

## SECTION 14: Public interest consideration against disclosure

Consideration 1(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)

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

*There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to 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) (whether in a particular case or generally).*

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

To show that this is a relevant consideration against disclosure, the Agency must establish that disclosure of the information would result in:

- a. prejudice to the conduct, effectiveness or integrity of the audit, test, investigation or review conducted by or on behalf of the Agency;  
by revealing its purpose, conduct or results; and  
whether or not the investigation is commenced and whether or not it is completed.

In particular, the Agency should identify the audit, test, investigation or review that would be prejudiced, and also identify the anticipated prejudice. In order to justify the application of the consideration, the Agency must demonstrate the causal nexus between the disclosure of the information and the prejudice that is expected.

## SECTION 14: Public interest consideration against disclosure

### Consideration 3(a) – reveal an individual's personal information

Clause 3(a) of the table at section 14 states:

*There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to reveal an individual's personal information.*

Personal information is defined in the GIPA Act as:

*...information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion. [Schedule 4(4)(1) GIPA Act]*

The term 'reveal' is defined in schedule 4, clause 1 of the GIPA Act to mean:

To disclose information that has not already been publicly disclosed (otherwise than by lawful means).

Section 15(b) of the GIPA Act provides that agencies must have regard to any relevant guidelines issued by the Information Commissioner when determining whether there is an overriding public interest against disclosure.

The Information Commissioner has published *Guideline 4 – Personal information as a public interest consideration under the GIPA Act*. This Guideline sets out what is meant by 'personal information' in the GIPA Act and includes (in paragraph 1.2) examples of what should be considered personal information.

In order to establish that this consideration applies, the Agency has to:

- b. identify whether the information is personal information,
- c. consider whether the information would be revealed by disclosing it under the GIPA Act.

## **SECTION 14: Public interest consideration against disclosure**

### **Consideration 4(c) – diminish the competitive commercial value of any information to any person**

Clause 4(c) of the table to 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 diminish the competitive commercial value of any information to any person*

In order to rely on this clause as a consideration against disclosure, an agency must show that releasing the information could reasonably be expected to have the effect outlined in clause 4(c) and base this on substantial grounds.

In particular, an agency must identify why the information has a competitive commercial value, and how that value would be adversely affected if the information was disclosed.

## SECTION 14: Public interest consideration against disclosure

### Consideration 4(d) – prejudice business interests

Clause 4(d) of the table to 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 prejudice any person's legitimate business, commercial, professional or financial interests*

In order to establish the relevance of this consideration, the agency must:

- a. identify the relevant legitimate interest; and
- b. explain how the interest would be prejudiced if the information was disclosed.

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

Our view is that the relevant meaning of “legitimate” for the purposes of this consideration is its ordinary meaning, that is genuine and not spurious.<sup>1</sup>

In particular, an agency must identify the party whose interests would be prejudiced, and the relevant interest/s. In order to justify the application of the consideration, an agency must demonstrate the causal nexus between the disclosure of the information and the prejudice to that interest.

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<sup>1</sup> Macquarie Dictionary, 6<sup>th</sup> edition, October 2013