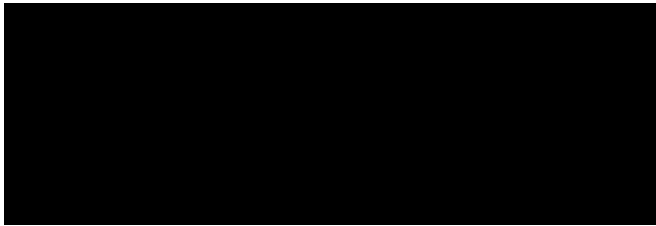




**In reply please quote:**

FOI Request: FA 16/03/02150  
File Number: ADF2016/13904

1 June 2016



Dear [REDACTED]

I refer to your email dated 30 March 2016 in which you request access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

**1 Scope of Request**

You have requested access to the following documents held by the Department:

*'all documents relating to the applications for Tariff Concession Orders TC 0605756 and TC 1424239, including all Illustrative Descriptive Material (IDM) and any correspondence relating to the classification of the goods the subject of the applications.'*

This letter is to notify you of my decision on access to the documents subject to your request.

**2 Charges**

On 3 May 2016, the Department notified you of the estimated charges associated with processing this request in the amount of [REDACTED]. On 4 May 2016, you paid the charges in full.

**3 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.

#### **4 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;
- consultation responses from third parties consulted in accordance with the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

#### **5 Decision on access**

The Department has identified 29 documents that fall within the scope of your request. These documents were in the possession of Department on 30 March 2016 when your FOI request was received.

The decision in relation to the documents in the possession of the Department which come within the scope of your request is as follows:

- Release four documents in full;
- Release 21 documents in part with deletions, and
- Exempt four documents in full from disclosure.

The reasons for the decision are set out below.

A schedule of these documents is at **ATTACHMENT A** for your reference.

#### **6 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 29 documents that fall within the scope of your request at **ATTACHMENT A** 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.

##### **6.1 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 1 April 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 also note that some documents contain references to multiple TCO applications, and I have taken the view that the information that does not relate to the TCO applications referred to in your request are not relevant to this request. This relates particularly to document 6.

I have therefore decided that parts of documents, as identified to in the schedule, 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.

## **6.2 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 the documents, as identified in the schedule, would disclose personal information relating to third parties. The information within these documents would reasonably identify a person, either through their names, 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 specific Tariff Concession Orders, rather than information relating to other 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.

As such, I have decided that parts of the documents are 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 6.4 below.

### **6.3 Section 47G of the FOI Act – Business Affairs**

Section 47G(1)(a) of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning the business, commercial or financial affairs of an organisation, where disclosure would, or could reasonably be expected to, unreasonably affect the organisation in respect of its lawful business, commercial or financial affairs.

I have considered that parts of the documents, as identified to in the schedule, contain information concerning the business, commercial or financial affairs of an organisation.

In deciding whether this information should be exempt from disclosure under the FOI Act, I have had regard to the following:

- (a) the information is not generally well known outside the company that prepared it and the company that provided it to the Department for the purposes of the TCO application;
- (b) the organisation is not known to be associated with the TCO applications, noting that the information did not originate with the TCO applicants and there is no direct correlation between the TCO applicants and the owners of the information;
- (c) research has been undertaken and the information contained within these documents does not appear to be available from publicly accessible sources, and
- (d) the information does relate to the business affairs of the respective organisations and does appear to be technical in nature. I consider the disclosure of this information would, or could reasonably be expected to, unreasonably affect the lawful business, commercial or financial affairs of the relevant organisations.

I am therefore of the view that disclosure of the information would, or could reasonably be expected to, unreasonably affect those organisations in respect of their lawful business, commercial or financial affairs.

As such, I have decided that the parts of the documents 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 6.4 below.

### **6.4 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 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. 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.

## **7 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**.

## **8 Your Review Rights**

### Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days. Applications for review should be sent to:

Freedom of Information Section  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

OR

By email to: [foi@border.gov.au](mailto:foi@border.gov.au)

### Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## **9 Making a Complaint**

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department in relation to your request.

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

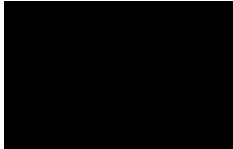
Your enquiries to the Ombudsman can be directed to:  
Phone 1300 362 072 (local call charge)  
Email [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Your enquiries to the Australian Information Commissioner can be directed to:  
Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

## **10 Contact**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au).



**Authorised Decision Maker**  
**Department of Immigration and Border Protection**

## ATTACHMENT A

### Schedule of Documents

FOI request: FA 16/03/02150

File Number: ADF2016/13904

No.	Date of document	No. of pages	Description	Decision on release	
1.	10/04/2006	4	Application for a Tariff Concession Order – <b>TCO 0605756</b>	Release in part	47F
2.	5/4/2006	8	Local Manufacturer Searches	Release in full	
3.	Undated	12	Illustrative Descriptive Material	Exempt in full	47G
4.	Undated	1	Description of Goods including the Customs Tariff Classification	Release in part	22
5.	1/5/2006	1	File note	Release in part	22 47F
6.	1/5/2006	5	Email from Broker to Australian Customs Service Subject: TCO's	Release in part	22 47F
7.	8/5/2006	1	Draft Description of Goods including the Customs Tariff Classification	Release in part	22
8.	8/5/2006	1	Email from Broker to Australian Customs Service Subject: Thickeners	Release in part	22 47F
9.	Undated	1	Draft Description of Goods including the Customs Tariff Classification	Release in full	
10.	9/5/2016	1	Minute Paper	Release in part	22
11.	9/5/2016	1	Draft Description of Goods including the Customs Tariff Classification with file note.	Release in part	22
12.	Undated	1	Customs Tariff Schedule 3	Release in full	
13.	15/5/2006	2	Letter to Broker from Australian Customs Service – Applicant acknowledged	Release in part	22 47F
14.	7/7/2006	3	Letter to Broker from Australian Customs Service – Application Successful	Release in part	22 47F
15.	Undated	2	Explanatory Statement	Release in full	



No.	Date of document	No. of pages	Description	Decision on release	
16.	11/7/2014	9	Application for a Tariff Concession Order – <b>TCO 1424239</b>	Release in part	47F
17.	27/6/2014	37	Local Manufacturer Searches	Release in part	47F
18.	14/7/2014	1	Addendum – DFA TCO application – Tailing Thickener	Exempt in full	47G
19.	Undated	29	Illustrative Descriptive Material	Exempt in full	47G
20.	18/7/2014	1	Pre-Screening Checklist	Release in part	22
21.	18/7/2014	1	Draft Description of Goods including the Customs Tariff Classification	Release in part	22
22.	Undated	5	Additional IDM	Exempt in full	47G
23.	17/7/2014	2	Email correspondence Subject: KPMG: Duro – Thickener	Release in part	47F
24.	21/7/2014	5	Email correspondence Subject: FW: KPMG: TCO Application – Thickeners	Release in part	22 47F 47G
25.	23/7/2014	2	Screen print from TCO database	Release in part	22 47F
26.	29/7/2014	2	Email to Broker Subject: URGENT: Amended wording – TCO 1424239 – Tailing thickeners	Release in part	22 47F
27.	29/7/2014	3	Email to Broker Subject: RE: URGENT: Amended wording – TCO 1424239 – Tailing thickeners	Release in part	22 47F
28.	29/7/2014	2	Letter to Broker Application acceptance	Release in part	22 47F
29.	1/10/2014	3	Letter to Broker Application successful	Release in part	22 47F

## ATTACHMENT B

### 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 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.

...

## **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.