



## ATTACHMENT A

### DECISION RECORD

#### Request Details

FOI Request: FA 16/03/00487  
File Number: ADF2016/10606

#### Scope of Request

You have requested access to the following documents:

*'documents in respect of Tariff Concession Order 9902711 being:*

- 1. Application;*
- 2. Identification material - accompanying application or provided afterwards;*
- 3. Questions to potential local producers - whether included in the applications or later;*
- 4. Potential local producers responses to those questions - whether to the applicant or Customs/ABF;*
- 5. Applicant responses to Customs/ABF or those potential local producers or potential local producers' responses;*
- 6. ABF/Customs internal records (including correspondence with the applicant or potential local producers) on:*
  - a. tariff classification of the products;*
  - b. extent to which the products can be produced in Australia;*
  - c. whether or not to make these applications into Tariff Concession Orders;*
- 7. Tariff Advice application documents listed below in respect of Tariff Concession Order 9902711 whether in the course of the processing of this TCO application or later;*
  - a. Tariff Advice applications;*
  - b. identification material arising in those applications;*
  - c. correspondence with the Tariff Advice applicant or anyone else, and*
  - d. Tariff Advice results.'*

On 15 April 2016, you agreed to modify the scope of your request as follows:

*"Tariff Advice application documents listed below created in the course of the processing of this 9902711 TCO application:*

- a. Tariff Advice applications.*
- b. identification material arising in those applications.*
- c. correspondence with the Tariff Advice applicant or anyone else.*
- d. Tariff Advice results".*

## **Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

## **Relevant material**

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

## **Reasons for Decision**

I am satisfied that I have been provided with all the documents that are relevant to your request. The schedule of the eight documents that fall within the scope of your request at **ATTACHMENT B** 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 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 8 March 2016, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that parts of documents would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

### **2 Section 24A of the FOI Act - Documents cannot be found, do not exist or have not been received**

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

The National Trade Advice Centre has undertaken reasonable searches in relation to paragraph 7 of your request, and has advised that no Tariff Advices were created during the course of the processing of this Tariff Concession Order 9902711.

As such, I am satisfied that the Department has undertaken reasonable searches in relation to your request and that no documents were in the possession of the Department on 21 March 2016 when your FOI request was valid and the Department therefore has no records to produce in response to this part of your request.

### **3 Section 47F of the FOI Act – Personal Privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under FOI would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the Privacy Act 1988).

I consider that disclosure of parts of documents numbered 1-2 and 6-8 would disclose personal information relating to third parties. The information within these documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The third parties information is not well known and would only be known to a limited group of people with a business need to know. As the third parties information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly sources.

I do not consider that the third parties information would be relevant to the broader scope of your request, as you are seeking access to information regarding a Tariff Concession Order rather than information that relates to these individuals.

I am satisfied that the disclosure of the information within these documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 3 below.

#### 4 The public interest – section 11A of the FOI Act

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

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 section 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:

- 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 not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents:

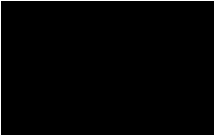
- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 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.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.



**Authorised Decision Maker**  
**Department of Immigration and Border Protection**  
**19 April 2016**

## ATTACHMENT B

### Schedule of Documents

FOI request: FA 16/03/00487

File Number: ADF2016/10606

No	Date of document	No. of pages	Description	Decision on release	
1.	15/1/1999	4	Application for Tariff Concession Order	Release in part	47F
2.	11/3/1999	2	Correspondence from Broker to potential Local Manufacturers	Release in part	47F
3.	Undated	1	Illustrative Descriptive Material	Release in full	
4.	21/04/1999	1	Minute	Release in part	22(1)(a)(ii)
5.	Undated	1	List of TCO's relating to hand held torches	Release in part	22(1)(a)(ii)
6.	7/5/1999	3	Letter from Australian Customs Service to Broker – Tariff Concession – Application acceptance	Release in part	22(1)(a)(ii) 47F
7.	12/5/1999	1	Letter from Australian Customs Service to potential Local Manufacturer - Tariff Concession System – Notification of Application	Release in part	22(1)(a)(ii) 47F
8.	9/7/1999	3	Letter to Australian Customs Service – application successful	Release in part	22(1)(a)(ii) 47F

## ATTACHMENT C

### 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 24A - Documents cannot be found, do not exist or have not been received

#### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

#### *Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

## **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**

- (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.