

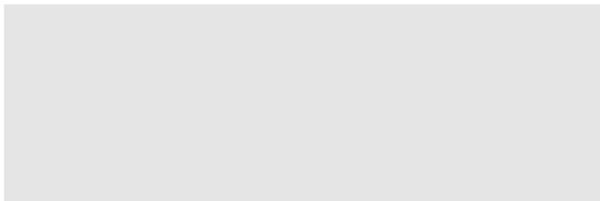


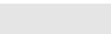
**Australian Government**  
**Australian Customs and  
Border Protection Service**

Customs House  
5 Constitution Avenue  
CANBERRA ACT 2061

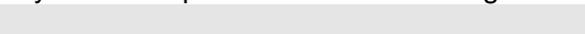
27 May 2012

File No: 2011/006587



Dear 

***Freedom of Information Act 1982 – Decision on Internal Review – No 2***

I refer to your correspondence dated 31 August 2011 in which you request on behalf of your client,  (Applicant), the Australian Customs and Border Protection Service (Customs and Border Protection) to review its decision on access to documents dated 29 July 2011 under the *Freedom of Information Act 1982* (the FOI Act).

I am authorised under section 23 the FOI Act to make decisions to release and to refuse access to exempt documents.

**Scope of Original Request**

On 25 March 2011, after discussions with Customs and Border Protection, the Applicant clarified the scope of their request to include the following documents:

*All documents, excluding any intelligence or investigative documents concerning individual persons or entities, held by Customs created after 2005 where those documents refer or relate to any of the following matters:*

- (a) measures taken by Customs or other Commonwealth Government Departments to prevent tobacco trafficking and tobacco smuggling in Australia;*
- (b) measures taken by Commonwealth Government Departments to prevent the sale of tobacco to minors in Australia;*
- (c) the formation of Custom's "strategy to combat the illicit trade in tobacco products" as outlined in the Australian Customs and Border Protection Service Annual Report 2009-10 at page 83; and*
- (d) the basis for, and the implementation of, any plans or programs by Customs as outlined in Customs' Annual Reports (also possibly referred to as "Compliance Programs"), relating to the importation or sale of tobacco products that are sold in counterfeit packaging, loose tobacco known as chop-chop, or genuine cigarettes not declared for duty purposes ('illicit Tobacco') in Australia.*

*All documents held by Customs created after 1995 where those documents refer or relate to the effect of generic packaging for tobacco products on the importation into or sale of illicit Tobacco in Australia.*

*All documents, excluding any intelligence or investigative documents concerning individual persons or entities held by Customs created after 2005 aggregating or summarising data related to or reporting on seizures of illicit Tobacco by Customs*

On 6 April 2011, based on discussions with [REDACTED] of your office regarding the type of records held by the agency, Customs and Border Protection confirmed that it had interpreted the scope of the Applicant's request as follows:

1. *Strategy and planning documents created after 2005, applicable to parts (a), (b), (c) and (d) of the request.*

*Customs and Border Protection envisage that this will encompass:*

- *Corporate planning and strategy documents;*
- *Organisational reporting documents;*
- *Documents related to liaison with external agencies and industry; and*
- *Ministerial correspondence.*

2. *All documents held by Customs and Border Protection created after 1995 where those documents relate to the effect of generic packaging for tobacco products on the importation in to or sale of illicit Tobacco in Australia.*
3. *All documents held by Customs and Border Protection created after 2005 aggregating or summarising data related to or reporting on seizures of illicit Tobacco by Customs and Border Protection.*

Customs and Border Protection confirmed that no documents pertaining to individual seizures of tobacco or tobacco products (including intelligence records, investigative records and records associated with processing individual movements of passengers and cargo across the border) will be considered within the scope of the Applicant's request.

On 10 May 2011, [REDACTED] confirmed that the Applicant does not require access to draft documents where those documents have minor differences to the finalised document.

On 9 June 2011, [REDACTED] confirmed that the Applicant does not require access to documents which were circulated to participants of the Tobacco Industry Forum.

### **Original Decision on Access Dated 29 July 2011**

Customs and Border Protection identified 447 documents that fell within the scope of the Applicant's original request. The decision maker decided to exempt 80 documents in full from release, exempt 114 documents in part with deletions and to release 253 documents in full.

### **Request for Internal Review**

On 31 August 2011, the Applicant requested Customs and Border Protection to review its decision dated 29 July 2011 to exempt 80 documents in full from release and to exempt 114 documents in part with deletions (total 194 documents).

On 14 September 2011, your office provided guidance as to the Applicant's concerns with the Customs and Border Protection's original decision. In particular, your office advised that the Applicant is concerned with the agency's decision to exclude certain information within documents as being irrelevant to the original request (section 22(1)(a)(ii) of the FOI Act). Further, concerns were raised regarding Customs and Border Protection's application of sections 37(2)(b) and 47C of the FOI Act to exempt from release information relating to law enforcement methods and procedures and information containing deliberative matter.

## **Delay in Processing the Request for Internal Review**

I again sincerely apologise for the delay in processing the Applicant's request for internal review.

As the independent internal review decision-maker, I am required to review all documents that fall within the scope of the original request and familiarise myself with the subject matter of these documents. I am required to consider consultation submissions from relevant Commonwealth and State agencies and also consider the Commonwealth's Protective Security Framework prior to making my decision on internal review.

These tasks have greatly contributed to the delay in finalising the decision on internal review.

