



ATTACHMENT A
DECISION RECORD

1 Request Details

FOI Request: FA 16/01/00138
File Number: ADF2016/520

2 Scope of Request

You have requested access to the following documents:

"documents from the Department of Infrastructure to DIBP (including the then ACBPS) that requested consultation in preparing its Coastal Shipping Act bill, referred to in this press release published May 2015

http://minister.infrastructure.gov.au/wt/releases/2015/May/wt149_2015.aspx

The request would include documents and correspondence from and between DIBP and Department of Infrastructure that would include the consultation supplied by DIBP on this proposed legislation including but not limited to selected changes.

The timeframe for this request is May 2014 to May 2015".

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,
- advice from external stakeholders with responsibility for matters relating to the documents to which you sought access, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

5 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 18 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.

5.1 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 6 January 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 this information is not relevant to your request and has been deleted from the documents.

I have also decided that some parts of the email chains are not relevant to the scope of your request, as they do not constitute "*correspondence from the Department of Infrastructure ... that requested consultation*" or "*correspondence from and between DIBP and Department of Infrastructure that ... include the consultation supplied by DIBP*". These emails consist of either internal communication between the then Australian Customs and Border Protection Service (ACBPS), communication directly between ACBPS and other Government agencies, or emails between ACBPS and Infrastructure which relate to administrative matters only, and do not contain any form of submission in relation to the proposed coastal shipping legislation.

I have therefore decided that parts of documents, as identified in the schedule and marked "s22(1)(a)(iii)" on the 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.

5.2 Section 34 of the FOI Act – Cabinet Documents

Section 34(3) of the FOI Act provided that 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.

Parts of documents 1 and 12 contain material which was deliberated in Cabinet and as such, disclosing this information would reveal both submissions made to Cabinet and Cabinet deliberations and decisions. Parts of document 1 contain information that was generated in the process of confirming final information for Cabinet deliberations. I am satisfied that these Cabinet deliberations have not been officially disclosed.

The Department of the Prime Minister and the Cabinet has been consulted in relation to the disclosure of this information, and supports the contention that it is exempt under section 34(3) of the FOI Act. I afford significant weight to the views expressed by those whose role it is to provide advice to and administer the functions of Cabinet.

I have decided that parts of documents 1 and 12 are exempt from disclosure under section 34(3) of the FOI Act.

5.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C(1) of the FOI Act provided that a document is conditionally exempt if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency. 'Deliberative processes' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'¹

The proximity of the development of parts of document 1 to Cabinet consideration of the issues referred to it in and the closeness of the ideas canvassed in the document result in this particular information being part the deliberative process of both this Department and its partner agencies.

Parts of documents 6 and 7 contain information that formed part of the deliberative process involved in assessing the implications for Customs Regulations for the importation of ships. This information included the weighting up or evaluation of the competing arguments or considerations that may have had a bearing on the course of action taken by the Department and its partner agencies and formed part of the process of reflection that was in progress at that time. This information relates directly to the functions of the Department (then ACBPS) and did not form part of the decision or conclusion reached at the end of the deliberative process.

Information contained in document 12 consists of a recorded exchange of an opinion and formed part of the writer's thinking process which had some bearing on the course of action then taken.

The information referred to above does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

I have decided that parts of documents 1, 6, 7 and 12 are conditionally exempt from disclosure under section 47C 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 5.5 below

5.4 Section 47E of the FOI Act – Operations of Agencies

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

This Department is responsible for managing the security and integrity of Australia's borders, including protecting its borders and managing the movement of people and goods across it.

Parts of the documents, as identified in the schedule and marked "s47E(d)" on the documents, contain information which discloses the Department's operational priorities. Disclosure of this information would prejudice the Department's ability to protect Australia's borders, and would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Department.

