



ATTACHMENT A

DECISION RECORD

Request Details

FOI Request: FA 16/03/00987
File Number: ADF2016/11587

Scope of Request

You have requested access to the following documents:

'Illustrative Descriptive Material (IDM) for the following tariff concessions:

1. 9706875;
2. 9704656, and
3. 9610867.'

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 four 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 47G(1)(a) of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I am of the view that document 3B contains information concerning the business, commercial or financial affairs of a third party organization. The information is technical data in relation to the CK45 Rollover Car Wash system.

The information was provided to the Australian Customs Services in 1997 in support of an application for a Tariff Concession Order (TCO). The applicant for the TCO is no longer registered for GST and a search of ASIC shows that the company was de-registered in March 2012.

Section 27 of the FOI Act states that if a request is made to the Department for access to a document containing business affairs information relating to a third party, and it appears to the Department that that third party might wish to make an exemption contention in relation to that information, the Department must not decide to give access to the document unless that third party is given a reasonable opportunity to make submissions in support of that exemption contention. However, the Department is only required to undertake that consultation process where it is reasonably practicable to do so.

Given the current status of the TCO applicant, I have formed the view that it has is not reasonably practicable for the Department to consult the affected third party.

In determining whether the information contained within document 3B should be exempt from disclosure under section 47G of the FOI Act, I am required to have regard to the following:

- (a) The extent to which the information is well known;
- (b) Whether the organisation is known to be associated with the matters dealt with in the information;
- (c) The availability of the information from publicly accessible sources, and
- (d) Any other matters that the Department considers are relevant.

This technical data is not information that is in the public domain, and does therefore appear to be well known to the public at large. It also does not appear to be available from publicly accessible sources.

I have also had regard to the fact that the brochure contained in document 3A, and the technical description contained on pages 1-5 of document 3B contain extensive information regarding the CK 45 Car Wash system, and that this information may sufficiently inform an interested party as to the nature of the goods that are subject to this Tariff Concession Order.

Having had regard to the above, I am of the view that disclosure of the technical data information contained in document 3B would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

As such, I have decided that the parts of document 3B are conditionally exempt under section 47G 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 2 below

2 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:

- I consider that the disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of third party organisations.

- As outlined above, I have taken into account the fact that extensive information regarding the CK 45 Car Wash system is being released, and that the information that is being released would sufficiently inform an interested party as to the nature of the goods that are subject to this Tariff Concession Order
- I do not consider that it is in the public interest to release the technical data contained within these documents without having been able to consult with the third party to which it relates, and 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 16/03/00987
File Number: ADF2016/11587

No.	Date of document	No. of pages	Description	Decision on release	
1.	Undated	5	IDM in relation to TCO 9610867	Release in full	
2.	Undated	6	IDM in relation to TCO 9704656	Release in full	
3A	Undated	17	IDM in relation to TCO 9706875	Release in full	
3B	Undated	9	IDM in relation to TCO 9706875	Release in part	47G

ATTACHMENT C

Relevant Legislation

Section 47G - Public interest conditional exemptions—business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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.