## **Staged Decision on Internal Review**

As you are aware, in order to limit further delays incurred by the Applicant, I am issuing a staged release of my decision in response to the internal review.

I note that this approach was discussed with, and agreed to, by [REDACTED] of your office on 2 April 2012.

In this decision, I have reviewed documents numbered 116 to 194 that were released in part or exempt in full the original decision. For ease of reference, I have included the original document number next to the document number on internal review in the schedule of documents at **Attachment A**.

I shall only refer to each document by the number it has been assigned on internal review.

## **Decision on Internal Review – No 2 – Documents 116-194**

Upon reviewing documents 116-194, I have decided to vary the original decision in that I have decided to exempt 20 documents in full from release, release 48 documents in part with deletions and release 11 documents in full.

The reasons for my decision are outlined below.

### **Reasons for Decision**

I have attached a schedule of the 79 documents that fall within the scope this decision at **Attachments A**. The schedule sets out the decision on access and, where appropriate, refers to various sections of the FOI Act. My reasoning in relation to the application of each section to particular documents is set out below.

#### **1 Paragraph 22(1)(a)(ii) of the FOI Act – irrelevant to request**

I have decided that the redacted parts of documents 116-148, 150, 155, 168, 177-181 and 193-194 would disclose information that could reasonably be regarded as irrelevant to the Applicant's request for access.

I have also decided that all information within documents numbered 153, 154, 157, 164-167, 189 and 190 would disclose information that could reasonably be regarded as irrelevant to the Applicant's request for access.

I consider that information relating to the following subjects to be irrelevant to the Applicant's request:

- risks to the border other than tobacco smuggling (such as maritime people smuggling and drugs);
- specific importations, operations and investigations;
- the activities of international bodies in combating illicit tobacco;
- comments relating to the agency's internal reporting processes; and
- Documents that were circulated to the Tobacco Industry Forum.

For your reference, I have provided details of the irrelevant information within each document in the 'Exemption' column in the schedule of documents at **Attachment A**.

## **2 Section 33(a) and 33(b) of the FOI Act – Documents Affecting National Security, Defence or International Relations**

I have decided that part of document 131 could reasonably cause damage to the security of Australia. Therefore, I have decided that this document is exempt from disclosure under section 33(a)(i) of the FOI Act.

I consider that the release of parts of documents 150, 152, 177 and 185 could reasonably be expected to cause damage to Australia's international relations. These documents contain information relating to the negotiation on the drafting of an international protocol. The release of these documents would result in a loss of trust of the parties and could prejudice Australia's participation in future negotiations.

I further consider that the release of parts of document 158 could also reasonably be expected to cause damage to Australia's international relations. Having regard to the identities of the foreign governments mentioned and the subject, nature and context of the communications and opinions, there would have been a reasonable expectation by the relevant countries that such information would be treated as confidential. Disclosure of the material in document would likely make foreign government officials wary in the future of communicating and discussing sensitive issues openly and candidly with Australian officials if they perceive a risk that discussions may be made public. There is a close working relationship amongst officials of many countries who work together on tobacco control issues. If there is a loss of trust and confidence in Australia by the countries referred to in the document, this loss of trust and confidence may be communicated to, and consequently shared by, other countries. The reputation of Australia and Australian officials would be harmed if they were unable to show they could protect the confidentiality of international discussions. As a result, future working relations and the ability for Australia to engage with other countries on tobacco control issues would be undermined.

Therefore, I have decided that parts of documents 150, 152, 158, 177 and 185 are exempt from disclosure under section 33(a)(iii) of the FOI Act.

I have also decided that the disclosure of document 149 and parts of documents 185-187 would divulge information or matters communicated in confidence to Customs and Border Protection by a foreign government or international organisation. I am of the view that disclosure of the information within these documents could reasonably be expected to damage future information exchange between the Australian Government and these agencies. Therefore, the information within these documents is exempt from disclosure under section 33(b) of the FOI Act.

### **3 Section 34 – Cabinet documents**

The attachments to document 158 are documents that were brought into existence for the dominant purpose of the consideration of a Cabinet Committee. They consist of Minutes and Agenda of Interdepartmental Committee - Plain Packaging of Tobacco Products. The disclosure of parts of these documents would reveal a Cabinet Committee deliberation or decision which has not yet been officially disclosed.

Customs and Border Protection has consulted the Department of the Prime Minister and Cabinet in relation to this document as required by the Cabinet Handbook.

I have therefore decided that parts of document 158 are exempt from disclosure under section 34 of the FOI Act.

I have also decided that pages 6-8 of document 161 were brought into existence for the dominant purpose of the consideration of a Cabinet Committee. I therefore, consider pages 6-8 of document 161 as exempt from disclosure under section 34 of the FOI Act.

### **4 Section 37(1)(a) and 37(2)(b) of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety**

I have decided that the disclosure of part of documents 116, 118, 120, 124, 125, 128, 131, 133, 134, 139, 141, 144, 148, 174 and 177 would, or could reasonably be expected to prejudice the enforcement or proper administration of a law relating to the legislation administered by Customs and Border Protection. I consider the information within these documents to be exempt from disclosure under subsection 37(1)(a) of the FOI Act.

I have also decided that parts of documents 125, 134 and 151 would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of, breaches or evasions of the law. The disclosure of the information within these documents would be reasonably likely to prejudice the effectiveness of those methods or procedures thereby reducing Customs and Border Protection's ability to protect the border. I consider the information within documents 125, 134 and 151 to be exempt from release under subsection 37(2)(b) of the FOI Act.

