



Freedom of Information Amendment (Parliamentary Budget Office) Act 2012

No. 177, 2012

**An Act to amend the *Freedom of Information Act*
1982, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 177, 2012

An Act to amend the *Freedom of Information Act 1982*, and for related purposes

[Assented to 4 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Freedom of Information Amendment (Parliamentary Budget Office) Act 2012*.

Freedom of Information Amendment (Parliamentary Budget Office) Act 2012 No. 177, 2012

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2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Freedom of Information Act 1982

1 Subsection 25(1)

Omit all the words after “last-mentioned document”, substitute:

to be:

- (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or
- (b) an exempt document to the extent referred to in subsection 45A(2) or (3).

2 Subsection 25(2)

Repeal the subsection, substitute:

- (2) If a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister (as the case may be) neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be:
 - (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or
 - (b) an exempt document to the extent referred to in subsection 45A(2) or (3).
- (3) If a notice is given under subsection (2) of this section:
 - (a) section 26 applies as if the decision to give the notice were a decision referred to in that section; and
 - (b) the decision is taken, for the purposes of Part VI, to be a decision refusing to grant access to the document in accordance with the request referred to in subsection (2) of this section, for the reason that the document would, if it existed, be:
 - (i) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or

- (ii) an exempt document to the extent referred to in subsection 45A(2) or (3).

3 After section 45

Insert:

45A Parliamentary Budget Office documents

General rules

- (1) A document is an exempt document if:
 - (a) both of the following are satisfied:
 - (i) the document originated from the Parliamentary Budget Officer or the Parliamentary Budget Office;
 - (ii) the document was prepared in response to, or otherwise relates to, a confidential request; or
 - (b) the document was brought into existence for the dominant purpose of providing information to the Parliamentary Budget Officer or the Parliamentary Budget Office relating to a confidential request; or
 - (c) the document was provided to the Parliamentary Budget Officer or the Parliamentary Budget Office in response to a request by the Parliamentary Budget Officer for more information in relation to a confidential request; or
 - (d) the document 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 that a confidential request has been made to the Parliamentary Budget Officer or the Parliamentary Budget Office, unless the existence of the request has been disclosed by the Senator or Member of the House of Representatives who made the request.

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) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information has been made publicly available by the Parliamentary Budget Officer:

- (a) under section 64U of the *Parliamentary Service Act 1999*; or
- (b) in a statement made under subsection 64V(4) of that Act.

- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information has been made publicly available by the Senator or Member of the House of Representatives who made the confidential request to which the document relates.

- (7) 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 the existence of a confidential request; and
- (b) the existence of the confidential request has not been disclosed by the Senator or Member of the House of Representatives who made the request.

Definition

- (8) In this section:

confidential request means a request referred to in paragraph 64E(1)(a) or (c) of the *Parliamentary Service Act 1999* that includes a direction under paragraph 64H(3)(d) or section 64M (as the case may be) of that Act to treat the request or any other information relating to the request as confidential.

4 Subsection 55T(1) (note)

Omit “or 34 (Cabinet documents)”, substitute “, 34 (Cabinet documents) or 45A (Parliamentary Budget Office documents)”.

5 Section 55U (heading)

Repeal the heading, substitute:

55U Information gathering powers—production of national security, Cabinet or Parliamentary Budget Office documents

6 Subsection 55U(1)

Omit “or 34 (cabinet documents)”, substitute “, 34 (Cabinet documents) or 45A (Parliamentary Budget Office documents)”.

7 Subsection 55U(3)

Omit “or 34”, substitute “, 34 or 45A”.

8 Subsection 58B(1)

Omit “or 34”, substitute “, 34 or 45A”.

9 Subsection 58E(1)

Omit “or 34”, substitute “, 34 or 45A”.

10 Subsection 58E(2)

Omit “or 34”, substitute “, 34 or 45A”.

11 Subsection 64(2) (note)

Omit “or 34”, substitute “, 34 or 45A”.

12 Application of amendments

- (1) The amendments of the *Freedom of Information Act 1982* made by this Schedule apply in relation to a request made under section 15 of that Act that is received after the commencement of this item.
- (2) The amendments of the *Freedom of Information Act 1982* made by this Schedule also apply in relation to a request made under section 15 of that Act that was received during the period:
 - (a) commencing on the day after the Bill for this Act was introduced into the House of Representatives; and
 - (b) ending immediately before the commencement of this item;

if the agency or Minister to whom the request was made has not made a decision on the request, or has not been taken to have made a decision on the request, before the commencement of this item.

Privacy Act 1988

13 Subsection 34(1)

Omit all the words after “last-mentioned document”, substitute:

to be:

- (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1) of the *Freedom of Information Act 1982*; or
- (b) an exempt document to the extent referred to in subsection 45A(2) or (3) of that Act.

*[Minister’s second reading speech made in—
House of Representatives on 10 October 2012
Senate on 30 October 2012]*

(182/12)

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