



## ATTACHMENT A

### DECISION RECORD

#### 1 Request Details

FOI Request: FA 16/06/02302  
File Number: ADF2016/29125

#### 2 Scope of Request

You have requested access to the following documents:

*'a report of full import declaration data held in the Department's Integrated Cargo System from 1 January 2014 to 27 June 2016 for shipments of Compressed Fibre Cement (CFC) flooring imported from China by Robin Johnson Engineering (South Australian company).'*

#### 3 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions 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 Reasons for Decision

I am satisfied that I have been provided with all the documents that are relevant to your request. My reasoning in relation to the application of each section to particular documents is set out below.

## 5.1 Section 45 of the FOI Act – Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

The document that falls within the scope of your request consists of data extracted from the Department's Integrated Cargo System (ICS).

The ICS is the Department's electronic clearance and reporting system for imports and exports and links the Department with owners of goods or their agents and automates procedures for the reporting of imports and exports.

The role of the Department in the import and export of goods is to:

- ensure that all goods being imported and exported from Australia are reported as required;
- administer controls on behalf of permit issuing agencies on the import and export of restricted or prohibited goods; and
- gather information regarding the nature and volume of imports and exports to assist government and industry in policy and decision-making.

The information entered into the ICS system is a mandatory legislative requirement completed by owners to ensure compliance with the Customs Act. The majority of declarations are submitted electronically in the ICS and the authentication process associated with that procedure makes the data being transferred as part of that transaction implicitly secure and confidential.

I further note that:

- the data within the document specifically outlines particular importation data that is commercially sensitive including the importers' details, volume and value of commodities;
- the data within the document is sufficiently secret in that only the importer itself (or those acting on their behalf) would be aware of the data relating to their importation activities. The information is not common knowledge or in the public domain;
- the importer views their data as valuable commercial information that has been given to the Department in confidence for the limited purposes of assessing Customs duties and clearing import/export processes;
- an importer/exporter would not be aware at the time of providing that information to the Department, and is certainly not advised, that the Department may disclose the sensitive commercial information they provide to the Department to applicants under the FOI Act;
- in this particular instance, the importer has provided consent for some limited information to be disclosed, but has expressly not consented to the remainder of their importation data being disclosed to the FOI applicant, and
- release of the exempt information could reasonably be expected to prejudice the competitive commercial activities of the importer. Any public release of this information would lead to a commercial disadvantage or impairment for the importer referred to within the data.

I am satisfied that the nature of the information is inherently confidential as:

- The information is specifically identified by the importer as being confidential;
- The information has the necessary quality of confidentiality as it contains information that is not common knowledge or in the public domain;
- The information was provided to the Department and received on the basis of a mutual understanding of confidence;
- If the information was disclosed, it would be contrary to the express stated requirements of the importer; and
- Disclosure of the information will likely cause detriment to the importer.

I am of the view that the disclosure of the exempt information within the document would found an action by the importer for breach of confidence and as such I have decided that this information is exempt from disclosure under section 45 of the FOI Act.

## **5.2 Section 47 of the FOI Act – Documents disclosing commercially valuable information**

A document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

I consider that parts of the information contained within the document contains information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

As notified to you on 13 July 2016, the Department has undertaken a consultation with the affected third party. The third party was provided with an opportunity to make submissions as to whether they might wish to make an exemption contention in relation to the business affairs information affecting their business that are contained within the document.

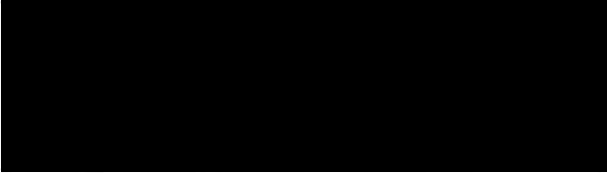
The affected third party has made submissions to the Department that certain information within the document is commercially valuable and that disclosure of that information would result in that commercial value being destroyed or diminished.

I have considered the submissions made by the affected third party, and am satisfied that:

- the information is known only to the person for whom it has value, and if it was known to others, its intrinsic commercial value would be diminished;
- the information confers a competitive advantage on the person to whom it relates;
- a genuine "arm's-length" buyer would be prepared to pay to obtain that information;
- the information is still current and continues to have value to the third party;
- disclosing the information would reduce the value of a business operation or commercial activity, resulting in a detrimental effect on the competitiveness of the affected third party in the relevant industry.

I am satisfied that the information contained within the document is valuable for the purpose of carrying on the commercial activities in which the relevant entity is engaged and that the information is relevant to the profitability or viability of a continuing business operation.

As such, I have decided that parts of the document are exempt from disclosure under section 47 of the FOI Act.



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

12/8/2016

## **ATTACHMENT B**

### **Relevant Legislation**

#### **Section 45 - Documents containing material obtained in confidence**

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
  - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
  - (b) an agency, the Commonwealth or Norfolk Island.

#### **Section 47 - Documents disclosing trade secrets or commercially valuable information**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
  - (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) 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.
- (3) 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.