### **5 Section 47C of the FOI Act – Deliberative Processes**

I have decided that documents 158, 188 and 192 and parts of documents 134, 139, 150, 152, 169, 175-178, 182, 186 and 187 contain views and opinions recorded in the course of deliberations related to the review of penalties and prosecution options available to Customs and Border Protection in relation to tobacco smuggling and other tobacco related matters.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act. Operational content, which is not covered by this conditional exemption, is identified for release, unless other exemptions have been applied.

The information satisfies the conditional exemption in section 47C of the FOI Act.

I have discussed the relevant public interest considerations below.

## **6 Section 47E(d) of the FOI Act – Operations of Agency**

I have also decided that the disclosure of parts of documents 116-118, 120, 124, 125, 127, 128, 130-137 and 139, 141, 144, 148, 150, 151, 155, 156, 174 and 177 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Customs and Border Protection. Disclosure of this information would compromise Customs and Border Protection's capacity to protect the border. Accordingly, the documents are conditionally exempt under section 47E(d) of the FOI Act.

I have discussed the relevant public interest considerations below.

## **7 Section 47F of the FOI Act – Personal Information**

The disclosure of parts of document numbered 185 would disclose personal information relating to a third party. The information would reasonably identify a person, either through their name, position or description of their role or employment circumstance.

I have decided that the disclosure of the information within this document would involve an unreasonable disclosure of personal information about an individual. Accordingly, part of document numbered 185 is conditionally exempt under section 47F of the FOI Act.

I have discussed the public interest considerations below.

## **8 Section 11A of the FOI Act – Public Interest**

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in subsection 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information.*

Having regard to the above factors that favour disclosure:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does have the character of public importance and that there may be a broad public interest in the documents.

- I am of the view that the disclosure of the documents may provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within Customs and Border Protection, promote scrutiny of government decision making and reveal the reasoning for a government decision. I consider these considerations weighing in favour of release.

I have also considered the factors that weigh against release.

- I am satisfied that the Applicant does not require access to the documents in order to access their own personal information or to contribute to the administration of justice for themselves or another person.
- In some instances the disclosure of the conditionally exempt documents would, or could reasonably be expected to prejudice the agency's ability to obtain confidential information in the future as well as having a potentially adverse affect on international relations.
- Disclosure of the information within documents 116-118, 120, 124, 125, 127, 128, 130, 131, 133-137 and 139, 141, 144, 148, 150, 151, 155, 156, 174 and 177 would, or could reasonably be expected to prejudice the operations of Customs and Border Protection.
- Disclosing the contact details of the New Zealand Customs officer contained in document numbered 185 may invite inappropriate approaches by third parties when the documents are made available to the public. This weighs against disclosure

I have also had regard to subsection 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;*
- (c) 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;*
- (d) access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

On balance, I have concluded that the disclosure of the conditionally exempt documents is not in the public interest.

## **Legislation**

I have attached an extract of the exemption provisions of the FOI Act and the public interest test for your information at **Attachment B**.

## **Your Review Rights**

The FOI Act grants you rights to have my decision reviewed.

Information regarding your review rights is available in the Office of the Australian Information Commissioner's FOI Fact Sheet 12 at **Attachment C** for your reference.

I note however that you have already exercised your right to an internal review referred to in this Fact Sheet.

## **Making a Complaint**

At **Attachment D** is FOI fact sheet 13 from the OAIC. This sets out how you may complain to the Australian Information Commissioner if you have concerns about how Customs and Border Protection has handled your request for documents under the FOI Act.

## **Contact**

Should you wish to discuss my decision, please do not hesitate to contact Ms Emily Winch, Customs and Border Protection's FOI Coordinator on 02 6275 5621 or via email at [foi@customs.gov.au](mailto:foi@customs.gov.au).



**Jagtej Singh**  
**National Manager**  
**Cargo Operations**  
**Australian Customs and Border Protection**

28 MAY 2013

**FREEDOM OF INFORMATION ACT 1982****DECISION ON INTERNAL REVIEW****SCHEDULE OF DOCUMENTS**

<b>Doc No Original Decision</b>	<b>Doc No Internal Review</b>	<b>No. of Pages</b>	<b>Description / Subject</b>	<b>FOI Status</b>	<b>Exemption</b>
161	116	13	573/2008 – Duty Free store operations and associated risk	Exempt in Full	s22(1)(a)(ii) – I note that this documents relates to the risks of export diversion of tobacco, cigarette and alcohol at off-airport duty free stores. Pages 1, 4-8, 10-12 contain case studies of particular investigations. s47E(d) – Pages 1-3, 9-10 and 13. s37(1)(a) – Pages 1-3, 9-10 and 13.
162	117	3	598/2008 – Fortnightly Intelligence Update	Exempt in Full	s22(1)(a)(ii) – The information on pages 1, 2 and part of page 3 relates to drugs and experiences in other countries and therefore is irrelevant to the request. s47E(d) – One paragraph on page 3 relates to tobacco and import syndicates. This information is exempt.
163	118	16	562/2008 - Strategic Intelligence Report - Duty Free store operations and associated risk	Release in Part	s22(1)(a)(ii) – I note that this documents relates to the risks of duty free store operation. Information relating to specific duty free stores liquids, aerosols and gels is irrelevant to the request. s47E(d) s37(1)(a)
164	119	25	534/2007 - The UAE – Emerging Drug Transit Point	Release in Part	s22(1)(a)(ii) – Pages 1-8 relate to drug seizures from the UAE and is therefore irrelevant to the request. Part of page 9 and pages 10-27 contains general discussions regarding the UAE. The content relating to tobacco on page 9 has been released.

**FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS**

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165	120	14	503/2007 – Customs Strategic Intelligence Outlook	Release in Part	s22(1)(a)(ii) – The information on pages marked 1-4 discusses the strategic drivers to the projected changes in the Customs environment including passenger movements and technology. The one paragraph relevant to tobacco and organised crime groups on page 3 has been released. The information on pages 5-10 and 11-17 relates to specific priorities including drugs and other prohibited imports (firearms etc). s47E(d) s37(1)(a)
166	121	6	53/2009 - Fortnightly Intelligence Update	Release in Part	s22(1)(a)(ii) – The information on pages 1, 2, part of page 3 and 4-6 relate to drugs. The paragraph on page 3 relating to tobacco has been released.
167	122	5	515/2007 - Fortnightly Intelligence Update	Release in Part	s22(1)(a)(ii) – The information on page 1, part of page 2 and page 3 relates to other risks to the border. The information relating to a specific detection of tobacco is irrelevant to the request on page 2.
168	123	19	531/2007 – Trade Infringements- State of the Environment	Release in Part	s22(1)(a)(ii) – Pages numbered 1-9 contain information relating to general discussion of counterfeit goods. Pages 10-14, 15-23 relate to commodities other than tobacco. Pages numbered 16-19 relate to other emerging trends and IPR goods. Page numbered 20 contains a distribution list.  Information on page 15 has been redacted as it relates to foodstuffs. The remaining information relevant to tobacco on pages numbered 10 and 15 has been released.

**FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS**

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169	124	18	585/2008 – Criminal Networks: The criminal environment in WA	Release in Part	s22(1)(a)(ii) – Pages 1-5 and part of page 6 and 7-11 contains general information on the criminal environment in WA. Pages 12-20 contain information relating to specific organised crime groups that is unrelated to the scope of the request.  The information relevant to tobacco on page 6 has been released in part. s47E(d) s37(1)(a)
170	125	17	Supply Chain Vulnerabilities: Analysis of Piggyback Imports	Exempt in Full	s47E(d) s37(1)(a) s37(2)(b) s22(1)(a)(ii) – Information relating to specific case studies and detections is irrelevant to the request. Page 17 contains a blank template feedback form.
171	126	15	Malaysia: Risk profile	Release in Part	s22(1)(a)(ii) – Pages 2-3 and part of pages 9-14 contain general information relating to risks associated with Malaysia. Pages 4-8 relate to drugs. Page 15 is a blank template feedback form.  Information relevant to tobacco on pages 8-9 (other than specific case studies of detections) has been released.
172	127	15	Half yearly tobacco report: Jan to Jun 2006	Release in Part	s22(1)(a)(ii) – Information on pages 3-6 relates to actual detections, investigations and seizures. Information on pages 6-8 refer to detections, investigations and seizures in overseas countries. Pages 12-15 relate to legitimate tobacco importers and are therefore outside the scope of the request. s47E(d)

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

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173	128	18	Half yearly Tobacco Report Jan to Jun 2005	Release in Part	s22(1)(a)(ii) – Information on pages marked 2-6 relates to actual detections, investigations and seizures. Information on pages marked 6-8 refer to detections, investigations and seizures in overseas countries. Pages 13-16 relate to legitimate tobacco importers and are therefore outside the scope of the request. s47E(d) –Information on pages numbered 1 and 12 s37(1)(a) – Information on page numbered 1
174	129	13	Customs Strategic Intelligence Outlook	Release in Part	s22(1)(a)(ii) – Information contained on pages marked 2-10 relate to other risks to the border such as terrorism, firearms etc. Page 12 is a blank template feedback form. The information relating to tobacco on pages 2 and 11 has been released
175	130	15	Half yearly Tobacco Report Jul to Dec 2005	Release in Part	s22(1)(a)(ii) – Information on pages 1-5 relates to actual detections, investigations and seizures. Information on pages 5-6 refer to detections, investigations and seizures in overseas countries. Pages 13-15 relate to legitimate tobacco importers and are therefore outside the scope of the request. s47E(d) –Information on pages 3 and 11.
176	131	20	Tobacco: Strategic Intelligence Report - Smuggling Trends an Australian Perspective July 2007- June 2008	Release in part	s22(1)(a)(ii) – Information relating to specific case studies of detections has been redacted. Page 20 is a blank template feedback form. s33(a)(i) s47E(d) s37(1)(a)