¹ See *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

I have decided that parts of the documents referred to above are conditionally exempt under section 47E(d) 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 5.5 below

5.5 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:

- Disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of the Department to manage future deliberative processes. I consider that the disclosure of this type of deliberative material may hinder the future deliberations and decision making processes of the Department, and that

there is a real public interest in this Department and its partner agencies being able to undertake effective deliberations in the future without there being a precedent of public disclosure of those processes. This is a factor which I consider strongly weighs against disclosure

- I consider that the disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice operational functions of the Department and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its operational activities is not compromised or prejudiced in any way. 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**

22 July 2016

ATTACHMENT B

Schedule of Documents

FOI request: FA 16/01/00138

File Number: ADF2016/520

No.	Date of document	No. of pages	Description	Decision on release	
1.	05/06/2014 0901	6	Email from Infrastructure to ACBPS, DIBP and others Subject: FW: Coastal shipping – options for way forward	Release in part	s22(1)(a)(ii) s34 s47C
2.	14/6/2014 2246	7	Email from Infrastructure to ACPBS, DIBP and others Subject: Request for consideration of issues with proposed changes to coastal trading	Release in part	s22(1)(a)(ii) s47E(d)
3.	20/6/2014 1058	5	Email from DIBP to Infrastructure Subject: FW: Request for consideration of issues with proposed changes to coastal trading - due today	Release in part	s22(1)(a)(ii) s47E(d)
4.	20/06/2014 2151	5	Email from ACBPS to Infrastructure Subject: RE: Request for consideration of issues with proposed changes to coastal trading	Release in part	s22(1)(a)(ii) s47E(d)
5.	21/6/2014 2034	6	Email from Infrastructure to ACBPS Subject: RE: Request for consideration of issues with proposed changes to coastal trading	Release in part	s22(1)(a)(ii) s47E(d)
6.	10/7/2014 2357	11	Email from ACBPS to Infrastructure Subject: FW: Coastal trading sub	Release in part	s22(1)(a)(ii) s47C s47E(d)
7.	11/7/2014 0912	4	Email from Infrastructure to ACBPS Subject: ATTACHMENT B Importation Customs edits clean	Release in part	s22(1)(a)(ii) s47C s47E(d)
8.	11/7/2014 1051	5	Email from ACBPS to Infrastructure Subject: FW: ATTACHMENT B Importation Customs edits clean	Release in part	s22(1)(a)(ii) s47E(d)

No.	Date of document	No. of pages	Description	Decision on release
9.	11/7/2014 1301	5	Email from ACBPS to Infrastructure Subject: FW: ATTACHMENT B Importation Customs edits clean	Release in part s22(1)(a)(ii) s47E(d)
10.	11/7/2014 1356	2	Email from ACBPS to Infrastructure Subject: RE: ATTACHMENT B Importation Customs edits clean	Release in part s22(1)(a)(ii) s47E(d)
11.	15/7/2014 0950	4	Email from Infrastructure to ACBPS Subject: RE: Coastal shipping implications for dry docking	Release in part s22(1)(a)(ii) s47E(d)
12.	16/7/2014 2107	4	Email from ACBPS to Infrastructure Subject: Coastal Shipping and dry docking	Release in part s22(1)(a)(ii) s47E(d) s34 s47C
13.	18/9/2014 1125	2	Email from Infrastructure to ACBPS Subject: RE: Coastal Shipping briefs	Release in part s22(1)(a)(ii)
14.	28/10/2014 1616	3	Email Subject: FW: Draft Agenda: Meeting to discuss coastal trading RIS	Release in part s22(1)(a)(ii) 47E(d)
15.	28/10/2014	2	Record of Meeting to Discuss Coastal Trading RIS	Release in part s22(1)(a)(ii) s47E(d)
16.	4/11/2014 1529	4	Email from DIBP to Infrastructure Subject: RE: Cabinet consideration of coastal shipping	Release in part s22(1)(a)(ii)
17.	18/11/2014 1629	2	Email from Infrastructure to DIPB, ACBPS and others Subject: Coastal Trading - Draft Transitional Arrangements	Release in part s22(1)(a)(ii)
18.	24/11/2014 1020	2	Email from ACBPS to Infrastructure Subject: RE: Coastal Trading - Draft Transitional Arrangements	Release in part s22(1)(a)(ii)

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 34 - Cabinet documents

General rules

...

- (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 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.

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.