# Considering the public interest test

This resource explains the public interest test and sets out the steps required to be considered in applying the public interest test.[[1]](#footnote-1)

## The public interest test

The public interest test is contained in s 11A(5) of the *Freedom of Information Act 1982* (FOI Act), which provides that the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

## Weighing the public interest test: checklist

In considering the public interest test, the following must be considered:

* Identify the factors favouring disclosure as set out in s 11B(3) of the FOI Act and the FOI Guidelines[[2]](#footnote-2)
* Identify the factors against disclosure[[3]](#footnote-3)
* Ensure that no irrelevant factor will be considered as set out in s 11B(4))[[4]](#footnote-4)
* Weigh the relevant factors to determine where the public interest lies at the time the decision is being made – the [FOI Guidelines](https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-6-conditional-exemptions#weigh-the-relevant-factors-to-determine-where-the-public-interest-lies) suggest considering[[5]](#footnote-5):
  + the timing of the request[[6]](#footnote-6)
  + the relevance of the factors and the weight that should be given to each factor
  + the application to the document requested (rather than a class of documents)

## Making a decision

If a decision maker is satisfied that a document is conditionally exempt, and giving access to that document would be contrary to the public interest, it is open to the decision maker to refuse access to the document.[[7]](#footnote-7)

If the decision maker decides to grant access to a document, they may defer access in certain circumstances, as set out in s 21 of the FOI Act. [[8]](#footnote-8) For example, the decision maker may defer access to the document where the premature release of the document would be contrary to the public interest – until an event occurs or the period of time expires after which its release would not be contrary to the public interest.

If the decision maker decides to refuse or defer access to a document, the decision should describe the material, and must contain the decision, set out the findings of fact, provide reasons for the decision and meet the general requirements for notices of decisions.[[9]](#footnote-9)

1. This resource should be read with the FOI Act and the *Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act* (FOI Guidelines). [↑](#footnote-ref-1)
2. Paragraph [6.231] of the FOI Guidelines. [↑](#footnote-ref-2)
3. Paragraph [6.233] of the FOI Guidelines sets out factors that may be relevant. The FOI Guidelines also set out specific guidance regarding the interaction between particular conditional exemptions and the public interest test: see the public interest and s 47B (paragraphs [6.240] to [6.244]), inhibition of frankness and candour in relation to s 47C (paragraphs [6.245] to [6.252]), and incoming government briefs in relation to s 47C (paragraphs [6.253] to [6.259]). [↑](#footnote-ref-3)
4. The irrelevant factors are that access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government; access to the document could result in any person misinterpreting or misunderstanding the document; the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and access to the document could result in confusion or unnecessary debate (s 11B(4)). [↑](#footnote-ref-4)
5. Paragraphs [6.236] to [6.239] of the FOI Guidelines. [↑](#footnote-ref-5)
6. While the timing may be a relevant factor, it is also open to an agency to decide to defer the provision of access to a document in certain circumstances under s 21 of the FOI Act rather than refuse access. [↑](#footnote-ref-6)
7. FOI Act s 11A(5). [↑](#footnote-ref-7)
8. As detailed at paragraphs [3.101] to [3.102] of the FOI Guidelines. [↑](#footnote-ref-8)
9. FOI Act s 26; Paragraphs [3.171] to [3.176] of the FOI Guidelines. [↑](#footnote-ref-9)