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

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177	132	47	Revenue: An analysis of Customs Fraud	Release in Part	s22(1)(a)(ii) – Pages 1-5 and 8-19 discusses fraud generally. Pages 21-28 and 34-47 relate to commodities other than tobacco. Page 46 and 47 is a blank template feedback form. The information that refers specifically to tobacco has been released. All information relating to specific operations is irrelevant to the request and has been redacted. s47E(d)
178	133	2	329-2006 Intelligence Update: Heightened Risk of Cigarette and tobacco imports into Victoria in Sea Cargo during the months November to March	Release in Part	s22(1)(a)(ii) – Information on page 1 refers to specific operations. s47E(d) s37(1)(a)
179	134	9	3405-2010 Intelligence Update: Illicit Cigarette and Tobacco Detections from China through Express Mail Services parcels – 2009	Release in Part	s22(1)(a)(ii) – Information on page 4 relates to the activities of other countries which is irrelevant to the request. Pages 8 and 9 contain a document dissemination list and feedback form. s37(1)(a) s37(2)(b) 47C s47E(d)
180	135	5	3756-2009 Intelligence Update: Country Threat Profile - India	Release in Part	s22(1)(a)(ii) – Information on pages 2 and 3 relate to threats to the border other than tobacco. Pages 4 and 5 contain a document dissemination list and feedback form. s47E(d)
181	136	5	3776-2009 Intelligence Update: Country Threat Profile - Malaysia	Release in Part	s22(1)(a)(ii) – Information on pages 2 and 3 relate to threats to the border other than tobacco. Pages 4 and 5 contain a document dissemination list and feedback form. s47E(d)
182	137	5	3760-2009 Intelligence Update: Country Threat Profile - Singapore	Release in Part	s22(1)(a)(ii) – Information on pages 2 and 3 relate to threats to the border other than tobacco. Pages 4 and 5 contain a document dissemination list and feedback form. s47E(d)

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

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183	138	3	3764-2009 Intelligence Update: Country Threat Profile – Republic of Korea	Release in Part	s22(1)(a)(ii) – Information on page 2 relates to threats to the border other than tobacco. Page 3 contains a document dissemination list and feedback form.
184	139	13	402-2007 Half Yearly Tobacco Report – July to December 2006	Release in Part	s22(1)(a)(ii) – Information on pages 3-6 relates to actual detections, investigations and seizures. Information on pages 5-6 refer to detections, investigations and seizures in overseas countries. Pages 6-7 relate to legitimate tobacco importers and are therefore outside the scope of the request. Page 13 is a distribution list. s37(1)(a) s47E(d) – Information on pages 9. s47C – Information on page 5
185	140	59	429-2007 Strategic Assessment: Regional Intelligence Estimate 2007- 2008	Release in Part	s22(1)(a)(ii) – The majority of the report is irrelevant to the request. The report exams the physical environment, risks, treatments, effectiveness, improvements and intelligence requirements for each Branch of Customs and Border Protection in the Northern Territory. The only information that is relevant is a paragraph under the ‘Risks’ section for each Branch stating that evasion of revenue and smuggling is a constant threat on pages 12, 20, 26, 29
186	141	5	43-2009 Fortnightly Intelligence Update Edition 43	Release in Part	s22(1)(a)(ii) – Information on pages 1-2 and 4 relate to other threats to the border including drugs, people smuggling etc. Page 5 is a feedback form. s47E(d) s37(1)(a)
187	142	3	Fortnightly Intelligence Update 2 May 2008	Release in Part	s22(1)(a)(ii) – Information on pages 1-3 relate to other threats to the border including drugs, people smuggling etc.

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

Doc No Original Decision	Doc No Internal Review	No. of Pages	Description / Subject	FOI Status	Exemption
188	143	4	Fortnightly Intelligence Update 16 May 2008	Release in Part	s22(1)(a)(ii) – Information on pages 1-4 relate to other threats to the border including drugs, people smuggling etc.  The information redacted as under the Tobacco heading includes comments and comparisons to other countries.
189	144	13	TOBACCO: The risk of Duty Free leakage	Release in Part	s22(1)(a)(ii) – Information on pages 1-5 relate to legitimate tobacco companies and is therefore outside the scope of the request.  Pages 11, 12 and 13 contain a document dissemination list, handling instructions and blank feedback form.  s47E(d) s37(1)(a)
190	145	5	Counterfeit Alcohol Production On The Rise	Release in Part	s22(1)(a)(ii) – The information on pages 1-2 relate to alcohol.  Pages 3 -5 contain a document dissemination list and blank feedback form.
191	146	4	Fortnightly Intelligence Update 11 July 2008	Release in Part	s22(1)(a)(ii) – Information on pages 1-3 relate to other threats to the border such as drugs etc.  The information redacted under the Tobacco heading relates to a specific business entity and thus is irrelevant to the request.  Page 4 contains a blank feedback form.
192	147	3	Fortnightly Intelligence Update 25 July 2008	Release in Part	s22(1)(a)(ii) – Information on pages 1-3 relate to other threats to the border such as drugs etc.  Please note that there is an error with the page numbering on this document. The wording within the document flows from pages 1 and 2 to 4. Page 3 does not exist.
193	148	7	TOBACCO: Operational Intelligence Report - Ant Smuggling	Exempt in Full	s22(1)(a)(ii) – Information on pages marked 3-7 relates to actual detections, investigations and operations.  s37(1)(a) s47E(d) s37(1)(a)

