the question in the sixth of the TGA's requests for information in documents 24 and 24A is conditionally exempt under s 47G(1)(a) of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

67. As the Guidelines explain:

> [t]he pro-disclosure principle declared in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure.[19]

68. Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test.[20] I consider that two of those factors are applicable in this IC review: promoting the objects of the FOI Act and informing debate on a matter of public importance.

69. The Guidelines provide that a further factor favouring disclosure is when the subject matter of the documents relates to health risks relating to public health and safety.[21]

70. Against these factors must be balanced the factors against disclosure. The FOI Act does not specify any factors against disclosure, but the Guidelines contain a non-exhaustive list of factors against disclosure.[22] Of those factors listed in the Guidelines, the ones with potential relevance to this IC review are:

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19 *Guidelines* [6.12].

20 These are whether access to the document would promote the objects of the FOI Act; inform debate on a matter of public importance; promote effective oversight of public expenditure; or allow a person to access his or her own information.

21 *Guidelines* [6.25(j)].

22 *Guidelines* [6.29].

- could reasonably be expected to impede the administration of justice generally, including procedural fairness
- could reasonably be expected to impede the flow of information to the police or another law enforcement or regulatory agency
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

71. The applicant states that release of documents 24 and 24A will prejudice its defence of litigation thereby impeding the administration of justice generally, including procedural fairness, prejudice the TGA's ability to obtain similar information in the future, prejudice the flow of information from it to the TGA and prejudice its competitive commercial activities.

72. As discussed above, I do not consider that disclosure of these documents will prejudice the TGA's ability to obtain similar information in the future. As a result, I have not given this factor any weight in determining where the public interest lies.

73. I have given some weight to the applicant's claim that disclosure of the documents will prejudice its commercial activities and that it will be less forthcoming in providing information to the TGA in the future should the documents under review be released.

74. I have carefully considered the applicant's claims that release of the documents will disadvantage it in litigation and that to do so would be procedurally unfair.

75. In deciding whether disclosure of the documents is in the public interest, I am required to balance the public interest in making information available to the public about the safety implications of the medical device with the private interests of the IC review applicant in preserving their professional reputation and profitability.

76. On balance, I consider the factors favouring access outweigh those that do not.

77. I consider that giving the FOI applicant access to the question in the sixth of the TGA's requests for information in documents 24 and 24A is not contrary to the public interest.

Findings

78. The documents subject to this IC review are not exempt under s 47G of the FOI Act.

Decision

79. Under s 55K of the FOI Act, I affirm the Department's decision of 19 August 2011.

Toni Pirani
Acting Freedom of Information Commissioner

24 April 2013

Review rights

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is $816, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.