

SECTION 14: Public interest consideration against disclosure

Consideration 1(d) – prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions

Clause 1(d) of the table at section 14 states:

There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions (whether in a particular case or generally).

In order for this to be a relevant consideration against disclosure, the Agency must be satisfied that:

- a. the information was obtained in confidence;
- b. disclosure of the information could reasonably be expected to prejudice the supply of such information to the Agency in future; and
- c. the information facilitates the effective exercise of the Agency's functions.

Although the GIPA Act does not use the phrase "future supply", the nature of the prejudice that this consideration deems to be contrary to the public interest, is implicit. This future effect is one aspect of the abstract nature of the enquiry. The other abstract element is supply in a general sense and whether disclosure will impact supply of similar information by persons to the agency in the future.

It is commonly understood that information will have a confidential quality if the person was not bound to disclose the information but did so on the basis of an express or inferred understanding that the information would be kept confidential.

The meaning of the word prejudice is to "cause detriment or disadvantage".

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Consideration 1(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

Clause 1(g) of the table at section 14 states:

There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence (whether in a particular case or generally).

To show that this is a relevant consideration against disclosure, the Agency must establish:

- a. the information was obtained in confidence; and
- b. disclosure of the information could reasonably be expected to found an action against an agency for breach of confidence; or
- c. otherwise result in the disclosure of information provided in confidence.

In raising this public interest consideration against disclosure the Agency needs to ensure the information is in fact confidential.

Once satisfied that the information is confidential information, the agency should then turn its mind to what constitutes a breach of confidence. A breach of confidence arises out of an unauthorised disclosure of, or other use of information, which is subject to an obligation of confidentiality.

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Consideration 3(b) – contravene an information protection or health privacy principle

Clause 3(b) of the table at section 14 of the GIPA Act provides:

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to 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

If an agency relies on clause 3(b) of the table to section 14 as a consideration against disclosure, it must demonstrate a reasonable expectation that an information protection principle or health privacy principle would be contravened by disclosure of the information.

It is not sufficient to simply assert that such a contravention would occur. The agency must identify the principle/s that would be contravened and show how the disclosure would breach the principle.

Third Party Consultation

An agency may be required to consult third parties before making a decision about an access application if the information is of a kind requiring consultation. Section 54 of the GIPA Act sets out when consultation is required. For example, consultation may be required if:

- the information concerns a person (or entity)'s business, commercial, professional or financial interests, and
- the person (or entity) may reasonably be expected to have concerns about the disclosure of the information, and
- those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure.

An agency must take any third party objection into account in making its decision, but an objection is not in itself determinative of an overriding public interest consideration against disclosure.

An agency may decide to release information despite receiving an objection from a third party. However under section 54(6) and (7) the agency must notify the third party of its decision, and not release the information until the third party's review rights have expired.

The Information Commissioner has published *Guideline 5: consultation on public interest considerations under section 54 of the GIPA Act*. This Guideline is available on the IPC website. Agencies must have regard to this Guideline pursuant to section 15(b) of the GIPA Act.