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

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194	149	3	European OLAF (Anti-Fraud Office) – Tobacco/Cigarette Seminar – March 2010 – Duplicate of document 5	Exempt in Full	s33(b) – It is noted that this document does not relate to Australia. The emphasis is on European Markets.
195	150	10	Illicit Tobacco Discussion Paper 11.3.10	Release in Part	s22(1)(a)(ii) - Information on pages numbered 1 relates to an actual operation. s47C s37(1)(a) s47E(d) s33(a)(iii)
197	151	2	Email 18 March 2009 – Author – Jim Stewart and attachment	Exempt in Full	s37(2)(b) s47E(d)
198	152	3	Tobacco smuggling discussion paper draft 22-2-2010	Exempt in Full	s47C s33(a)(iii)
199	153	28	Email 22 July 2010 – Author – CARM attaching a Report titled ' <i>Canadian Report: Counterfeit and Chinese Brand Cigarettes Smuggled in Marine Containers July 2010</i> '.	Exempt in Full	s22(1)(a)(ii) – The email correspondence is attaching a copy of a report prepared by the Canadian authorities regarding counterfeit cigarettes in maritime containers in Canada. This report does not relate to Australia and is therefore irrelevant to the request.
200	154	4	Email 29 October 2010 – Author – Jim Stewart and Seizure document with Tobacco - Cigarettes	Exempt in Full	s22(1)(a)(ii) – The email is attaching a seizure report prepared by Customs National Operations Centre. It contains specific information regarding a particular detection and seizure. The document is therefore irrelevant to the request.
201	155	22	Risk Reporting Framework – Tobacco Smuggling - Duplicate of Document 43	Release in Part	s47E(d) s22(1)(a)(ii) – The information on page 21 relates to a specific operation. The information on page 22 discusses the theory of different risk metrics. Not relevant to any particular risk.
202	156	2	Email 19 Nov 2010 – Author – Kingsley Woodford-Smith attaching copy of the Risk Reporting Framework – Tobacco Smuggling – Refer to Documents 43	Release in Part	s47E(d)
203	157	4	Email 17 Nov 2010 – Author – Kingsley Woodford-Smith attaching a seizure report on a significant detection without controlled delivery	Exempt in Full	s22(1)(a)(ii) – This document is an email attaching a significant detection report seizure relating to a particular detection. The document is therefore irrelevant to the request.

**FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS**

<b>Doc No Original Decision</b>	<b>Doc No Internal Review</b>	<b>No. of Pages</b>	<b>Description / Subject</b>	<b>FOI Status</b>	<b>Exemption</b>
204	158	7	Email and attachments including cabinet-in-confidence documents	Exempt in full	s47C s34 s33(a)(iii)
207	159	3	Customs and Border Protection Talking Points – Government tobacco changes: commentary by former Senior Customs and Border Protection officer April 2010 - Duplicate of Document 25	Release in Full	
221	160	2	Email 29 April 2010 – Author – Anita Langford and press article: Tobacco industry prepares for court battle dated 29 April 2010.	Release in Full	
223	161	8	Email 29 April 2010 – Jim Stewart attaching copy of Minute and letters to the Treasurer Wayne Swan from The Prime Minister Kevin Rudd and return letter from The Treasurer to the Prime Minister.	Release in Part	s34 – Pages 6-8
224	162	6	Talking Points – Tobacco (April 2010) -Duplicate of Document 25	Release in Full	
227	163	4	Liberal Briefing for Tobacco (May 2010) -Duplicate of Document 53	Release in Full	
237	164	3	Email 23 November 2010 – Tobacco Industry Forum Meeting arrangements and Agenda.	Exempt in Full	s22(1)(a)(ii) – This document was circulated to the Tobacco Industry Forum and is therefore outside the scope of the request.
242	165	5	Tobacco Industry Forum – Agenda 6 Dec 2010	Exempt in Full	s22(1)(a)(ii) – This document was circulated to the Tobacco Industry Forum and is therefore outside the scope of the request.
243	166	5	Tobacco Industry Forum – Agenda 6 Dec 2010	Exempt in Full	s22(1)(a)(ii) – This document was circulated to the Tobacco Industry Forum and is therefore outside the scope of the request.
244	167	5	Tobacco Industry Forum – Agenda 6 Dec 2010	Exempt in Full	s22(1)(a)(ii) – This document was circulated to the Tobacco Industry Forum and is therefore outside the scope of the request.
421	168	2	Internal Minute – Briefing on Customs Import Controls for Tobacco Workshop – March 2008	Release in Part	s22(1)(a)(ii) – The information relates to the importation of fruit flavoured cigarettes and is therefore irrelevant to the request.

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

Doc No Original Decision	Doc No Internal Review	No. of Pages	Description / Subject	FOI Status	Exemption
422	169	2	WCO Enforcement Committee 2-5 March 2010 Brussels Agenda Item 9. Tobacco - Duplicate of Document 175	Release in Part	s47C – This document contains Customs and Border Protections views and opinions in relation to the Draft Protocol
423	170	8	Senate Estimates Brief 2-1-8 – Tobacco Figures (May 2010) - Duplicate of Document 59	Release in Full	
424	171	8	Senate Estimates Brief 2-1-8 – Tobacco Figures (May 2010) - Duplicate of Document 59	Release in Full	
425	172	4	Email 23 July 2008 – Ministerial Tobacco	Release in Full	
426	173	4	Email 25 July 2008 – Ministerial Tobacco - Duplicate of Document 172	Release in Full	
427	174	6	Ministerial submission – Illicit tobacco – BAT submission to the NSW Tobacco Regulation Review	Release in Part	s37(1)(a) s47E(d)
428	175	4	Email 25 Feb 2010 – Author – Sarah Major attaching WCO Enforcement Committee 2-5 March 2010 Brussels Agenda Item 9. Tobacco - WTO document is a duplicate of Document 169	Release in Part	<u>Email:</u> Release <u>WTO Document:</u> s47C – This document contains Customs and Border Protections views and opinions in relation to the Draft Protocol
429	176	3	Email 10 March 2010 – Author – Sue Pitman	Release in Part	s47C
430	177	13	Email 11 March 2010 – Author – Justin Wickes. Illicit Tobacco Discussion Paper and Internal Minute. - The Discussion Paper is a Duplicate of Document 150	Release in Part	<u>Email:</u> Released <u>Discussion Paper:</u> s22(1)(a)(ii) s47C s37(1)(a) s47E(d) s33(a)(iii) <u>Minute:</u> s47C
431	178	2	Email 18 May 2010 – Author – Sarah Major.	Exempt in Full	s22(1)(a)(ii) s47C(1)
432	179	2	Email 19 May 2010 – Author – Nick Ward	Release in Part	s22(1)(a)(ii)
433	180	4	Email 31 May 2010 – Senate Estimates Brief: Tobacco. - Attachment: Senate Estimates Brief is a duplicate of Document 59	Release in Part	s22(1)(a)(ii) – The information redacted on the email relates to other topics for Senate Estimates including anti-dumping etc.

## FREEDOM OF INFORMATION ACT – INTERNAL REVIEW - SCHEDULE OF DOCUMENTS

Doc No Original Decision	Doc No Internal Review	No. of Pages	Description / Subject	FOI Status	Exemption
434	181	4	Email 20 May 2010 – Senate Estimates Brief: Tobacco. - Attachment: Senate Estimates Brief is a duplicate of Document 59	Release in Part	s22(1)(a)(ii) – The information redacted on the email relates to other topics for Senate Estimates including anti-dumping etc.
435	182	11	Email 1 June 2011 – Author – Justin Wickes and attached letters.	Release in Part	s47C
436	183	3	Email 7 June 2010 – Author – Kingsley Woodford-Smith	Release in Full	
437	184	3	Email 29 June 2010 – Author – Siann Taylor	Release in Full	
438	185	5	Email 20 October 2010 from NZ Customs seeking information from Customs and Border Protection.	Release in Part	s33(a)(iii) s33(b) s47F
439	186	2	Email 10 Feb 2011 – Author – Kingsley Woodford-Smith attaching Agenda and Draft Minutes to IDC on 27 October 2010	Release in Part	s33(b) s47C
440	187	3	Email 10 Feb 2011 – Author – Bryce Conolan – discussions following on from those in Document 186.	Release in Part	s33(b) s47C
441	188	2	Email 10 Feb 2011 – Author – Simon Cotterell (Health)	Exempt in Full	s47C
442	189	4	Email 14 Feb 2011 – Author – Julie Callinan regarding a Significant Detection	Exempt in Full	s22(1)(a)(ii) – This document is an email attaching a significant detection report seizure relating to a particular detection. The document is therefore irrelevant to the request.
443	190	3	Email 17 Feb 2011 – Author – Kingsley Woodford-Smith regarding a Significant Detection - Duplicate of Document 157	Exempt in Full	s22(1)(a)(ii) – This document is an email attaching a significant detection report seizure relating to a particular detection. The document is therefore irrelevant to the request.
444	191	3	Email 22 March 2011 – Author – Bryce Conolan	Release in Full	
445	192	4	Email 1 April 2011 – Author – Helen Jeffs attaching Consultation Paper on Plain packaging of tobacco products	Exempt in Full	s47C
446	193	1	Document registering and administering BATA IP Protection	Release in Part	s22(1)(a)(ii) – List other companies who sought a renewal of their Notices to Object.
447	194	1	Email relating to documents registering and administering BATA IP Protection	Release in Part	s22(1)(a)(ii) – Lists other tobacco companies unrelated to BATA.

## Relevant Legislation

### Section 22 - Access to edited copies with exempt or irrelevant matter deleted

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

#### *Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

### Section 33 - Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

### Section 34 - Cabinet documents

- (1) A document is an exempt document if:
  - (a) both of the following are satisfied:
    - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
    - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
  - (b) it is an official record of the Cabinet; or
  - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or

- (d) it 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 a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

*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.
- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) 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 a Cabinet deliberation or decision; and
  - (b) the existence of the deliberation or decision has not been officially disclosed.

**Section 37 - Documents affecting enforcement of law and protection of public safety**

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
- ...
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
- ...
- (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- ...

**Section 47C - Public interest conditional exemptions—deliberative processes**

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

*Exceptions*

- (2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
  - (b) purely factual material.
- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

#### **Section 47E - Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

#### **Section 47F - Public interest conditional exemptions—personal privacy**

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

...

#### **11B - Public interest exemptions—factors**

##### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

##### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;

- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

*Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) 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;
  - (d) access to the document could result in confusion or unnecessary debate.

*Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.



## FOI fact sheet 12

# Freedom of information – Your review rights

April 2011

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

### Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

### Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

### Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

### Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

### Do I have to pay?

No. The Information Commissioner's review is free.

### How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

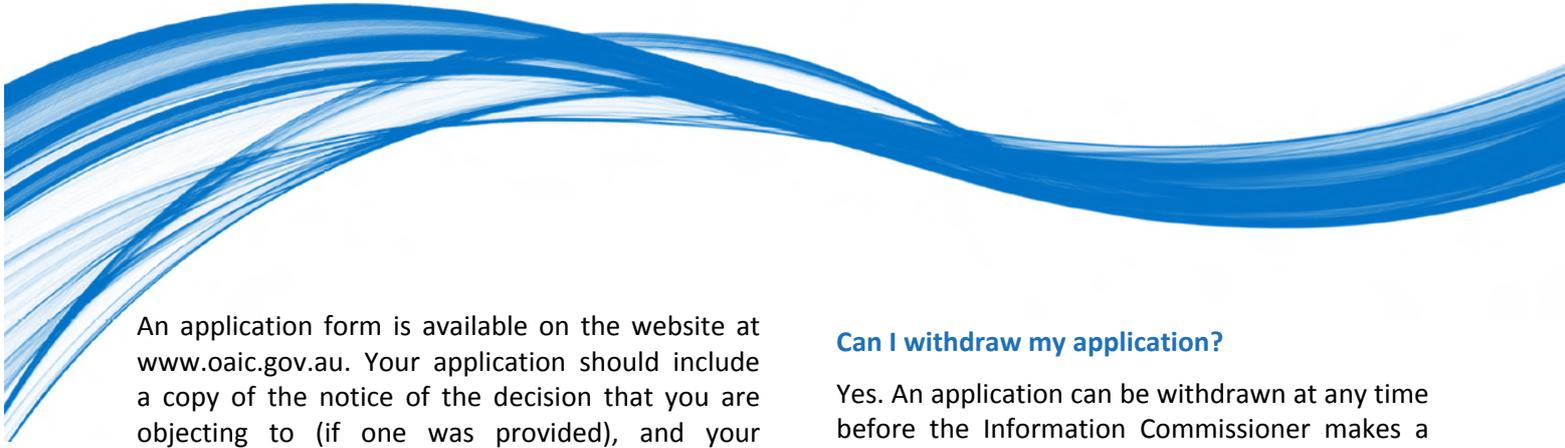
online: [www.oaic.gov.au](http://www.oaic.gov.au)

post: GPO Box 2999, Canberra ACT 2601

fax: +61 2 9284 9666

email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

in person: Level 3,  
175 Pitt Street  
Sydney NSW 2000



An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

#### **Can I get help in completing the application?**

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

#### **When do I have to apply?**

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

#### **Who will conduct the review?**

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

#### **Does the Information Commissioner have to review my matter?**

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

#### **Can I withdraw my application?**

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

#### **What happens in the review process?**

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

#### **Will there be other parties to the review?**

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

#### **Can someone else represent me?**

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

#### **Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?**

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

### What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

### What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

### Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

### What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

### FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

### For further information

**telephone:** 1300 363 992

**email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**write:** GPO Box 2999, Canberra ACT 2601  
or visit our website at [www.oaic.gov.au](http://www.oaic.gov.au)



## FOI fact sheet 13

# Freedom of information – How to make a complaint

October 2010

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

### Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See **FOI Fact Sheet 12 Freedom of information – Your review rights** for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

### What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

### Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

### When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.



### **How do I make a complaint?**

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also available on our website at [www.oaic.gov.au](http://www.oaic.gov.au).

If you need help we can assist you. You can contact us on 1300 363 992 or by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

### ***What information do I need to put in the complaint?***

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

### **Is there a fee for making a complaint?**

No. There are no costs involved in making a complaint to the Information Commissioner.

### **What will happen to my complaint?**

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

### **Can the Information Commissioner decide not to investigate my complaint?**

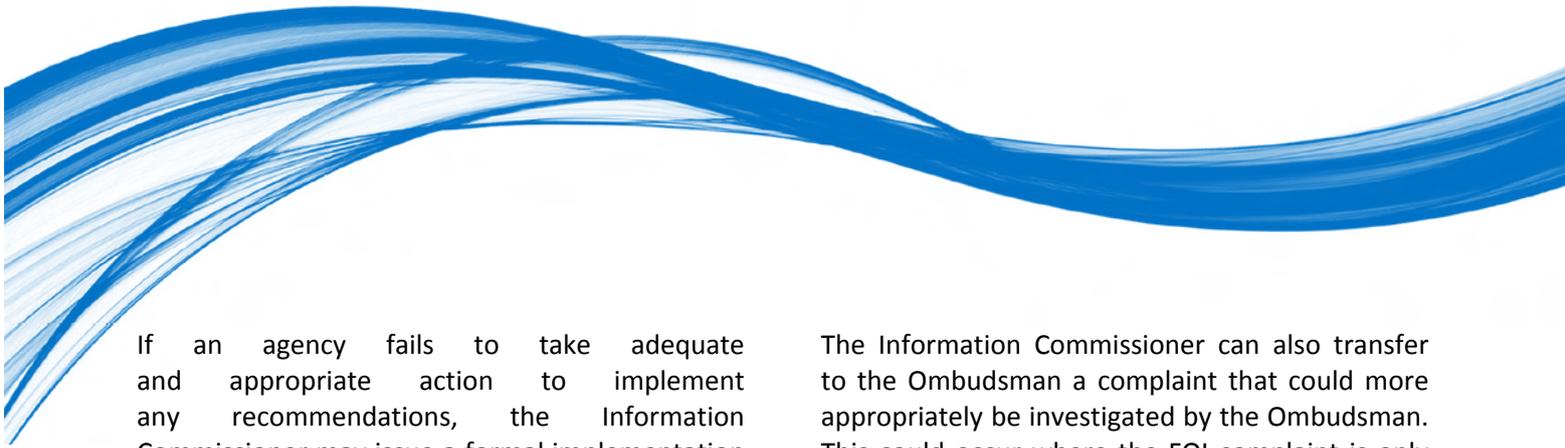
Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

### **How will my complaint be resolved?**

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.



If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.

Your name will not be included in the report unless there is a special reason and you were first consulted.

#### **Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

#### **For further information**

**telephone:** 1300 363 992

**email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**write:** GPO Box 2999, Canberra ACT 2601

or visit our website at

**[www.oaic.gov.au](http://www.oaic.gov.au)**